

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-070


YN3 ()

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on February 18, 2020, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated June 4, 2021, 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 former Yeoman Third Class (YN3/E-4) who was discharged from active duty on October 9, 1990, and subsequently placed on the Temporary Disability Retired List (TDRL), asked the Board to correct his discharge form DD-214 to show that he was not retired from the Coast Guard. Specifically, the applicant asked the Board to change his type of separation, separation authority, separation code, reenlistment code, and narrative reason for separation. Alternatively, the applicant asked the Board to issue him a retirement I.D. Card from the Coast Guard.

The applicant argued that his DD-214 is incorrect because he was not retired from the Coast Guard. He stated that while he was placed on the TDRL in 1990, he was removed from the list and discharged in 1993.

To address the delay in submitting his application, the applicant stated that he tried to have his record corrected for many years. However, he stated that he was informed that nothing could be done about it. He stated that he would like his record corrected because it is causing pay issues with the Department of Veterans Affairs.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 16, 1987. After completing recruit training, he attended Yeoman "A" School.

On September 13, 1990, the applicant was notified that he was being placed on the TDRL because the Commandant determined that he was unfit to perform his duties by reason of a physical disability rated at 40%. He was further notified that he was required to report for a periodic physical examination at least once every eighteen months.

On October 9, 1990, the applicant was placed on the TDRL. He received an Administrative Remarks form ("Page 7")¹ that states that he was terminated from active duty in the Coast Guard and placed on the TDRL in accordance with COMDT (G-PE) LTR 1856 of 90SEP13.

The applicant's DD-214 documents his service from 1987 to 1990, and states the following:

- Block 23, type of separation: "Retired";
- Block 24, character of service: "Honorable";
- Block 25, separation authority: "COMDT (G-PE) LTR 1856 of 13 SEP 90";
- Block 26, separation code: SFK, denoting placement on the TDRL due to a temporary disability;
- Block 27, reenlistment code: RE-3P, denoting ineligibility due to retired status; and
- Block 28, narrative reason for separation: "Placed on Temporary Disability Retired List"

On January 5, 1993, a Physical Evaluation Board (PEB) determined that the applicant was fit to perform his assigned duties. The Commandant approved the findings of the PEB and directed that the applicant be removed from the TDRL.

On April 1, 1993, the applicant was notified by letter that he was being removed from the TDRL. He was further notified that he had the opportunity to either reenlist in the Coast Guard or be discharged.

On September 7, 1993, the applicant was notified that since he did not reenlist in the Coast Guard, he had been discharged by reason of Convenience of the Government. The applicant was provided a copy of his Honorable Discharge Certificate and an Honorable Discharge Button.

¹ An Administrative Remarks record entry, form CG-3307, better known as a "Page 7," is used to document a member's notification of important information, achievements, or counseling about positive or negative aspects of a member's performance in the member's military record.

VIEWS OF THE COAST GUARD

On June 3, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board grant alternative relief in this case.

The JAG argued that the applicant was not entitled to a new DD-214 when he was removed from the TDRL. In fact, the JAG stated that the Commandant's instructions for preparing DD-214s, COMDINST M1900.4D, expressly prohibits members from receiving DD-214s when they are removed from the TDRL. On October 9, 1990, the applicant was placed on the TDRL and received a DD-214. Three years later, the PEB determined that the applicant was fit for duty and he was removed from the TDRL. Instead of receiving a new DD-214, the JAG stated that the applicant properly received documentation stating that he had been removed from the TDRL, an Honorable Discharge Certificate, and an Honorable Discharge Button.

The JAG argued that the applicant failed to show that the Coast Guard committed an error in blocks 23 and 26 of his DD-214. Block 23 of the applicant's DD-214 states "Retired." The JAG stated that since the TDRL is a form of retirement, either "Retired" or "Retirement" is appropriate to list as the type of separation. Block 26 of the applicant's DD-214 states SFK. The JAG stated that according to the Separation Program Designator (SPD) Handbook, SFK is the appropriate separation code when a member is placed on the TDRL.

The JAG argued that although the applicant was not entitled to a new DD-214 when he was removed from the TDRL, the Board should grant him alternative relief by reissuing him a DD-214 that corrects blocks 25, 27, and 28. To support this recommendation, the JAG cited the SPD Handbook which came into effect on January 13, 1994. According to the SPD Handbook, for a member who was placed on the TDRL, block 25 should state "COMDTINST M1000.6A 12-C-10," block 27 should state "RE-2," and block 28 should state "disability, temporary."

The JAG concluded by stating that the Board should send the applicant a copy of the letter dated September 7, 1993, which informed him that he was removed from the TDRL and enclosed a copy of his Honorable Discharge Certificate and Honorable Discharge Button.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 8, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Chapter 1.B.2.a. of the Commandant's instructions for preparing DD-214s, COMDTINST M1900.4C, states that "[a]ll entries [on the DD 214], unless specified otherwise are for the current period of active duty only from the date of entry as shown in block 12a through the date of separation as shown in block 12b."

Chapter 1.A.1.d. of COMDTINST M1900.4C states that a DD-214 will NOT be issued to members "who are being removed from the [TDRL]."

Chapter 2 of COMDTINST M1900.4C discusses all of the separation codes to be used for enlisted personnel. For members who were retired because they were placed on the TDRL, the instructions state to issue the applicant the following: “Placed on the Temporary Disability Retired List” as the narrative reason for separation; SFK as the separation code; RE-4 or RE-3P as the reenlistment code; and “COMDT (G-PE) ltr of authority.”

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 received his DD-214 on October 9, 1990, when he was placed on the TDRL, and was notified of his discharge on September 7, 1993. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1993, 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 Pursuant to these requirements, the Board finds the following:
 - a. Regarding the delay in applying to the Board, the applicant explained that he tried to correct his record for many years. However, the applicant failed to provide any evidence of his efforts to have his record corrected. Therefore, the Board finds that the applicant’s explanation for the delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.
 - b. A cursory review of the merits of this case shows that the applicant’s claim lacks potential merit. The applicant argued that his DD-214 should be corrected because he was not retired from the Coast Guard. The applicant’s record shows that he was placed on the TDRL on October 9, 1990, and received a DD-214 which shows that he was separated on that date due to a temporary disability. The applicant’s record also shows that he was notified in a letter dated September 7, 1993, that he had been removed from the TDRL and separated from the Coast Guard. The applicant did not receive a second DD-214 reflecting his removal from the TDRL in accordance with Coast Guard policy. According to Chapter 1.A.1.d of the Commandant’s

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).

instructions for preparing DD-214s, COMDTINST M1900.4C, a DD-214 should not be issued to members who are removed from the TDRL. Furthermore, although the JAG recommended changing blocks 25, 27, and 28 of the applicant's DD-214, the Board disagrees. The JAG's recommendation was based on the SPD Handbook which came into effect more than three years after the applicant was placed on the TDRL. However, the applicant's DD-214 was properly issued in accordance with Coast Guard policy in effect at the time. Therefore, the disputed record is presumptively correct,⁶ and the record contains no persuasive evidence that substantiates his allegations of error or injustice in his official military record.

4. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations to conduct a thorough review of the merits. The applicant's request should be denied.

5. The JAG recommended that the Board send the applicant a copy of the letter dated September 7, 1993, which informed him that he was removed from the TDRL and enclosed a copy of his Honorable Discharge Certificate and Honorable Discharge Button. However, the Board does not have a copy of the letter with the enclosures. Therefore, the Board finds that the Coast Guard should send a copy of the letter to the applicant.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁶ 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties "correctly, lawfully, and in good faith.").

ORDER

The application of former YN3 [REDACTED] [REDACTED] USCG, for correction of his military record is denied, but alternative relief is granted. The Coast Guard shall mail him a copy of the letter dated September 7, 1993, which informed him that he had been removed from the TDRL.

June 4, 2021

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]