

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-124

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

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. The Chair docketed the application upon receipt of the applicant's completed application on April 16, 2012, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated December 21, 2012, 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 ALLEGATION

The applicant asked the Board to correct his record (notice of separation document) to show that he served in the Temporary Reserve from August 4, 1942 to December 6, 1942. According to the applicant's military record, he enrolled in the Temporary Reserve on August 4, 1942 and his service was terminated on December 13, 1942, with an ordinary discharge. There is no evidence that the applicant served on active duty while enrolled in the Temporary Reserve.

The applicant's record also shows that he enlisted in the regular Coast Guard Reserve for three years on December 14, 1942 and began active duty the same day. He served on active duty in the Reserve until his separation on December 6, 1945.

The applicant did not give the date on which he discovered the alleged error. He stated that it is in the interest of justice to excuse his untimeliness because "I just want my recorded time of service corrected—the time served should be from [August 4, 1942] changed to [December 6, 1942]."

VIEWS OF THE COAST GUARD

On September 6, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC).

In recommending denial of relief, PSC noted that the application was not timely, but it was in the applicant's interest for the Board to consider the application. However, PSC stated that according to Article 1.B.1. of the Reserve Policy Manual, during the period under review, members of the temporary reserve were volunteers and former Auxiliary members "whose paid and unpaid services were still needed in a military capacity for coastal patrols and port security work," while regular reserve members served on active duty "for the duration."¹ PSC stated that the applicant's separation document correctly shows that the applicant served on active duty in the Reserve from December 14, 1942, to December 6, 1945. PSC stated that the applicant's time in the Temporary Reserve was not creditable as active duty.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 11, 2012, the Board sent a copy of the views of the Coast Guard to the applicant for a response. The Board did not receive a reply from the applicant.

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 section 1552 of title 10 of the United States Code.

2 The application was not timely. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered the alleged error or injustice. *See* 33 CFR 52.22. The applicant did not state when he discovered the alleged error, but he should have discovered it on or within three years of his December 6, 1945 separation from active duty. He signed his separation document at that time which showed the dates he began and ended his active duty service. Therefore, his application is untimely by approximately 64 years and the applicant has not persuaded the Board that it is in the interest of justice to excuse the untimeliness.

3. Although the application is untimely, the Board must still perform at least a cursory review of the merits to determine whether it is the interest of justice to waive the statute of limitations. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing 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 stated 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.

¹ See also Chapter 2.A.1.d. of the Pay Manual which states that full-time active duty performed as a temporary member of the Coast Guard Reserve is included in calculating a members years of service to determine the member's rate of pay. However, periods during which no duty was assigned or performed may not be counted.

4. A cursory examination of the merits indicates that the applicant is not likely to prevail because he has presented no evidence that the time he spent in the Temporary Reserve was active duty. The Coast Guard asserted that the time could not be counted as active duty, and therefore the applicant's record is correct as it currently stands. The applicant has presented no evidence that his record is incorrect, other than his own statement. Under the circumstances, the Coast Guard is entitled to the presumption of administrative regularity, which the applicant has failed to rebut with sufficient evidence to the contrary. (The Board notes that while the applicant's time in the Temporary Reserve is correctly not reflected on the document separating him from active duty, such time is recorded on other documents in his military record.)

5. Accordingly, the application should be denied because it is untimely and because it is not in the interest of justice to excuse the untimeliness.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXXXXXXXXXX, for correction of his military record is denied.

