

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-176



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 29, 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 26, 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 November 6, 1998, 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 stated that he has asked the Coast Guard for a DD 214, and he was provided with a DD 214 covering just the applicant's time in active duty training. Although the applicant was separated from the Coast Guard Reserve in 1998, he did not submit his application to the Board until July 11, 2016.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on September 24, 1991. He completed a period of active duty training from October 8, 1991, until February 21, 1992, a total of 4 months and 14 days. The applicant received a DD 214 for this period which states that he was released from active duty at the expiration of a term of active obligated service. The Reserve Retirement Point Statements that are available in the applicant's record show that he drilled periodically and occasionally performed active duty training but never for more than 90 days at a

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.

time. The applicant was separated from the Coast Guard Reserve on November 6, 1998.

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.

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

VIEWS OF THE COAST GUARD

On December 9, 2016, the Judge Advocate General 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 1992. Therefore, PSC argued, the applicant is not eligible for a DD 214 and has not met his burden of showing that there is an error or injustice in his record.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 13, 2016, the Board sent the applicant a copy of the Coast Guard’s views 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.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The applicant was separated from the Coast Guard Reserve in 1998 but did not submit his application to the Board until July 11, 2016. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1998 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.³ 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”⁴ 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.”⁵

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 1998 that he had not received a DD 214 after the February 21, 1992, DD 214, 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 inactive service or short periods of ADT 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 of fewer 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 after 1992.

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 September 24, 1991, to November 6, 1998, and 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 active and inactive service in the Reserve.

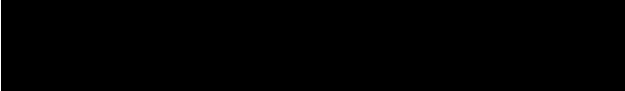
(ORDER AND SIGNATURES ON NEXT PAGE)

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

³ 10 U.S.C. § 1552(b).

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

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

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 active and inactive service in the Coast Guard Reserve.

May 26, 2017

