

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2023-062


ME3 (Former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on August 22, 2023, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated January 16, 2025 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 reserve Marine Enforcement Specialist in the grade of E-4 (ME3) who retired for physical disability, effective December 17, 2021. He claims that because he was separated from his final period of active service on January 6, 2021, this is his proper date of separation. He requests a correction of his record to obtain disability retirement pay for the period between January 6 and December 17, 2021. Alternatively, he requests that the Coast Guard issue him a new DD-214 reflecting the entirety of his reserve service as regular active-duty service.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on February 22, 2011. He served periods of active duty during his reserve service, but was never a member of the regular Coast Guard.

Applicant's final period of active-duty service was from January 28, 2020 to January 6, 2021, when he was ordered to active duty on a medical hold.

After applicant's release from medical hold on January 6, 2021, he returned to active reserve status in the selected reserve. He was finally discharged from the selected reserve when his permanent disability retirement was approved on December 16, 2021.

VIEWS OF THE COAST GUARD

On April 19, 2024, a judge advocate (JA) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The PSC memorandum contended that the two DD-214's in the applicant's record were correct, as was his separation date of December 16, 2021. Applicant's final day of active duty was January 6, 2021. His final day in an active status of the selected reserve was December 16, 2021. They contend that the use of a standard block entitled "Last Day of Active Duty" on applicant's separation authorization led to confusion between active duty and active status.

Since the DD-214s were accurate and the applicant's final active status date was accurate, PSC and the JA recommend denying relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 21, 2024 the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. As of the date of the Board hearing, no response had been received.

APPLICABLE LAW AND POLICY

Coast Guard Personnel Service Center Instruction (CGPSCINST) 1900.1B provides procedures for the preparation of the Certificate of Release or Discharge from Active Duty, DD Form 214. Paragraph 2 states the following:

n. BLOCK 12a. (DATE ENTERED ACTIVE DUTY THIS PERIOD):

In accordance with reference (a), the date **shall** be the date the member entered active duty for the earliest period of continuous active service for which a DD-214 **was not issued**. For reserve component member's serving on multiple sets of active duty orders with no break in active service, use the earliest orders start date, (always combine multiple order types with no break in active duty, as applicable) . . .

o. BLOCK 12b. (SEPARATION DATE THIS PERIOD): Enter the last day of active duty.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record.

The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued. Applicant's request was submitted within three years after the alleged error or injustice was discovered, and is therefore timely.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.¹

3. The Board may correct any military record of the Coast Guard when necessary to correct an error or remove an injustice.² Error means either legal or factual error.³ Injustice, when not also error, is treatment by the military authorities that shocks the sense of justice but is not technically illegal.⁴ When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁶

4. CGPSCINST 1900.1B states the Coast Guard's procedures for preparing the DD-214. The applicant makes no allegation of factual error in his final DD-214. Specifically, he does not allege that he performed active-duty service after January 6, 2021. Therefore, the Board finds no error in the DD-214. To issue a new DD-214 that encompasses the applicant's entire reserve service as creditable active-duty service would be factually incorrect and inconsistent with Coast Guard policy.

5. The applicant's permanent disability retirement appears to have been approved and entered on December 15, 2021 with applicant's placement on the permanent disability retired list effective on December 17, 2021. Except for a short period of paid duty in October 2021, the applicant did not perform any active-duty service or receive basic pay after January 6, 2021, and was not in an active-duty status when he was placed on the retired list on December 17, 2021. As a reserve component Coast Guardsman, applicant's entitlement to retired pay began upon his discharge and placement on the retired list, not upon his separation from his final period of active duty.

6. Applicant claims that issuing him a new DD-214 would entitle him to payment of additional VA disability benefits. That may be true, but it is not a basis to grant relief. In any event, this Board will not speculate on the applicant's entitlement to VA disability benefits. The

¹ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

² 10 U.S.C. § 1552(a); 33 C.F.R. § 52.2(a).

³ *Sawyer v. United States*, 18 Cl.Ct. 860, 868 (1989), *rev'd on other grounds*, 930 F.2d 1577 (Fed.Cir.1991).

⁴ *Id.*

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanden v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

documents applicant has presented are accurate and consistent with law and Coast Guard policy. He has not presented to this board, as a matter of fact or law, an error or injustice by the Coast Guard that merits relief. Applicant needs to pursue his claim with the VA if he believes he has not been paid disability compensation to which he believes he is entitled.

ORDER

The application of former ME3 [REDACTED] for the correction of his military record is denied.

January 16, 2025

