

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-022

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case upon receipt of the applicant's completed application on December 1, 2015, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 14, 2016, 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, currently a [REDACTED] in the Reserve who was discharged from active duty due to non-selection for promotion on June 19, 2015,¹ asked the Board to correct her record to reflect that she is eligible for separation pay and to have the Coast Guard Personnel and Pay Center and the Finance Center take any necessary actions to pay her separation pay.

The applicant alleged that the Coast Guard erred in its application of its regulations and policy by failing to award her separation pay when she was discharged from active duty on June 19, 2015. The applicant stated that she was legally entitled to separation pay under 14 U.S.C. § 286² and Chapter 1.A.18. of the Military Separations Manual, COMDTINST M1000.4, which provide that an officer who is involuntarily discharged from active duty who has completed at least six years of active service immediately before the date of separation is entitled to separation pay under 10 U.S.C. § 1174.³ The applicant alleged that her DD 214s show that she completed

¹ 14 U.S.C. § 283 provides that a lieutenant in the Regular Coast Guard who has twice failed of selection for promotion shall be honorably discharged on the next June 30th or, at her request, on an earlier date with no loss of benefits.

² 14 U.S.C. § 286(b) states that "[a]n officer of the Regular Coast Guard who is discharged under this section or section 282, 283, or 284 of this title and has completed 6 or more, but less than 20, continuous years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) of section 1174 of title 10."

³ 10 U.S.C. § 1174(d)(1) states that the amount of separation pay an eligible officer receives is "10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty."

more than 14 years of continuous active service immediately before her involuntary separation from active duty on June 19, 2015. In support of her allegations, the applicant submitted the following:

- The applicant's first DD 214 shows that she entered active duty on May 15, 2001, and was separated on August 1, 2009, having completed 8 years, 2 months, and 18 days of active duty.
- Her second DD 214 shows that she immediately returned to active duty on August 2, 2009, and served continuously for another 5 years, 10 months, and 18 days, until her involuntary discharge on June 19, 2015.

VIEWS OF THE COAST GUARD

On April 20, 2016, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board grant no relief except to correct the applicant's second DD 214 to reflect the actual time she served on active duty. In so doing, he adopted the findings and analysis provided in a memorandum on the case prepared by PSC.

PSC explained that the applicant received a DD 214 dated August 1, 2009, because she voluntarily resigned her commission on that date pursuant to the Coast Guard's Temporary Separation Program. She did not return to active service until April 18, 2011, when she signed an extended active duty contract.

PSC stated that the applicant was twice non-selected for promotion in 2013 and 2014, which required her to be separated from active duty no later than June 30, 2015, pursuant to 14 U.S.C. § 283(1). PSC stated that in December 2014, PSC's Officer Personnel Management (OPM) branch notified the applicant that she was not entitled to separation pay because she would not have completed six years of continuous active service immediately before June 30, 2015. PSC explained that the applicant would not have six years of continuous active service immediately before June 30, 2015, because she had been discharged from active duty under the Temporary Separation Program on August 1, 2009, and did not serve on active duty for a period of 1 year, 8 months, and 18 days, from August 2, 2009, through April 17, 2011. Therefore, PSC stated, on the last possible date of discharge, June 30, 2015, the applicant could have completed just 4 years, 2 months, and 13 days of continuous active duty since her return to active duty on April 18, 2011, following her temporary separation. Therefore, PSC stated, the applicant was not entitled to separation pay.

PSC stated that the applicant's second DD 214 is erroneous because it shows August 2, 2009, as the date she entered active duty—as if she had never requested and taken a temporary separation from active duty. PSC stated that the applicant was temporarily separated at her request and not on active duty from August 2, 2009, until she returned to active duty on April 18, 2011, and that period does not count as active service and should not be reflected as active service on her second DD 214.

PSC concluded that the applicant has not shown that the Coast Guard's determination that she was legally ineligible for separation pay constitutes an error or injustice because she had

not completed at least six years of continuous active duty immediately prior to her discharge. Therefore, PSC recommended denying the requested relief but correcting block 12a of the applicant's second DD 214 to show that she returned to active duty on April 18, 2011.

In support of this recommendation, PSC submitted the following documents:

- The applicant's Separation Authorization, issued on October 27, 2008, shows that her request for a voluntary separation had been approved with an effective date of August 1, 2009; that it was a temporary separation pursuant to Article 12.F. of the Personnel Manual; and that she was authorized to hold a Reserve commission during her temporary separation.
- In the applicant's Notice of Intent to Return to Active Duty After Temporary Separation, dated September 21, 2010, the applicant advised the Coast Guard that she intended to return to active duty on April 1, 2011.
- In a memorandum dated March 25, 2011, PSC notified the applicant that her return to active duty had been approved but that because the Senate had not yet confirmed her permanent regular commission, she would return to active duty on an extended active duty contract provided that she agreed to accept the appointment as a permanent commissioned officer as soon as the Senate confirmed it. The memorandum stated that the start date for the extended active duty contract would be April 18, 2011.
- The applicant's extended active duty contract shows that she signed it to begin extended active duty on April 18, 2011.
- The information sent to the applicant in December 2014 states that because she had been non-selected for promotion twice, she would be mandatorily separated no later than June 30, 2015. It also states that only officers who would have at least six years of continuous active duty immediately before their date of separation were entitled to separation pay.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 16, 2016, the applicant submitted her response to the advisory opinion of the Coast Guard. The applicant disagreed with the recommendation.

The applicant stated that because of her temporary separation, both her active duty base date (ADBDD) and her date of rank were adjusted to account for the period of 1 year, 8 months, and 18 days when she was not on active duty. Her ADBDD was adjusted from May 15, 2001, to March 29, 2002. Thus, the applicant argued, "the Coast Guard has already accounted for my temporary separation by reducing my time in service. [The] Coast Guard has not provided a justification for reducing my active duty time. The Coast Guard reduced my service while also using the temporary separation to deny separation pay. The Coast Guard should not be permitted to have it both ways. Since my service entry date has already been adjusted for temporary separation, the Coast Guard should provide separation pay."

The applicant alleged that her ADBD was not changed pursuant to any law or policy and yet the Coast Guard denied her separation pay even though it had already adjusted the applicant's ADBD to account for her temporary separation.

The applicant also argued that because she was a Reserve officer during her temporary separation, she had no break in service and so should receive separation pay.

In support of these allegations, the applicant submitted documentation showing that her ADBD has been adjusted to May 29, 2002, while her pay base date (PBD) remains unchanged.

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed within three years of the applicant's separation on June 19, 2015.

2. The applicant alleged that the Coast Guard's determination that she is not entitled to separation pay is erroneous and unjust because she has served continuously in the active or reserve military since May 15, 2001; because the Coast Guard has already adjusted her ADBD to account for her break in active duty; and because her DD 214s reflect more than six years of continuous active duty. In 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 his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁴ 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."⁵

3. The applicant has not proven by a preponderance of the evidence that she is entitled to separation pay. The record shows, and the applicant does not deny, that she resigned her active duty commission as of August 1, 2009, pursuant to the Temporary Separation Program and did not return to continuous active duty until April 18, 2011. Under 14 U.S.C. § 286(b), to be entitled to separation pay upon an involuntary discharge, an officer must have completed at least six years of active duty immediately before her discharge from active duty. Because the applicant had not served on continuous active duty for the six years immediately before her involuntary discharge on June 19, 2015, she was not entitled to separation pay under the statute. The fact that the applicant accepted as a Reserve appointment during her temporary separation from active duty does not make her eligible for separation pay under the statute. Because the applicant is not entitled to separation pay under the statute, the Coast Guard may not legally pay her separation pay, and its determination that she is not entitled to separation pay is neither erroneous nor unjust.

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

4. The applicant argued that she should receive separation pay because the Coast Guard has improperly adjusted her active duty base date from May 15, 2001, to March 29, 2002, to account for her temporary separation from active duty for the period August 2, 2009, through April 17, 2011. Under the requirements of 14 U.S.C. § 286(b), however, the applicant's ADBD—whether adjusted or not—is irrelevant to whether she was entitled to separation pay upon her involuntary discharge in June 2015. Moreover, contrary to the applicant's claim, Appendix C of the Personnel and Pay Procedures Manual, PPCINST M1000.2A, required the adjustment of her ADBD when she returned to active duty. Appendix C states that a member's ADBD is calculated by subtracting a member's prior period of active duty and any period of unauthorized absence from the date the member last entered active duty. The applicant last entered active duty on April 18, 2011, following a significant break in active duty and so her ADBD had to be adjusted. Because she served in the Reserve during her temporary separation, her pay base date was not adjusted.

5. The applicant's second DD 214 is substantially erroneous as it states in block 12a that she entered active duty on August 2, 2009, instead of April 18, 2011. Therefore, the DD 214 appears to credit her with more than 20 months of active duty she did not actually perform. Veterans use their DD 214s to prove their active duty time, but the applicant cannot rely on this DD 214 to prove her active duty time without risking being accused of fraud. Therefore, the Board agrees with the Coast Guard that her DD 214 dated June 19, 2015, should be corrected by changing the date in block 12a from August 2, 2009, to April 18, 2011, and by adjusting the amounts of active service and inactive service in blocks 12c, 12d, and 12e of the DD 214 accordingly.

6. Therefore, the applicant's request should be denied but alternative relief should be granted by correcting the date of entry on active duty in block 12a of her DD 214 dated June 19, 2015, from August 2, 2009, to April 18, 2011, and by adjusting the amounts of active service and inactive service in blocks 12c, 12d, and 12e of this DD 214 accordingly.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of [REDACTED], USCGR, for correction of her military record is denied but alternative relief is granted:

The Coast Guard shall correct the date of entry on active duty in block 12a of her DD 214 dated June 19, 2015, from August 2, 2009, to April 18, 2011, and adjust the amounts of active service and inactive service in blocks 12c, 12d, and 12e of this DD 214 accordingly.

No other relief is granted.

October 14, 2016

