

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-021



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 November 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 September 22, 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 as a [REDACTED] in the Coast Guard Reserve and was honorably discharged on September 17, 2007, asked the Board to create a DD 214¹ reflecting his active Coast Guard service. He stated that he needs a DD 214, which is a "Certificate of Release or Discharge from Active Duty," so he can obtain a home loan through the Department of Veterans Affairs (VA).

In support of his application, he submitted a letter from the Coast Guard Personnel Service Center (PSC) which states that they were unable to find a copy of his DD 214 in his official military record. The applicant also submitted a copy of a DD 214 Worksheet² printed

¹ The DD Form 214 provides the member and the service with a concise record of a period of service with the Armed Forces at the time of the member's separation, discharge or change in military status (reserve/active duty). In addition, the form is an authoritative source of information for both governmental agencies and the Armed Forces for purposes of employment, benefit and reenlistment eligibility, respectively. 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. Reservists released from continuous active duty for training (ADT) less than 90 days are not eligible to receive a DD 214. COMDTINST M1900.4D.

² The DD Form 214 Worksheet is an unauthenticated working copy and is not suitable to permanent filing. Enclosure 3 to DoDI 1336.01. The Coast Guard's instructions for preparing the DD 214 state that the worksheet is used to ensure accuracy, completeness, and economy in the final preparation of the DD 214. Article 1.D.2.b. of COMDTINST M1900.4D.

from the Coast Guard personnel database (Direct Access) which states that he entered active duty in the Coast Guard on January 12, 2004, and was discharged on September 17, 2007, after completing three years, eight months, and six days on active duty. The worksheet states that he was separated pursuant to article 12-B-15, because of a physical disability.

The applicant stated that he discovered the alleged error in his record on October 7, 2015, and that the Board should find it in the interest of justice to consider his application and because he “did not know there had been an error until I requested a copy of my DD 214.”

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on January 12, 2004, for a term of six years and was discharged on September 18, 2007. His records show that he joined the Selected Reserve and completed 54 days of Initial Active Duty for Training (IADT) from January 12 to March 5, 2004, when he was released to inactive duty; another 13 days of Active Duty for Training (ADT) from July 18 to 30, 2004, before being released to inactive duty; and 70 days of ADT from August 28 to November 5, 2005, before being released to inactive duty. There is no DD 214 in his military record documenting any of these periods of ADT, nor is there a copy of the DD 214 Worksheet in the applicant’s official record. There is nothing in his official military record which indicates that he was separated due to a physical disability.

APPLICABLE LAW AND REGULATIONS

Department of Defense Instruction 1336.01 was issued on August 20, 2009, and Paragraph 2.d. states that Reserve 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 a continuous period of active duty lasting 90 days or more, or when required by the Secretary of the Military Department concerned for shorter periods. It also states that personnel shall be furnished a DD Form 214 upon separation for cause or for physical disability regardless of time served on active duty.

Chapter 1.B.10. of M1900.4D, the Commandant’s Instruction for preparing the DD 214, states that reservists released from ADT lasting less than 90 days are not eligible to receive a DD 214.

Chapter 1.D.2.a. of M1900.4D states that, unless otherwise specified, all entries on a DD 214 “are for the current period of active duty only from the date of entry as shown in block 12a through the date of separation as shown in block 12b.” Under Chapter 1.E., block 12a should show the “Date Entered Active Duty This Period” and block 12b should show the effective date of release or discharge from active duty.

VIEWS OF THE COAST GUARD

On April 20, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief.

The JAG argued that the applicant is not eligible for a DD 214 documenting his Reserve service from January 12, 2004, to September 18, 2007, because he did not complete any period of active duty of 90 days or more, and DoDI 1336.01 states that a member will not receive a DD 214 unless they are being released from active duty service or completed a period of continuous active duty for training, full time training duty or active duty for special work of 90 days or more. The JAG noted that the applicant's records show that he completed various periods of active duty for training but that each of these periods of active service does not make him eligible for a DD 214 because each is less than 90 days. Finally, the JAG noted that pursuant to DoDI 1336.01 a member can receive a DD 214 if they are discharged due to a disability, but there is nothing in the Coast Guard's records to show that the applicant was processed or discharged due to a disability.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 6, 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 May 19, 2016, and argued that he was only discharged because he had a temporary physical disability and that the Coast Guard's decision to discharge him before he had completed 90 continuous days of active service was out of his control. The applicant argued that he should have been allowed to remain in the Coast Guard because after he was evaluated and placed on medication he was "fine and would have been able to continue but I had already been honorably processed out."

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 2007 but did not submit his application to the Board until 2015. Therefore, the preponderance of the evidence shows that the applicant knew in 2007 that he did not receive a DD 214, 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

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).

4. Regarding the delay of his application, the applicant argued that the Board should consider his application because he “did not know there had been an error until I requested a copy of my DD 214.” The Board finds that the applicant’s explanation for his delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

5. The applicant argued that he is entitled to receive a DD 214 documenting his service in the Reserve and that his lack of a DD 214 is erroneous and unjust. The Board begins its analysis in every case by presuming that the disputed information in the applicant’s military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust. 33 C.F.R. § 52.24(b). 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.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

6. A cursory review of the merits indicates that the applicant is not entitled to a DD 214 for his service in the Reserve. The Board notes that the title of the DD 214 is “Certificate of Release or Discharge from Active Duty,” and the applicant was not being discharged or released from active duty when he was discharged from the Reserve on September 17, 2007. DoDI 1336.01 and Chapter 1.B.10. of M1900.4D. state that Reserve 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 214 when they have served 90 days or more, but the applicant did not serve on active duty for any period of at least 90 days.

7. The DoD Instruction states that personnel shall be furnished a DD 214 upon separation for cause or for physical disability regardless of time served on active duty. The Coast Guard stated that there is nothing in the applicant’s record to show that he was discharged due to a physical disability, but in his response to the advisory opinion, the applicant alleged that he was discharged because a temporary disability. The DD 214 Worksheet he submitted is only a worksheet and is not in his official military record. Nothing in the records before the Board shows why he was discharged before the end of his Reserve enlistment, however. If the applicant submitted medical records showing that he was processed for separation from active duty by physical evaluation boards under the Coast Guard’s Physical Disability Evaluation System, it appears that he might be entitled to a DD 214 pursuant to DoDI 1336.01. Without such evidence and because all of his periods of active duty were fewer than 90 days, the Board finds that the applicant’s request for a DD 214 cannot prevail. However, if the applicant submits copies of his medical records showing that he was separated due to a physical disability while on active duty, then the Board will take another look at his application because DoDI 1336.01 also states members separated for physical disability regardless of time served on active duty shall be furnished a DD 214 upon separation.

8. The applicant explained in his response to the advisory opinion that he needs proper documentation of all of his active duty time so that he can obtain a home loan through the VA. Therefore, the Board finds that in the interest of justice, the Coast Guard should ensure that

the applicant is provided with a Statement of Creditable Service (SOCS) or similar document that enables him to show documentation of his active and inactive duty to the VA prior to his discharge from the Reserve on September 17, 2007.

9. The Board will not waive the statute of limitations in this case and the applicant's request for a DD 214 should be denied. However, the Coast Guard should provide him with an SOCS or similar documentation reflecting his service as a reservist. Additionally, if the applicant submits medical records showing that he was separated from active duty due to a physical disability, the Board will reconsider his request.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [REDACTED], USCGR, for correction of his military record is denied, but the Coast Guard shall do the following:

The Coast Guard shall issue him a Statement of Creditable Service or similar documentation of all of his Reserve service until his discharge from the Reserve on September 17, 2007.

No other relief is granted.

September 22, 2016

