

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-156

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 case after receiving the applicant's completed application on July 14, 2015, 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 May 13, 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, who served in the Coast Guard Reserve and was separated on August 29, 2008, with an honorable discharge, alleged that he never received a DD 214¹ and asked the Board to correct his record by issuing him a DD 214 reflecting his service in the Reserve.

Although the applicant was separated from the Coast Guard in 2008, he did not submit his application to the Board earlier because he stated that he did not discover the alleged error until June 17, 2015.

After receiving the applicant's request, the Chair of the Board notified him that the National Personnel Records Center² (NPRC) did not have a copy of his military record nor did the Coast Guard have a paper or electronic copy of his record. Accordingly, the applicant asked the Board to amend his application to include a request to have the Coast Guard create a Personal Data Record (PDR) for him.

¹ The DD 214 is issued to members who change their military status among active duty, reserve, or retired components or are separated/discharged from the Coast Guard to a civilian status. Chapter 1.A. of COMDTINST M1900.4D. Reservists released from a period of continuous active duty for training (ADT) of less than 90 days are not eligible to receive a DD 214.

² The National Personnel Records Center (NPRC) is the National Archives and Records Administration's (NARA) central repository of personnel-related records for both the military and civil services of the United States Government (May 12, 2016, 9:52 AM), <http://www.archives.gov/st-louis/>.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on March 7, 1995, and served in the Coast Guard Selected Reserve (SELRES) from August 1, 2002, to February 14, 2005. He was transferred to the Individual Ready Reserves (IRR) on February 14, 2005. His record shows that he completed multiple periods of Active Duty for Training (ADT), however, no period of ADT lasted more than 13 days. The applicant was separated from the Coast Guard Reserve on August 29, 2008, and received an honorable discharge.

APPLICABLE LAW AND REGULATIONS

Department of Defense Instruction 1336.01 was issued on August 20, 2009, and Paragraph 2.d. states that personnel being separated from a period of active duty for training, full-time training duty, or active duty for special work will be furnished a DD Form 214 when they have served 90 days or more, or when required by the Secretary of the Military Department concerned for shorter periods.

Chapter 1.B.10. of the Coast Guard Military Separations Manual, COMDTINST M1900.4D, states that reservists released from ADT less than 90 days are not eligible to receive a DD 214.

VIEWS OF THE COAST GUARD

On December 18, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief. The JAG argued that the application is untimely and should not be considered by the Board beyond a cursory review. Notwithstanding the untimeliness, the JAG argued that the applicant is not eligible to receive a DD 214 for his service in the Reserve because enclosure (2) of Department of Defense Instruction (DoDI) 1336.01 states that DD 214s are issued to active duty Service members, and reservists are not active duty Service members. Moreover, the JAG argued, Enclosure 3, paragraph 2.d. to the DoD instruction specifically states that personnel being separated from “a period of active duty for training, full-time training duty, or active duty for special work will be furnished a DD Form 214 when they have served 90 days or more.” The JAG noted that the applicant was not an active duty member nor was he discharged from a period of active duty for training, full-time training duty, or active duty for special work having served 90 days or more. Therefore, the JAG argued that the applicant is not eligible for a DD 214 and has not met his burden or showing that there is an error or injustice in his record.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 12, 2016, the BCMR sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. He responded on February 4, 2016, and did not object to the Coast Guard’s recommendation.

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.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.³ The applicant was discharged from the Coast Guard in 2008 but did not submit his application to the Board until June 25, 2015. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 2008 and his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁴ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review”⁵ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted 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.”⁶
4. Regarding the delay of his application, the applicant stated that he discovered that there was no DD 214 in his record until June 17, 2015, but did not explain to the Board why he did not discover this earlier. The Board finds that the applicant knew or should have known in 2008 that there was no DD 214 in his record and he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.
5. A cursory review of the merits of this case indicates that the applicant's request for a DD 214 lacks merit because he is not eligible to receive a DD 214 for his service in the Coast Guard Reserve. He is not eligible to receive a DD 214 because Paragraph 2.d. of DoDI 1336.01 and Chapter 1.B.10. of COMDTINST M1900.4D state that reservists released from ADT less than 90 days are not eligible to receive a DD 214, and the record shows that the applicant did not perform any continuous active duty for training of at least 90 days.
6. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request for a DD 214 should be denied.
7. The record shows, however, that the NPRC has no Personnel Data Record (PDR) for the applicant, and the Coast Guard stated that it does not have a paper or electronically imaged copy of his PDR (known as an EIPDR). Since FY2006, the Coast Guard has apparently been retaining EIPDRs instead of storing paper PDRs at NPRC, so the Coast Guard should have

³ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

⁴ 10 U.S.C. § 1552(b).

⁵ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁶ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

an EIPDR for the applicant because he was separated in 2008. The Board finds that the lack of an EIPDR constitutes both an error and an injustice against the applicant. Accordingly, the Coast Guard should establish an EIPDR for the applicant.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [REDACTED], USCGR, for correction of his military record is granted in part: The Coast Guard shall establish an EIPDR for him, but his request for a DD 214 is denied.

May 13, 2016

