

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

Application for Correction
of the Coast Guard Record of:

BCMR Docket No. 2011-017

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case upon receipt of the applicant's completed application November 1, 2010, and subsequently prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 14, 2011, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant asked the Board to correct his record to show that he received a DD 214 (certificate or release from active duty) for a 29-day period of active duty between October 21, 2005 and November 18, 2005. The applicant stated that he was involuntarily recalled to active duty under title 10 of the United States Code in support of Hurricane Katrina. He contended that a person who is involuntarily recalled to active duty is entitled to a DD 214 upon his or her release from that period of active duty. In support of his application, the applicant submitted a copy of his recall orders, which show that he was involuntarily recalled under title 14 of the United States Code.

The applicant contended that he discovered the alleged error on September 23, 2010. He stated that it is in the interest of justice to consider his application if more than 3 years have passed since he discovered the error because “[a]s a service member, I performed my duties as required in accordance with the UCMJ and the oath I had taken upon enlistment into the armed forces.” He also stated that during “the hurricane period he was activated and deactivated 3 times,” but only actually served during the period under review.

VIEWS OF THE COAST GUARD

On January 12, 2011, the Board received an advisory opinion from the office of the Judge Advocate General (JAG) of the Coast Guard. He recommended that the Board deny relief to the

applicant, in accordance with a memorandum from the Commander, Personnel Service Center (PSC).

PSC noted that the application was not timely and should be denied for that reason. With respect to the merits of the application, PSC stated that Chapter 1.B.10. of COMDTINST M1900.4D allows for the issuance of a DD 214 for reservist upon completion of active duty for a period of 90 days or more. PSC stated that the applicant's official record does not show that he served for 90 days or more in support of Hurricane Katrina. Therefore, the Coast Guard was correct not to issue the applicant a DD 214 for the active duty period under review.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 25, 2011, the Board received the applicant's response to the views of the Coast Guard. He disagreed that his application should be denied.

The applicant stated that according to COMDTINST M3061.1 (Manpower Mobilization & Support Plan) (1996), a DD 214 should be issued upon the release of a member called to active duty. The applicant submitted a copy that instruction. Article 6.C.4.e. states the following: "Reservist involuntarily ordered to active duty shall be issued, upon release of discharge, a completed "Certificate of Release or Discharge from Active Duty (DD Form 214) in accordance with DOD Directive 1336.1 and the Personnel Manual."

The applicant stated that if he had known that a DD 214 should have been issued at the time, he would have made every effort to ensure that he received one.

FINDINGS AND CONCLUSIONS

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

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code.

2. The application was not timely. Under 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or should have discovered, the alleged error or injustice. The applicant stated that he discovered the alleged error on September 23, 2010. However, he was aware of the existence of the DD 214 as early as April 16, 1988, because he received one at that time for an earlier period of active duty. Therefore, he was aware upon his release from active duty on November 18, 2005 that he had not been given a DD 214. He should have filed his application within three years of his release from active duty in 2005.

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 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.” *Id.* at 164, 165.

4. The Board is persuaded to waive the untimeliness and perform a full review of the merits based upon the strength of the applicant’s case that an error exists in his record. In this regard, the Board disagrees with the advisory opinion and finds that the applicant is entitled to relief. The applicant submitted a copy of his orders showing that he was recalled involuntarily to active duty for 29 days in 2005 in response to and support of Hurricane Katrina. According to COMDTINST M3061.1, a reservist involuntarily recalled to active duty shall be issued a DD 214 upon release from active duty. This provision is consistent with Chapter 1.B.10. of COMDTINST M1900.4D (Certificate of Release or Discharge from Active Duty), which states that a DD 214 will not be issued to “reservists who are released from continuous active duty for training (ADT) less than 90 days.” The applicant was not on active duty for training, but rather, he was involuntarily mobilized and deployed under title 14 in support of Operation Katrina. Therefore, under Coast Guard regulations, the applicant was entitled to a DD 214 upon his release from that period of active duty.

5. Enclosure (3) to DoDI M 1336.01 removes any doubt that a reservist who is ordered to active duty for a contingency operation will be issued a DD 214 regardless of the number of days served on active duty.

6. Accordingly, the applicant has proved by a preponderance of the evidence that he is entitled to a DD 214 and his application should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXX, for correction of his military record is granted. The Coast Guard shall issue a DD 214 to the applicant covering the period of his involuntary recall to active duty from October 21, 2005 to November 18, 2005. A copy of the DD 214 shall be placed in his military record.

