DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-080

FINAL DECISION

[redacted] **Attorney-Advisor:**

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on March 31, 1999, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated January 13, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a former xxxxxxx in the Coast Guard Reserve from November 24, 196x, to February 1, 196x, asked the Board to correct his discharge form, DD 214, to show that he performed active duty.

APPLICANT'S ALLEGATIONS

The applicant alleged that he performed active duty for the Coast Guard in 196x but that it was not reflected in block 19 on his DD 214. He alleged that because his active duty was not shown on his DD 214, he is being denied veterans' benefits by the Department of Veterans Affairs (DVA).

Concerning the lateness of his application, the applicant alleged that he knew of the error on his DD 214 all along but did not understand its importance with respect to veterans' benefits. He thought that other documents evidencing his work in the Coast Guard would suffice. He alleged that he discovered the effect of the error on February 19, 1999.

VIEWS OF THE COAST GUARD

On October 28, 1999, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the requested relief.

The Chief Counsel argued that the Board should deny relief because the applicant "failed to provide sufficient evidence to merit the waiver of the Statute of Limitations." He argued that "[t]here is no evidence that the Coast Guard committed error by classifying his service as "active duty for training." Because the applicant admitted that he knew the contents of his DD 214 when it was issued to him, the Chief Counsel argued that the application to the Board arrived more than xx years after the statute of limitations on his claim expired. The Chief Counsel alleged that the applicant had failed to show that it would be in the interest of justice for the Board to waive the statute of limitations and that, therefore, the Board should dismiss the case with prejudice.

Should the Board decide to waive the statute of limitations, however, the Chief Counsel argued that the applicant's request should be denied because the record proves there is no error on his DD 214. The applicant, he explained, enlisted under the "RL-2" enlistment program. Participants in this program received nine months of "active duty for training," which included recruit training followed by attendance at a Class "A" school, and then completed their six-year obligation performing inactive duty training (drills). The Chief Counsel argued that the applicant's record clearly shows that the RL-2 program was explained to him and that he knew the program "required nine (9) months of active duty for training, not nine (9) months of active duty."

The Chief Counsel further explained that, although the applicant enlisted in the RL-2 program, he did not attend Class "A" school for medical reasons. He fell ill with mononucleosis. Therefore, on March 26, 196x, his "basic orders were amended to indicate that he was being retained as an RL-2 and assigned in accordance with assignment policies for RL-1 personnel." RL-1 personnel, the Chief Counsel explained, performed five months of active duty for training, which included "recruit training and/or on-the-job training," and performed inactive duty training drills for the remainder of their six-year terms. The Chief Counsel alleged that this amendment was made because the applicant chose not to extend his nine-month commitment in order to complete "A" school after he was well. While still technically in the RL-2 program and obligated to train for nine months, the applicant was assigned under the RL-1 program to the xxxx for "on-the-job training."

The Chief Counsel alleged that the applicant failed to prove that the Coast Guard committed any error or injustice in his case. "Applicant clearly enlisted in the CG Reserve and was serving in an active duty for training status while he received on-the-job training in accordance with the [March 26, 196x] agreement between Applicant and the Coast Guard."

The Chief Counsel stated that "active duty for training" is not the same thing as "active duty," although it is "active service." The applicant's enlistment documents and other records clearly show that he knew his service was to be classified as "active duty for training." Therefore, there is no error on his DD 214.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on November 2, 196x, for a term of six years. Block 11 of his enlistment contract (form CG-3301) indicates that he would be required to perform nine months of active duty for training. Block 12 of the contract indicates that his service would be considered "inactive duty."

Also on November 2, 196x, the applicant signed a "Certificate of Obligated Service upon Enlistment in Coast Guard Reserve for 6 Years," which is incorporated by reference into his enlistment contract. The certificate explains the various ways in which the applicant may fulfill his six-year obligation. One of the options is for the applicant to perform "a 9 months initial period of active duty for training plus service in the Ready Reserve, such that the total service is 6 years." The certificate states that the benefits, obligations, and responsibilities of his enlistment have been explained to him and that he understands he will be ordered to perform nine months of "active duty for training" starting within 90 days of his enlistment. The certificate also states that the applicant is "subject to the Uniform Code of Military Justice while on active duty or active duty for training."

On November 2, 196x, the applicant also signed a form that explained his obligations under the RL-2 program. The form indicates that after his active duty for training, he would have to perform 48 scheduled drills and two weeks of active duty for training every year. The form also stated that he was "liable for active duty under the provisions of the Armed Forces Reserve Act of 1952" and that he was "liable for active duty in time of war, national emergency …, or when otherwise authorized by law."

An "Administrative Remarks" entry in the applicant's record dated November 2, 196x, states that he is "[g]uaranteed enrollment in Class "A" xx

School upon satisfactory completion of recruit training" and that his recruit training will begin on November 24, 196x, at the Coast Guard Receiving Center in xxxxxxxx.

On November 24, 196x, the applicant received his "Initial Active Duty for Training Orders" at the Receiving Center in xxxxxx. The orders, which he signed to indicate his acceptance, indicated his status as "SR-RL-2, USCGR." The orders indicated that he would soon be sent to the Training Station in xxxx, xxxx, for recruit training and that, upon completion of recruit training, he would be assigned to attend xxxxxxxx [Class "A"] school, which was tentatively scheduled to begin after recruit training on March 8, 196x. The orders also indicated that upon completion of school, the applicant would continue to perform "active duty for training" until the end of his nine-month obligation.

On February 8, 196x, the applicant received orders indicating that upon completion of xxxxxxx school, he should report to the xxxx Coast Guard District in xxxx to finish his nine months of "active duty for training." On March 2, 196x, the applicant was hospitalized and diagnosed with "infectious mononucleosis." He was discharged from the hospital on March 9, 196x, and instructed to return for out-patient treatment. On March 12, 196x, the applicant completed "recruit training" and was promoted to seaman apprentice.

An "Administrative Remarks" entry in the applicant's record dated March 26, 196x, states that the applicant would be retained as an RL-2 but assigned in accordance with policies for RL-1 personnel because he "was held over [at the Training Station] after graduation from Recruit Training due to medical reasons and at this time he does not desire to voluntarily extend his Active Duty for Training in order to have the required time for attendance and completion of xx School." On March 29, 196x, the applicant's "Active Duty for Training Orders" were amended so that he would report to the xxxx in xxxxx no later than April 3, 196x. His service record card indicates that on April 3, 196x, he reported to the U.S. cutter xxxxx in xxxxxx for more active duty for training. On August 2, 196x, he was transferred to Coast Guard xxxxxxx, for further active duty for training.

The applicant's DD 214 indicates in blocks 11a. and 11d. that on August 23, 196x, he was "release[d] from active military service," having served nine months and completed his active duty for training. Block 19 of the DD 214 indicates that his source of entry into active service was not induction or enlistment but instead "Other: ordered to nine mo. ADTNG." Under "Remarks" in block 32, it indicates "RFA 1955 nine months ADTNG."

After his release from active service, the applicant was obligated to perform training drills through the end of his six-year obligation on November 1,

197x. However, the applicant was honorably discharged and was issued a discharge certificate on February 1, 196x, due to a physical disability after having been diagnosed with chronic bronchitis. He had served 3 years, 2 months, and 29 days in the Reserve.

In support of his claim, the applicant submitted several documents. A letter from his member of Congress states that the applicant told him that, during the nine-month training period reflected on his DD 214, he helped to recondition the *U.S.S. xxxxxx* for use in the Coast Guard and that such work should be considered active duty, rather than a training exercise.

A letter from the DVA dated February 19, 1999, states that the applicant's service was characterized as "active duty for training," which "does not qualify a veteran for a VA pension." The DVA informed him of his right to appeal the decision.

The applicant also submitted a photocopy of his dog tag, which shows his Coast Guard service number.

APPLICABLE LAW

According to 10 U.S.C. § 101(22) (1964), "active duty" is defined as "full-time duty in the active military service of the United States. It includes duty on the active list, full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned."

Title 38 U.S.C. § 101(21) (1964) defines "active duty" as "full-time duty in the Armed Forces, other than active duty for training." "Active duty for training" is described as "full-time duty in the Armed Forces performed by Reserves for training purposes." 38 U.S.C. § 101(22). Only veterans who served on "active duty" for more than 180 days were "eligible veterans" for the purpose of certain benefits. 38 U.S.C. § 1652(a)(1).

Congress further distinguished "active duty for training" from "active duty" for various purposes in 10 U.S.C. § 269(e) (1964) and 37 U.S.C. § 204(g)(1).

Article 1 of the 1964 Administrative Manual for the Coast Guard Reserve included the definitions of various terms. "Active duty" was defined as "[f]ull time duty in the active military service of the United States <u>other than active duty for training</u>." [Emphasis added.] "Active duty for training" is defined as "full time duty in the active military service of the United States for training purposes." The "RL-2" program is defined as "nine months ACDUTRA consisting

of recruit training – Class "A" school for which preselected; remainder of six years INACDUTRA." The "RL-1" program is defined as "five months initial ACDUTRA consisting of recruit training – school and/or on-the-job training; remainder of six years INACDUTRA."

According to Article 1-H-4 of the Coast Guard Personnel Manual in effect in 196x, the RL-2 program "is offered to personnel who qualify for and desire specialty training which requires more ACDU time than is provided in the RL-1 program [six months]. After successful completion of recruit training, the trainee will attend a Class A school, followed by approximately 2 months of operational experience." The RL-1 program "is available to personnel who do not qualify for, and/or do not desire to participate in, one of the training programs mentioned below. It is the standard program, and consists of 6 months' initial ACDUTRA."

According to Article 13-A-1(b) of the Personnel Manual, DD 214s were issued to "all personnel at the time of separation from active service including active duty for training of 90 days or more." Article 13-A-1 (b)(4) specified that, for Reserve "RL Trainees," "members of the Reserve serving in a program requiring an initial period of active duty for training of 4 months or more will be issued a DD Form 214 upon release from this initial training duty." However, Article 13-A-1(f) of the Personnel Manual specified that, while copies of the DD 214s of members who had been on active duty should be forwarded to the Selective Service Administration and the Veterans Administration, copies of the DD 214s of personnel released from active duty for training should not be forwarded to those agencies.

Article 13-A-1(e) of the Personnel Manual governed preparation of members DD 214s. It specifies that in block 19a. of the form, "[f]or ACDUTRA personnel, check "Other" and enter "Ordered for (six, nine, or twelve) months ACDUTRA."

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 section 1552 of title 10 of the United States Code.

2. An application to the Board must be filed within three years of when the applicant discovers the alleged error in his record. 10 U.S.C. § 1552.

The applicant admitted that he knew the content of his DD 214 in 196x. Thus, his application was untimely.

3. Pursuant to 10 U.S.C. § 1552, the Board may waive the three-year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board should consider the reason for the delay and conduct at least a cursory review of the merits of the case. Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992).

4. The applicant alleged that, although he knew the content of his DD 214, he did not discover the effect of the language in block 19 until February 19, 1999, when he received a letter from the DVA denying his claim for veterans' benefits. The effect of the language in block 19, which is to make the applicant ineligible for veterans' benefits, is not readily apparent on the face of the DD 214. In addition, the applicant's DD 214 indicates that he performed nine months of "active military service." Therefore, the cause of the delay of the application is reasonable, and the Board finds that it is in the interest of justice to waive the statute of limitations in this case.

5. The record shows that the applicant enlisted in the Coast Guard Reserve's RL-2 training program in November 196x. Both the enlistment documents he signed and the Coast Guard regulations governing the RL program clearly indicated that his service was considered "active duty for training" rather than "active duty." The Personnel Manual and 38 U.S.C. § 101 clearly distinguished "active duty for training" from "active duty," and the Reserve's Administrative Manual stated that "active duty for training" does not count as "active duty." Furthermore, in 38 U.S.C. §§ 101 and1652(a)(1), Congress made members who have performed "active duty for training" rather than "active duty" ineligible for certain veterans' benefits.

6. The RL-2 training program was supposed to consist of nine months' active duty for training, during which time the trainees were to undergo recruit training, attend "A" school, and receive approximately two months of operational experience, which amounts to on-the-job training. Personnel Manual (1965), Article 1-H-4. Due to a serious illness, the applicant was not able to begin the "A" school component of the RL-2 training program on time with his fellow trainees. The record indicates that the Coast Guard gave him the option of extending his active duty for training commitment to complete "A" school at a later date, but the applicant rejected this proposal. Therefore, the Coast Guard assigned the applicant to perform on-the-job training in accordance with the basic RL-1 program for the remainder of his nine-month obligation.

7. The applicant argued that the work he did helping to refurbish the xxxxxx instead of attending "A" school should not be considered training but active duty. However, the record indicates that on-the-job training is an integral part of "active duty for training" in the RL program, in which the applicant voluntarily enlisted. The applicant failed to prove by a preponderance of the evidence that the Coast Guard committed error or injustice when it assigned him to complete the remainder of his Reserve training obligation doing on-the-job training after his illness prevented him from attending "A" school.

8. Article 13-A-1(e) of the Personnel Manual in effect in 196x specified that, for members being released from an active duty for training program, block 19a. on the DD 214 should indicate "Other" and "Ordered for (six, nine, or twelve) months ACDUTRA." This is the entry made in block 19a. on the applicant's DD 214. He has failed to prove that it is in error or unjust.

9. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application for correction of the military record of former XXXXXXX, USCGR, is hereby denied.