

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-146



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 on May 15, 2018, after receiving the applicant's completed application, 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 March 22, 2019, 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 is a former seaman (SN) in the Coast Guard Reserve who was released from active duty (RELAD) on May 4, 1961, after serving 5 months and 26 days of initial active duty for training (IADT). He asked the Board to correct his DD 214 to show that he served for 6 full months. He stated that during his enlistment, the Coast Guard offered everyone in his Reserve unit a chance to be discharged after serving for 5 months and 27 days, but no one told him that by accepting the offer he would lose his veteran status. The applicant stated that he was a reservist for 8 years and that his father, his son, and his son-in-law all served in the military. He argued that it is an injustice that he is denied veteran status solely because he opted to be discharged 3 days shy of 6 months.

In support of his request, the applicant submitted a copy of his DD 214 documenting 5 months and 26 days of IADT from November 9, 1960, through May 4, 1961. It also states that his Reserve obligation would terminate on September 21, 1968.

The applicant stated that he discovered the alleged errors in his record on September 21, 1968, and argued that the Board should find it in the interest of justice to consider his application because he was never told that if he had stayed on active duty for training for 3 more days then he would be considered a veteran.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on September 22, 1960, for a term of 8 years. On October 10, 1960, he received Initial Active Duty for Training Orders for a period of 6 months. He reported for IADT on November 9, 1960. His record contains an Administrative Remarks form dated May 4, 1961, which states that he was RELAD on that date, having completed six months of active duty for training. The applicant's DD 214 shows that he performed 5 months and 26 days of active duty service from November 9, 1960, through Thursday, May 4, 1961.

Upon his release from IADT, the applicant began drilling as a reservist and performing annual 12-day periods of active duty for training. On September 22, 1966, he was transferred from the Ready Reserve to the Active Status Pool and so was no longer required to perform inactive duty training (drills) or annual active duty for training. The applicant was honorably discharged from the Coast Guard Reserve on September 21, 1968, having fulfilled his 8-year service obligation.

VIEWS OF THE COAST GUARD

On October 18, 2018, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion and adopted the findings and analysis in a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC noted that the application is untimely and argued that relief should be denied because the applicant's record is correct and shows that he received Initial Active Duty for Training orders from November 9, 1960, to May 4, 1961, in which the period of duty was for a maximum of six months and that he was RELAD after serving 5 months and 26 days. PSC stated that the applicant acknowledged his dates of service with his signature and that there is nothing in Title 38 of the United States Code that requires someone to serve on active duty for six continuous months to be called a "veteran."

In addition to adopting the facts and analysis provided by PSC, the JAG argued that the record does not support a conclusion that the Coast Guard erred when it issued the applicant a DD 214 reflecting 5 months and 26 days of service. The JAG noted that a review of the applicable statutes pertaining to the determination of veteran status demonstrates that (1) the applicant's understanding of the qualifying criteria for "veteran" status under federal law is inaccurate and (2) even if he had completed the full 6-month term of his orders, he still would not be eligible for veteran status under federal law.

The JAG explained that according to 38 U.S.C. § 101(2), a "veteran" for the purposes of Title 38, "Veterans' Benefits," is "a person who served in the active military and who was discharged or released therefrom under conditions other than dishonorable." However, "active military service" is defined at § 101(24) to include only—

- 1) active duty, which is defined at § 101(21) to mean full-time duty in the Armed Forces "other than active duty for training" by a reservist;
- 2) any period of active duty for training by a reservist during which the reservist is disabled or dies from a disease or injury incurred or aggravated in the line of duty; or

- 3) any period of inactive duty training by a reservist during which the reservist is disabled or dies from (a) an injury incurred or aggravated in the line of duty or (b) an acute myocardial infarction, cardiac arrest, or cerebrovascular accident occurring during such training.

The JAG noted that the statute distinguishes between “active duty” and “active duty for training.” Specifically, active duty for training (absent injury or death) does not qualify as “active military service.” Accordingly, the JAG attorney explained, the applicant’s service on active duty for training and inactive duty training does not make him eligible for “veteran” status under federal law because he was not disabled while serving on active duty for training or on inactive duty (drilling).

The JAG also stated that the applicant’s reference to a “6-month” requirement is likely derived from 38 U.S.C. § 5303A, which states that a person who is discharged or released from a period of active duty before completing the shorter of (A) 24 months of continuous active duty, or (B) the full period for which such person was called or ordered to active duty, is not eligible by reason of such period of active duty for any benefit under this title or any other law administered by the Secretary.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 26, 2018, the BCMR sent the applicant a copy of the Coast Guard’s recommendation and invited him to submit a response. The BCMR did not receive a response.

APPLICABLE LAW AND REGULATIONS

Title 38 U.S.C. § 101(2) states that a veteran is “a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.” There is no mention of a 6-month timeframe.

Title 38 U.S.C. § 101(21) defines “active duty” as—

- (A) full-time duty in the Armed Forces, other than active duty for training; [Emphasis added.]
- (B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service ... ;
- (C) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration ... ;
- (D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy; and
- (E) authorized travel to or from such duty or service.

Title 38 U.S.C. § 101(22) states that “active duty for training” means, *inter alia*, “full-time duty in the Armed Forces performed by Reserves for training purposes.”

Title 38 U.S.C. § 101(24) states that “active military, naval, or air service” includes only—

- (A) active duty;

- (B) any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in the line of duty; and
- (C) any period of inactive duty training during which the individual concerned was disabled or died—
 - (i) from an injury incurred or aggravated in the line of duty; or
 - (ii) from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.

Under 38 U.S.C. § 5303A, for any veterans' benefit for which the eligibility requirements "are based on the length of active duty," a person is not eligible if the person did not complete the lessor of 24 months of continuous active duty or "the full period for which such person was called or ordered to active duty."

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.¹ The applicant was discharged from the Coast Guard and received and signed his DD 214 on May 4, 1961, and presumably knew its contents at the time. Therefore, his application is untimely.

2. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.² 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"³ 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."⁴

3. The applicant did not justify his delay in seeking a change to his DD 214, and the Board's cursory review of the merits of this case indicates that his Coast Guard records do not require any correction. The record shows that the applicant received Initial Active Duty for Training orders for a period of 6 months and that he was released from IADT after serving 5 months and 26 days. There is nothing in the record to show why he was released before completing exactly 6 months of IADT, but being released 3 days shy of 6 months is not an error or an injustice. Moreover, although the applicant believes that being discharged before serving for 6 full months of IADT caused him to lose "veteran" status, he is mistaken. Under 38 U.S.C. § 101, for the purpose of qualifying for federal veterans' benefits, a reservist is only a "veteran" (a) if the reservist served on regular active duty (not IADT or any other type of active duty for training); (b) if the reservist became disabled or died from a disease or injury incurred or aggravated

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

² 10 U.S.C. § 1552(b).

³ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁴ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

while performing active duty for training; or (c) if the reservist became disabled or died from an acute myocardial infarction, cardiac arrest, or a cerebrovascular accident or from an injury incurred or aggravated in the line of duty while performing inactive duty training (i.e., during a drill). Thus, even if the applicant had served for the full 6 months anticipated by his IADT orders, he would not qualify as a “veteran” for the purpose of the benefits administered by the Department of Veterans’ Affairs.

4. The applicant’s final DD 214 is presumptively correct and he has submitted insufficient evidence to rebut it. Based on the record before it, the Board finds that the applicant’s claim cannot prevail on the merits. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. However, all reservists are entitled to documentation of their military service, and there is no statement of service in the applicant’s record summarizing all of his active and inactive service and his honorable discharge from the Reserve. Therefore, even though his request should be denied as untimely, in the interest of justice, the Board will direct the Coast Guard to issue him a statement of service.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former SN [REDACTED], USCGR, for correction of his military record denied, but alternative relief is granted. The Coast Guard shall issue him a statement of service summarizing his active duty for training and inactive duty and his honorable discharge from the Reserve.

March 22, 2019

