

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-143



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 3, 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 asked the Board to correct his military record by awarding him full retirement pay and benefits as an E-7 with six years' time in grade. He stated that he began at the E-7 paygrade on September 1, 2009. The applicant argued that he should be credited with five years and one month of active duty time, or alternatively be allowed to return to active duty in a limited status to be allowed to complete the five years and one month of active duty he needs to reach twenty years of active duty service for retirement purposes. He also asked the Board to correct his DD Form 214, Block 28, Narrative Reason for Separation, by changing it from "Disability, Temporary" to "Disability, Permanent." The applicant requested that he receive a new DD 214 with Block 28 changed, as well as Block 12.c., Net Active Service This Period. Lastly, he stated that Block 7.b., Home of Record at Time of Entry, should state the address at which he is currently located.

The applicant stated that when he was placed on the Temporary Disability Retired List (TDRL), he had eighteen years and eleven months of time in service. He argued that according to the Personnel Manual, when a member has over eighteen years of service they are "allowed to" stay in service in order to reach twenty years. He stated that he was kept on the TDRL for five years, which would have taken him past his twenty years had he been allowed to continue his military service in a limited capacity. The applicant stated that he was retired due to

permanent disability on May 4, 2015.¹ At that time, he claimed that he would have had twenty-three years and eleven months' time in service.

SUMMARY OF THE RECORD

The applicant originally enlisted in the Coast Guard on June 17, 1991. He received a DD 214 for the period of June 17, 1991, to June 15, 1995, with the Narrative Reason for Separation being Completion of Required Active Service. His home of record on the DD 214 is a city in [REDACTED]. The applicant then served in the Coast Guard Reserve from June 16, 1995, to May 30, 1999. He re-enlisted on active duty in the Coast Guard on June 7, 1999. His enlistment document for this period states that his home of record was the same city in [REDACTED] but shows a different state and zip code than that listed on his DD 214. His second DD 214 covers the period from June 7, 1999, to May 2, 2010. The Coast Guard also provided a copy of statement of creditable service, which further verifies these dates. The Narrative Reason for Separation on his last DD 214 dated May 2, 2010, is Disability, Temporary. Block 12.c. of this DD 214, Net Active Service this Period, states ten years, ten months, and twenty-six days. Block 12.d., Total Prior Active Service, states three years, eleven months, and fifteen days.

On November 9, 2014, the applicant received a letter from a Coast Guard Military Pay Technician. The letter states:

We are advising you that on May 2, 2015 five years will have lapsed since you were placed on the Temporary Disability Retired List (TDLR). Under 10 U.S.C. § 1210(h), your status on the TDRL will continue, except that you will be in a non-pay status effective May 3, 2015 until such time as a final determination of your case is made by the Coast Guard Personnel Command.

On June 9, 2015, the applicant received a letter from the Personnel Service Center (PSC), Separations Branch. The letter states:

You have been found unfit to perform the duties of your rating by reason of permanent physical disability. Pursuant to 10 U.S.C. 1210(c), the final action on the Physical Disability Evaluation Board proceedings in your case determined that your name be removed from the Temporary Disability Retirement List and that you be Permanently Retired... In accordance with Title 10, United States Code, Chapter 61, you are permanently retired from the United States Coast Guard effective May 3, 2015.

The applicant submitted an email conversation he had with an employee of PSC regarding the application to the Board. The PSC employee gave the applicant a link with information on how to apply to the BCMR. The applicant asked some follow up questions once he reviewed the DD 149. The PSC employee explained to the applicant that the Board will "look at whether you should have been allowed to remain active duty or if the decision made stands. Just state your case as you feel things should have gone. Worst case scenario nothing changes." The applicant had also asked about how many years he should state he has been on active duty, because if his TDLR time is included, he had over 24 years, but the applicant stated "that is not active duty time." The PSC employee replied that the applicant has fourteen years of active duty, and eighteen years (which includes time on inactive duty in the Reserve) for pay purposes.

¹ The applicant was retired on May 3, 2015.

VIEWS OF THE COAST GUARD

On November 3, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In making this recommendation, the JAG adopted the findings and analysis provided in a memorandum prepared by PSC. PSC argued that no relief should be granted because the applicant has not shown that his DD 214 is erroneous or unjust. PSC stated that according to the Coast Guard Pay Manual, COMDTINST M7220.29B, Article 2.A., to compute a member's cumulative years of service for the purpose of determining rate of basic pay, all periods of active and inactive service as an enlisted member in the regular or reserve component are added together. According to Article 2.11., for computation of creditable service for service on a retired list, a retired member who is recalled to active duty may count inactive service on a retired list; however, this only applies for longevity purposes, and not for active duty time in service. This provision does apply to the TDRL. According to Article 2.F.1., active duty pay is terminated upon separation or a change in status. For retirement purposes, active duty pay and allowances are credited through the date *before* the date the member was placed on the retired list.

PSC further pointed out that 37 U.S.C. § 205 states that for the purpose of computing basic pay, years of service are computed by adding all periods of active service as an enlisted member minus time on TDRL. This section states that any time while on TDRL "may not be included to increase retired pay [or] retirement pay." PSC also stated that according to the Personnel Manual, COMDTINST M1000.6A, Article 17.A.2.b., members who are on active duty and are unfit because of a physical disability may stay on active duty in limited assignment status if they have over eighteen years, if they can perform useful service for their grade, and if their retention will not be detrimental to their health. If a member meets these criteria, they may stay on active duty until they reach twenty years of active duty.

PSC argued that when the applicant was retired and placed on the TDRL, he had a total of fourteen years, ten months, and twenty-five days of active duty for both periods of service. PSC argued that the applicant's contention that he had eighteen years and eleven months of active duty when he was placed on TDRL is incorrect because it erroneously includes the time the applicant spent in the Reserve. Because the applicant did not have more than eighteen years of service when he was placed on the TDRL, PSC argued that he was not eligible to request retention as authorized by the Personnel Manual.

According to COMDTINST M1900.4D, Instructions for the Preparation of the DD Form 214, Article 1.B.3., members who are removed from TDRL are ineligible to receive a DD 214. Therefore, PSC argued, the applicant was ineligible to receive a DD 214 after he was permanently retired on May 3, 2015. PSC stated that the applicant has not shown an error or injustice in his military record. The applicant correctly received a DD 214 denoting his retirement status as "Disability, Temporary" and was ineligible to receive another DD 214 in accordance with COMDTINST M1900.4D. According to COMDTINST M7220.29B, time spent on the TDRL does not count towards active duty time, and the five years spent on the TDRL therefore is not creditable active duty time. PSC argued that the applicant had a total of fourteen years, ten months, and twenty-five days of active duty, and he was therefore ineligible to request retention to reach twenty years. PSC therefore recommended that no relief be granted. PSC did

not discuss the applicant's contention that his Home of Record address should be changed on his DD 214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 9, 2016, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond. No response was received.

APPLICABLE REGULATIONS

Article 2.A. of the Coast Guard Pay Manual, COMDTINST M7220.29B, states:

Under the authority of 37 USC 205, compute a member's cumulative years of service for the purpose of determining the member's rate of basic pay by adding all periods of active and inactive service as a commissioned officer, warrant officer, or enlisted member in any Regular or Reserve component of a Uniformed Service.

Article 2.A.11. states that a "retired member who is recalled to active duty may count inactive service on a retired list of any of the Uniformed Services; however, this only applies for longevity purposes. This includes the temporary disability retired list." Article 2.B. states that any service that is not listed as credible service in Article 2.A. is not used to compute a Pay Entry Base Date.

Article 2.F. states that active duty "pay is terminated upon separation or change in status." For retirement, according to Article 2.F.1., this is computed as the "date before the date placed on the retired list."

Article 17.A.2.a. of the Personnel Manual, COMDTINST M1000.6A, states the following:

Commander, (CGPC) will consider retaining on active duty in a limited assignment status members who, although unfit because of physical disability, meet these criteria:

- 1- The member possess a special skill for which there is a specific Service need.
- 2- The member's physical condition is such he or she can perform duty requiring their special skill.
- 3- Retention will not jeopardize their health nor their associates' health.
- 4- The disability is stabilized and is not likely to require frequent absence from duty.
- 5- The member should have at least 18 years but less than 20 years service.

Article 17.A.2.b. discusses the "18 Years' Service" rules:

Members who have at least 18 but fewer than 20 years service when they are found unfit for continued service or who remain on active duty under paragraph a. of this article who attain 18 years service will remain on active duty until they complete 20 years of service if they meet these criteria:

- 1- They can perform useful service in an established billet for their grade, specialty, or rating.
- 2- Their retention will not be detrimental to their health nor a hazard to their associates.

Article 1.B.3. of COMDTINST M1900.4D, Instructions for the Preparation of DD Form 214, states that a DD 214 will NOT be issued to members who are being removed from the TDRL.

Title 37 of the U.S. Code, Section 205 states that years of service are computed by adding all periods of active service as an officer or enlisted member. It further states that certain periods of service, including periods while “on a temporary disability retired list...may not be included to increase retired pay [or] retirement pay.”

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 is timely.

2. The applicant alleged that his lack of a twenty-year retirement and certain entries on his final DD 214 are erroneous and unjust. 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.² 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.”³

3. Retention until 20 Years: The applicant argued that he should have been retained on active duty in order to reach twenty years in service because at the time he was placed on TDRL, he had eighteen years and eleven months of total military service, including both active and inactive duty. According to the Personnel Manual then in effect, members may be retained on active duty if they have reached eighteen years, but not yet twenty years, of active duty service if they meet certain criteria.⁴ The record shows when he was retired and placed on the TDRL on May 2, 2010, the applicant had fourteen years, ten months, and twenty-five days of active duty service, not eighteen years and eleven months. Moreover, even if the applicant had attained over eighteen years of active duty service, he has not shown that he would have been able to satisfy the other criteria for being retained until he reached twenty years. The Board finds that the applicant was not eligible to be retained on active duty under Article 17.A. of the Personnel Manual because he had not reached eighteen years of active duty service.

² 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)).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁴ COMDTINST M1000.6A, Article 17.A.2.b.

4. TDRL Time as Active Duty: The applicant argued that his time on the TDRL should be credited towards his active duty time. He stated that this time should count so that he can “complete the 5 years and 1 month needed...to reach 20 years.” If the applicant had believed that he had eighteen years and eleven months of active duty service, he would have needed only one year and one month of additional active duty service to reach twenty years. Regardless, time on the TDRL does not count as active duty time.⁵ When a member is on the TDRL, he has been separated from the Coast Guard and placed in a retired status. The applicant was not performing any active or inactive duty while on the TDRL. Therefore, the Boards finds that his five years on the TDRL should not be added to the applicant’s active duty time. As a result, Block 12.c. of his final DD 214, Net Active Service This Period, is correct and should not be changed.

5. DD 214 Should Say “Disability, Permanent”: The applicant alleged that he should receive a new DD 214 with the Narrative Reason for Separation as “Disability, Permanent” instead of “Disability, Temporary.” The applicant relied on his June 9, 2015, letter, which states he was found unfit to perform the duties of his rating due to “permanent physical disability.” However, a DD 214 must be correct at the time it is issued.⁶ When the applicant was separated on May 2, 2010, and placed on the TDRL, he was separated from both active duty and the Reserve, presumably because it was unclear if his condition would improve, making him eligible to rejoin active duty. The letter the applicant received supplements his DD 214 to show that he was permanently retired after the maximum allowed time on the TDRL, but it does not prove that the Narrative Reason for his separation as shown on on May 2, 2010, on his DD 214 is inaccurate. The Board finds that this request should also be denied, because his DD 214 was correct on the date it was issued, as required by COMDTINST M1900.4D, and he was not entitled to a new DD 214 upon his removal from the TDRL.

6. Home of Record on DD 214: The applicant claimed that his Home of Record at Time of Entry, Block 7.b., on his second DD 214 should be the same as his current mailing address. His DD 214 lists a town in [REDACTED] State, and a zip code in [REDACTED] State as his home of record, without a street address. The record shows that his home of record at the time of his original enlistment in 1991 was the same city, state, and zip code as his current mailing address (in [REDACTED] state), with a different street address. Under COMDTINST M1900.4D, a member’s home of record is his residence at the time he enters active duty and does not change unless the member leaves active duty for more than a day. Therefore, the applicant’s second DD 214 should show his residence at the time of his second enlistment in 1999 as his home of record. His address at the time of his enlistment in 1999 was in [REDACTED] and was the same city as that listed on his second DD 214. The second DD 214, however, has [REDACTED] and the [REDACTED] zip code of the original DD 214, but the correct city name. Therefore, the Board finds that Block 7.b. on the applicant’s DD 214 should be corrected to the proper home of record at the time of his enlistment in 1999.

7. Accordingly, the Board finds that the applicant has not proven by a preponderance of the evidence that his lack of a twenty-year retirement from the Coast Guard is erroneous or unjust. However, the Coast Guard should correct the applicant’s home of record by issuing him a DD 215 with the correct city, state, and zip code. All other requests should be denied.

⁵ COMDTINST M1900.4D, Article 1.B.3.; 37 U.S.C. § 205.

⁶ COMDTINST M1900.4D, Article 1.D.2.

ORDER

The application of former [REDACTED] USCG, for correction of his military record is granted in part as follows: The Coast Guard shall issue the applicant a DD Form 215 with the home of record as [REDACTED]. All other requests for relief are denied.

May 5, 2017

