


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-230

 SA (former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on July 22, 2017, and assigned it to staff attorney  to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 13, 2018, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a former seaman apprentice in the Coast Guard Reserve who was discharged in 2000, asked the Board to correct her record by changing her reentry code from RE-4, ineligible to reenlist, to RE-1, eligible to reenlist, so that she may serve her country. She stated that there is no error or injustice in her record, and she chose to leave so the code she received was fair, but she is asking for a second chance. Regarding the delay of her application, she stated that would "like a chance to prove that [she] can do this."

SUMMARY OF THE RECORD

On January 18, 2000, shortly before her 20th birthday, the applicant enlisted in the Coast Guard Reserve for a period of six years. On the same date, she signed a document that stated she would be "required to report to and participate satisfactorily in the scheduled training of the nearest Coast Guard unit."

There is very little documentation available in the applicant's Coast Guard record. A member of the Coast Guard Reserve is normally required to attend four 4-hour drills on one weekend a month (each drill is a 4-hour period of inactive duty training) and perform two weeks of active duty as annual training per year. According to the applicant's Leave and Earnings Statements (LESEs), she began Initial Active Duty Training (IADT) on January 18, 2000, which ended on March 8, 2000. She was promoted to an E-2 on March 9, 2000, and she began IADT at

the E-2 pay grade on the same date through April 14, 2000. On April 14, 2000, she was released from IADT to inactive duty in the Reserve. The applicant drilled on May 13 and 14, June 10 and 11, July 24 and 25, August 14 and 15, September 18 and 19, October 30 and 31, and November 13. The applicant's last LES is dated December 2000, which shows a "Seprats Prorate" payment, indicating that she had been separated.

The applicant stated on her application that she was discharged from the Reserve on October 23, 2001,¹ with a general discharge under honorable conditions and an RE-4 reentry code.

VIEWS OF THE COAST GUARD

On December 6, 2017, the Judge Advocate General of the Coast Guard recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum submitted by the Personnel Service Center (PSC).

PSC stated that the application is not timely and therefore should not be considered by the Board beyond a cursory review. PSC spoke with the applicant to request additional information, as "nothing was submitted with the application." PSC argued that the applicant has admitted that there is no error or injustice in her record and that her reentry code is fair. PSC stated that they have been unable to locate her discharge papers, and without being able to do so, recommend granting no relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 2, 2018, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited her to respond within 30 days. No response was received.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The applicant was discharged from the Coast Guard Reserve in 2000. Therefore, the preponderance of the evidence shows that the applicant knew her reentry code—the alleged error in her record—in 2000, and her application is untimely.
3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further instructed that "the longer the

¹ There is no evidence in the record that she was in the Reserve at any point in 2001.

² 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.”

4. The applicant did not explain her delay in seeking an upgrade of her reentry code except to indicate that she recently decided she would like it updated so that she may have a second chance to serve her country.

5. A cursory review of the case indicates that it lacks potential merit. The applicant stated in her application that there is no error or injustice in her record, and she did not submit any evidence of error or injustice. The limited documentation available in her record does not reveal an error or injustice with respect to her reentry code, which is presumptively correct.³

6. Accordingly, the Board will not excuse the untimeliness of the application or waive the statute of limitations at this time. The applicant’s request should be denied, but if she submits new documentation of her discharge, such as documents showing her separation code or reason for separation, the Board will reconsider her case.

(ORDER AND SIGNATURES ON NEXT PAGE)

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of former SA [REDACTED], USCGR, for correction of her military record is denied, but if she submits new documentation of her discharge, such as documents showing her separation code or reason for separation, the Board will reconsider her case.

April 13, 2018

