

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2013-016**



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**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 after receiving the applicant's completed application on November 2, 2012, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 25, 2013, 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 [REDACTED] in the Reserve, asked the Board to correct his record by adding a DD 214 to document his release from 195 days of continuous active duty in 2007, when he worked on a joint project of the Armed Forces. He learned in May 2011 that he needs a DD 214 showing least 185 days of active duty to satisfy a court in some litigation he is pursuing. The applicant alleged that he served continuously on various short-term inactive and active duty orders in 2007 because the Coast Guard did not have a dedicated funding stream for the project and so paid him from various pockets and issued orders accordingly. The applicant stated that members he worked with during that period from other Reserve Services all received DD 214s, but he did not. In support of his allegations, the applicant submitted copies of his inactive duty training (IDT) and active duty (AD) orders. He described his service during this period as follows:

<b>Start Date</b>	<b>End Date</b>	<b>Days</b>	<b>Description</b>
Mar. 23	Mar. 27	5	IDT—He was told it was not AD because of a 179-day limit on AD orders but that he should report early to prepare for deployment overseas.
Mar. 28	Aug. 15	141	AD—orders for AD for special work (ADSW); deployed overseas.
Aug. 16	Sept. 30	46	AD—an extension of his ADSW orders.
Oct. 1	Oct. 13	13	After returning from overseas and taking some leave, he reported to his unit from Sept. 25 to Oct. 13 to create an "after action report."
Oct. 14	Oct. 20	7	IDT—He was sent to Portsmouth, VA, for meetings related to the project.
<b>Total</b>		<b>212</b>	

### VIEWS OF THE COAST GUARD

On May 3, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant partial relief in this case. In so doing, he adopted the findings and analysis provided by the Personnel Service Center (PSC) in a memorandum on the case.

PSC stated that the applicant, who normally drilled at the [REDACTED] office in [REDACTED], was ordered to report to the [REDACTED] office for 5 days of IDT from March 23 to 27, 2007. Then for 6 months and 3 days from March 28 to September 30, 2007, he served on ADSW primarily aboard a Navy ship in the [REDACTED]. After those ADSW orders ended, the applicant reported for IDT drills on two days: October 4 and 7, 2007.

PSC submitted a copy of the applicant's drill pay records, which show that during the pertinent period in 2007, he performed multiple drills (full days) each day from March 23 to 27; single drills (half days) on September 25, 26, 28, and 30; a single drill each on October 4 and 7; and multiple drills from October 14 to 20.

PSC noted that its Direct Access database erroneously shows that the applicant's ADSW orders ended on September 23, 2007, instead of September 30<sup>th</sup>, and so his service during that period was erroneously counted as IDT drills. PSC stated that Direct Access should be corrected in this regard, but no other correction is warranted because PSC has already issued the applicant a DD 214 documenting his active duty service from March 28 to September 30, 2007. PSC submitted a copy of a DD 214 documenting the applicant's active duty service for 6 months and 3 days from March 28 through September 30, 2007. Therefore, PSC alleged, the only correction remaining for the Board to make is to order a correction to the applicant's record in Direct Access to show that he continued serving on ADSW from September 24 to 30, 2007.

The JAG stated that the applicant was entitled to a DD 214 under COMDTINST M1900.4D, as well as Department of Defense Instruction 1336.01, Enclosure 3, which states that personnel being separated from a period of ADSW will be furnished with a DD 214 when they have served 90 days or more. However, PSC has already issued the DD 214 documenting 6 months and 3 days on active duty. The JAG explained that the applicant's 187 total days on active duty are shown as 6 month and 3 days on his DD 214 pursuant to the following calculation:

	2007	09	30	(end date of ADSW orders)
-	2007	03	28	(start date of ADSW orders)
	=		06 02	
+			01	("inclusive day")
			06 03	(total time on active duty)

### APPLICANT'S RESPONSES TO THE VIEWS OF THE COAST GUARD

On May 16, 2013, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

## 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 10 U.S.C. § 1552. Although 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.<sup>1</sup>

2. The applicant alleged that he did not discover the error in his record—the lack of a DD 214—until 2011, but his military record contains other DD 214s he has received at the end of past periods of active duty as a reservist. Therefore, he was familiar with DD 214s; should have requested one in 2007 when his ADSW orders ended; and should have applied to this Board for one within three years of September 30, 2007.<sup>2</sup> The preponderance of the evidence shows that the application was not timely filed.<sup>3</sup>

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 (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.”<sup>4</sup> 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.”<sup>5</sup>

4. The applicant did not explain his delay in requesting a DD 214 documenting his active duty in 2007 but stated that a court has required him to produce one to prove his active duty service pursuant to litigation. However, a cursory review of the merits of his claim shows that his command's failure to prepare a DD 214 was an error because he had served on active duty for more than 90 days.<sup>6</sup> In addition, the Coast Guard has identified discrepancies in the applicant's record that require correction. Therefore, the Board finds that it is in the interest of justice to excuse the untimeliness of the application.

5. The Coast Guard admitted the error but noted that the DD 214 should not document the applicant's inactive duty drills as active duty. Therefore, instead of preparing a DD 214 reflecting 195 days of active duty from March 28 through October 8, 2007, PSC issued one reflecting the 187 days covered by the applicant's actual ADSW orders from March 28 through

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<sup>1</sup> See *Steen v. United States*, No. 436-74, 1977 U.S. Ct. Cl. LEXIS 585, at \*21 (Dec. 7, 1977) (holding that “whether to grant such a hearing is a decision entirely within the discretion of the Board”); *Flute v. United States*, 210 Ct. Cl. 34, 40 (1976) (“The denial of a hearing before the BCMR does not *per se* deprive plaintiff of due process.”); *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).

<sup>2</sup> 10 U.S.C. § 1552(b).

<sup>3</sup> 33 C.F.R. § 52.24(b) (adopting a “preponderance of the evidence” as a BCMR applicant's burden of proof).

<sup>4</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>5</sup> *Id.* at 164-65; see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

<sup>6</sup> COMDTINST M1900.4D, Chap. 1.B.10.

September 30, 2007. This DD 214 appears to be accurate in accordance with the orders and drill records submitted into evidence. 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,”<sup>7</sup> and the applicant did not bother to rebut the Coast Guard’s advisory opinion of his request. Therefore, the Board finds this issue to be moot because the Coast Guard has already properly documented the applicant’s ADSW in 2007 on a DD 214.

6. In reviewing the applicant’s record, however, PSC noted that the applicant’s electronic records in Direct Access contradict the orders in his record. PSC submitted print-outs showing that Direct Access erroneously indicates that the applicant’s ADSW ended on September 23, 2007, and that he performed drills through the end of the month. The applicant stated that after he returned stateside in mid September 2007, he took some leave but continued reporting for duty to prepare an “after action report.” Therefore, PSC and the JAG recommended that the Board correct the applicant’s records in Direct Access to show that he continued to serve on ADSW until September 30, 2007. The applicant did not respond to this recommendation. However, because the records in Direct Access contradict the actual orders issued to the applicant and because the correction appears to be in the applicant’s best interest, the Board will order the Coast Guard to make this correction. Because the correction may affect the applicant’s entitlements during that period, his military records should be corrected to show and be consistent with his continuous service on active duty from March 28, 2007, through September 30, 2007.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

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<sup>7</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979); 33 C.F.R. § 52.24(b) (presumption of regularity).

**ORDER**

The application of [REDACTED], USCGR, for correction of his military record is granted in part. The Coast Guard shall correct his military records, particularly in Direct Access, to show and be consistent with the fact that he served on continuous active duty from March 28, 2007, through September 30, 2007, and was not released from active duty on September 23, 2007.

