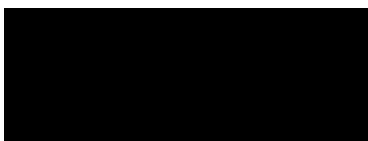


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-147



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 June 8, 2016, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 5, 2017, 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 April 10, 2006, alleged that he never received a DD 214¹ upon his discharge and asked the Board to correct his record by issuing him a DD 214 reflecting his service in the Reserve. He argued that he should have received a DD 214 for the period of June 27, 2003, to January 26, 2011. Although the applicant was separated from the Coast Guard in 2006, he did not submit his application to the Board until June 7, 2016.

In support of his application, the applicant provided a DD 214 for his participation in active duty training (ADT) from January 27, 2003, to June 26, 2003. The narrative reason for separation is "Completion of Required Active Service," the character of service is honorable, and his reentry code is RE-1. He also provided a copy of his Coast Guard Reserve identification card, which shows an expiration date of January 25, 2011. The applicant provided a letter from the National Personnel Records Center dated May 10, 2010, which states that it had not received

¹ The DD 214, Certificate of Release or Discharge from Active Duty, 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 fewer than 90 days are not eligible to receive a DD 214.

a military record for the applicant.² Lastly, he submitted orders for annual training, showing that he was to report on August 25, 2003, and to complete the training by September 5, 2003.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on January 27, 2003, for a period of six years. The applicant received a DD 214 for completion of ADT from January 27, 2003, to June 26, 2003. According to the applicant's Reserve record, he did not complete any additional periods of ADT of 90 days or greater prior to his discharge.

On December 30 2005, the applicant received an administrative entry CG-3307 ("Page 7") stating that he failed to meet his service obligations for Fiscal Year 2005. The Page 7 states that the applicant "completed 14 out of 48 IDT [inactive duty training] drills, 0 ADT drills...additionally, [the applicant] did not attend the required October 8, 2005, Sector...Conference."

On January 26, 2006, the applicant received a Page 7 stating that his Good Conduct eligibility period was being terminated due to failure to obtain 70 points in the prior anniversary year. The Page 7 further states that the applicant "failed to meet these standards for [his] 2004 and 2005 anniversary years." Below the applicant's name is a handwritten note that states "mbr not available for signature."

On April 10, 2006, the applicant received a general discharge for misconduct from the Reserve with an RE-4 reentry code (ineligible to reenlist).

On January 10, 2012, the applicant received a final decision from the Discharge Review Board (DRB). The applicant had challenged his general discharge and RE-4 from the Coast Guard Reserve. He had requested that the DRB upgrade his discharge to "Honorable" so that he could join the Army. The DRB stated that, while the applicant's full record was not available to it, it appeared that the applicant was not fulfilling his obligations to the Coast Guard Reserve. They found that based on "the lack of participation the applicant was presumptively discharged for failure to meet participation requirements." The DRB therefore declined to make any changes to the applicant's discharge from the Coast Guard Reserve. The final decision states that if the applicant wished to seek further redress, the BCMR is the appropriate avenue.

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 214 when they have served 90 days or more, or when required by the Secretary of the Military Department concerned for shorter periods.

² Since 2006, the Coast Guard retains its own veterans' records electronically and no longer mails them to the National Personnel Record Center in St. Louis.

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 November 3, 2016, 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). PSC argued that the application is untimely and should not be considered by the Board beyond a cursory review. Notwithstanding the untimeliness, PSC argued that the applicant is not eligible to receive a DD 214 for his service in the Reserve because the 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, PSC argued, 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.” PSC 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 of 90 days or more after the period for which he received a DD 214 in 2003. Therefore, PSC 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 November 4, 2016, the Board sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. He responded on December 29, 2016, and did not object to the Coast Guard’s recommendation. However, he requested a CG-4174 or a CG-4175,³ as appropriate, to “reflect [his] 6 years in the Coast Guard Reserve.”

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.⁴ The applicant was discharged from the Coast Guard Reserve in 2006 but did not submit his application to the Board until June 7, 2016. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 2006 and his application is untimely.

³ These forms refer to the Annual Reserve Points Statement provided annually to Reserve members. These forms provide information regarding Reserve points at the end of a member’s anniversary year.

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

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁵ 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”⁶ 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.”⁷

4. Regarding the delay of his application, the applicant did not provide an explanation. The Board finds that the applicant knew or should have known in 2006 that he had not received a DD 214 after the June 26, 2003, DD 214, and he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly. Furthermore, he received a final decision from the DRB regarding his discharge from the Coast Guard Reserve in 2012, which advised him to seek redress with this Board.

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, Certificate of Release or Discharge from Active Duty, to document his discharge in 2006 because he was discharged from inactive duty, rather than active duty. Under Paragraph 2.d. of DoDI 1336.01 and Chapter 1.B.10. of COMDTINST M1900.4D, reservists are entitled to DD 214s when they are released or discharged from a period of ADT of at least 90 days, and the record shows that the applicant did not perform any continuous active duty for training of at least 90 days after 2003.

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 applicant served in the Coast Guard Reserve from January 27, 2003, to April 10, 2006. The Board finds that he is entitled to documentation of his military service. Accordingly, the Board will grant alternative relief by directing the Coast Guard to prepare a Verification Letter of Service for the applicant to formally document his time in the Reserve.


(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ 10 U.S.C. § 1552(b).

⁶ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁷ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

ORDER

The application of former  USCGR, for correction of his military record is denied, but alternative relief is granted: The Coast Guard shall prepare and send him a Verification Letter of Service which captures his time serving in the Coast Guard Reserve.

May 5, 2017

