

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-217



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 completed application on August 29, 2012, 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 May 30, 2013, 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 asked the Board to correct his Coast Guard military record by crediting him with retirement points for the years he served in U.S. Navy during World War II. He alleged that a lack of documentation of his Navy service has been adversely affecting his retired pay from the Coast Guard. In support of his allegations, the applicant submitted a copy of his Notice of Separation from the Navy showing that he served in the Navy for 2 years, 1 month, and 29 days from April 14, 1944, until his honorable discharge on June 12, 1946. He also submitted a copy of a letter from the xxxxxxxxxx County Veterans Service Agency to the Department of Veterans Affairs (DVA) noting that the applicant should qualify for DVA benefits based both on his Navy service and his Coast Guard service. The applicant alleged that he discovered the error in his record on June 5, 2012.

SUMMARY OF THE RECORD

The applicant served 2 years, 1 month, and 29 days in the Navy during World War II before he enlisted in the Coast Guard on June 1, 1948. On February 11, 1949, the Navy sent the Coast Guard a memorandum documenting his time in the Navy.

His first DD 214 from the Coast Guard, dated June 11, 1952, shows that he had completed 4 years and 12 days in the Coast Guard, as well as 2 years, 1 month, and 29 days in the Navy and so had a net total of 6 years, 2 months, and 11 days of active duty for pay purposes.

His second DD 214 from the Coast Guard, dated June 13, 1955, shows that he had completed another 3 years and 2 days of active duty and so had a net total of 9 years, 2 months, and 12 days of active duty for pay purposes, calculated as follows:

Prior Coast Guard service for pay purposes:		4 years	0 months	11 days
Coast Guard service this period:	+	3 years	0 months	2 days
Other (Navy) service:	+	2 years	1 month	29 days
Total service for pay purposes	=	9 years	2 months	12 days

His third DD 214 from the Coast Guard, dated May 15, 1961, shows that he had completed another 5 years, 11 months, and 2 days of active duty and so had a net total of 15 years, 1 month, and 14 days of active service for pay purposes.

His fourth DD 214 from the Coast Guard, dated May 1, 1966, shows that he had completed another 4 years, 11 months, and 15 days of active service and so was honorably retired with 20 years and 1 month of total active military service for pay purposes, which can also be calculated in accordance with the Coast Guard's regulations as follows:

Date of retirement		1966	05	01	(May 1, 1966)
Minus date of first entry	-	1948	06	01	(June 1, 1948)
	=	17	11	00	(17 years, 11 months, zero days)
Plus one "inclusive day"	+			01	(addition of one day required by regulation)
Total	=	17	11	01	(total time in Coast Guard)
Plus all Navy service	+	2	01	29	(2 years, 1 month, and 29 days in the Navy)
Total military service	=	20	01	00	

On May 1, 1966, a Coast Guard technician entered an inaccurate Statement of Service in the applicant's record. It shows that he served 20 years, 2 months, and 29 days (not just 17, years, 11 months, and 1 day or even just 20 years and 1 month) in the Coast Guard and no time in the Navy. This inaccurate Statement of Service may be the cause of the applicant's complaint.

VIEWS OF THE COAST GUARD

On February 21, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request. The JAG stated that the applicant's Coast Guard record properly includes credit for his time in the Navy during World War II and that his retired pay is based on both his Navy and Coast Guard service, which together give him slightly more than the 20 years of service necessary to qualify for retirement and retired pay. The JAG noted that if the applicant's Navy time were not included in these computations, he would not have qualified for retirement or retired pay at all because he served less than 20 years of active duty in the Coast Guard.

The JAG also adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC). PSC noted that the application is not timely, and that the applicant's Coast Guard record includes ample documentation of his service in the

Navy. PSC pointed out that each of the applicant's DD 214s include the applicant's Navy service in the calculation of his total active duty.

PSC stated that the applicant's complaint about retirement points is inapplicable because only reservists accumulate retirement points. PSC stated that because the applicant's pay record contains an inaccurate Statement of Service, which attributes all of his military service to service in the Coast Guard, he may think he is not being paid for his Navy service, but in fact he has been and is being paid his retired pay based on all of his military service in both the Coast Guard and the Navy.

In an email attached to PSC's memorandum, the Chief of Retiree and Annuitant Services at the Pay and Personnel Center in Topeka, Kansas, advised PSC that the applicant's retired pay multiplier is 60%, including 50% for 20 years, 2 months, and 29 days of military service and another 10% for good conduct.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 14, 2013, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. The Board received no response.

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 submissions, and applicable law:

1. The Board has jurisdiction over 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 in his record.¹ Although the applicant alleged that his retired pay is incorrect and that he discovered the alleged error in June 2012, the Board finds that the applicant was presumably aware of the basis for and calculation of his retired pay when he retired in 1966. Therefore, his application is not timely.²
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 to determine whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review."⁴ The court further instructed 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

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

² 10 U.S.C. § 1552(b).

³ 10 U.S.C. § 1552(b).

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

⁵ *Id.* at 164-65; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. Regarding the delay of his application, the applicant explained that he only recently became aware that his retired pay appears to be based only on his Coast Guard service. The Board notes that there is no evidence that the applicant ever saw the inaccurate Statement of Service form that a technician entered in his pay record in 1966.

5. A cursory review of the merits of this case indicates that no correction is warranted. The applicant's Navy service is amply documented in his Coast Guard record, and only by adding his time in the Navy to his time in the Coast Guard did he qualify for retirement with more than 20 years of total active service. Therefore, his retired pay is clearly based on both his Navy and Coast Guard service. Although the Statement of Service in his pay record incorrectly attributes all of his service as service in the Coast Guard, it may not be in the applicant's interest to correct the Statement of Service because it appears to overstate his total active duty. The Statement of Service shows that he served 20 years, 2 months, and 29 days on active duty, whereas the applicant's DD 214s show that he served just 20 years and 1 month on active duty. Therefore, and because the inaccurate Statement of Service is having no known adverse effect on the applicant's retired pay or benefits,⁶ the Board should not order its correction.⁷

6. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

⁶ 14 U.S.C. § 423(a)(1) states that "[t]he retired pay of a member who first became a member of a uniformed service (as defined in section 101 of title 10) before September 8, 1980, is determined by multiplying--

“(A) the sum of--

(i) the basic pay of the member's retired grade or rate, and

(ii) all permanent additions thereto including longevity credit to which the member was entitled at the time of retirement; by

(B) the retired pay multiplier determined under section 1409 of title 10 for the number of years of service that may be credited to the member under section 1405 of such title.”

⁷ See *Friedman v. United States*, 141 Ct. Cl. 239, 252-53 (1958) (“The Correction Boards were established for the purpose only of reviewing, on application of a member of the military personnel, a military record to correct errors or injustices against such personnel and not to review and reverse decisions of other established boards favorable to such personnel.”).

ORDER

The application of [REDACTED], USCG (Retired), for correction of his military records is denied.

