

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-245



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on August 16, 2017, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated June 1, 2018, 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 her record by backdating her Reserve contract. The applicant explained that when she was discharged from active duty with the Coast Guard on September 1, 2016, she was informed that her contract to enter the Coast Guard Reserve would not be ready for signature on September 2, 2016, but that her Reserve unit "would take care of the issue." She stated that when she was finally able to sign her Reserve contract on November 16, 2016, her unit was not able to backdate it. She asked that the Board correct this error because the unintended break in her military service affects her retirement and promotion timeline. In support of her application, the applicant provided relevant documentation which is discussed below in the Summary of the Record.

SUMMARY OF THE RECORD

On August 11, 2016, the applicant was authorized to separate from active duty on September 1, 2016. She received Standard Travel Orders for her discharge and was instructed to report to her Reserve unit on September 2, 2016. The applicant signed this Order on August 24, 2016.

Also on August 11, 2016, the applicant completed a Reserve Applicant Accession Worksheet to enter the Selected Reserve. This form was approved on August 22, 2016.

On August 29, 2016, the In-Service Transfer Team member of the applicant's Reserve unit sent an email regarding the applicant. She stated that the applicant's discharge orders were incorrect. She explained how the discharge should have been entered into the system and stated that the applicant was supposed to be a rehire on September 2, 2016, within twenty-four hours of her release from active duty. The team member requested a corrected set of orders for the applicant to correct the errors.

On October 19, 2016, the Officer in Charge of the applicant's active duty station sent an email stating that the applicant's discharge orders were completed in error. He stated:

Due to the tight time frame of [the applicant's] discharge and her reporting into the [REDACTED], along with the [Reserve unit] closing and sending all records and paperwork to the new Super ... at the same time; we were told it was not possible to have [the applicant's] reserve contract ready and available for swearing in and that she would have to notify her receiving [Reserve unit] upon arrival and it would be taken care of [there].

He stated that he had since learned that this was not the case and asserted that this was no fault of the applicant. He added that the applicant was a "great Coastie" and that she was highly motivated to enter the Reserve.

In June 2017, members of the applicant's Reserve unit emailed each other regarding the applicant's gap in service. The first email in this chain states that the applicant "has a break in service between 02SEP16-16NOV16, when she did not have an actual break in service." The second email states that Coast Guard Headquarters processed the applicant for discharge instead of a release from active duty as was intended. This email indicated that this error was not something that could be handled internally. The members of her unit then sent the applicant a copy of the DD 149, the application form to this Board, to move forward with having her gap in service error fixed.

On November 16, 2016, the applicant signed the Coast Guard Reserve enlistment contract. This is the contract she is asking the Board to backdate to September 2, 2016. The contract is for a period of three years and follows a total of four years and nine months of active duty military service.

VIEWS OF THE COAST GUARD

On January 19, 2018, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief in this case. In doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC stated that the application is timely and therefore should be considered on the merits. PSC stated that the applicant's Travel Orders were meant to place the applicant in a Reserve position effective September 2, 2016. However, the applicant signed an enlistment contract effective November 16, 2016, which created a break in service of more than two months thereby affecting her time in service and time in grade. PSC stated that the Officer in Charge of her unit stated in an email that due to the short time frame along with consolidation of their office to a new

location the applicant's contract was not completed in time, placing her in a discharge state. PSC therefore recommended granting relief due to this administrative failure that led to a processing delay. The applicant was meant to enter the Reserve on September 2, 2016, as her Orders state. It is through no fault of her own that this was not completed until November 16, 2016. PSC recommended that the Board grant relief by backdating the contract and issuing a Statement of Creditable Service in order to recalculate the appropriate changes.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 22, 2018, the Chair sent the applicant a copy of the Coast Guard's views and invited her 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. The application was timely.

2. The applicant alleged that the gap of service in her military record is erroneous and unjust and asked that the Board retroactively backdate her Reserve enlistment contract. When considering allegations of error and injustice, the Board begins its analysis 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.¹ 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."²

3. 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.³

4. The Board finds that the applicant has proven by a preponderance of the evidence that an error exists in her record. Her August 11, 2016, Standard Travel Orders clearly instructed her to report to her Reserve unit on September 2, 2016, the day after she was to be released from active duty. Also on August 11, 2016, she had completed a Reserve Applicant Accession Worksheet so that she could enter the Reserve after active duty. The applicant has submitted multiple emails from members of both her active duty and her Reserve units indicating that the

¹ 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

² *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

³ *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).

Coast Guard had intended for her to be released from active duty and immediately enter the Reserve within twenty-four hours, but through an administrative error that is not what occurred.

5. Accordingly, the applicant's request for relief should be granted. The November 16, 2016, Reserve enlistment contract should be backdated to September 2, 2016. The Coast Guard should also provide the applicant with a Statement of Creditable Service as suggested by PSC. The Board also finds that the applicant should be informed about her new anniversary date as a result of this correction. If the applicant finds that she is credited with an unsatisfactory year of service as a result of this correction of the Coast Guard's error, she should reapply to this Board.

(ORDER AND SIGNATURES ON NEXT PAGE)



ORDER

The application of [REDACTED], USCGR, for correction of her record is granted. The Coast Guard shall backdate the effective date of her Reserve enlistment contract from November 16, 2016, to September 2, 2016. The Coast Guard shall also send her notification of her new anniversary date as a result of this correction and a Statement of Creditable Service accounting for all of her active duty and Reserve time after this correction is made.

June 1, 2018

