

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-077

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

FINAL DECISION

This is a proceeding under 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 January 21, 2011, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 13, 2011, 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, who was honorably discharged from the Reserve on August 18, 1993, asked the Board to correct his record by ordering the Coast Guard to issue him a discharge form DD 214 to document his military service. He alleged that at the time of his discharge, no DD 214 was issued only because the "system was not communicating with the DOD system." The applicant stated that he discovered this error in 1995 and needs documentation of his service to receive benefits from the Department of Veterans Affairs (DVA).

SUMMARY OF THE RECORD

On August 19, 1985, the applicant enlisted in the Reserve for eight years as a radioman, third class (RM3). The Statement of Understanding he signed required him to attend Reserve Enlisted Basic Indoctrination (REBI), a two-week course, and to drill regularly on inactive duty for at least three years. His Retirement Points Statements and a Computation of Retirement Point Credits in his record show that he drilled regularly for more than five years and completed two-week periods of annual active duty for training in his anniversary years ending on August 18th in 1988, 1989, and 1990. He stopped drilling in February 1991 and received membership points only in his anniversary years ending on August 18th in 1992 and 1993. His record contains no documentation of any period of active duty longer than two weeks.

On August 18, 1993, the applicant was honorably discharged from the Reserve upon the expiration of his Reserve enlistment. There is no DD 214 or Statement of Creditable Service in his record.

VIEWS OF THE COAST GUARD

On May 4, 2011, the Judge Advocate General of the Coast Guard recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The PSC stated that although the applicant served in the Coast Guard Reserve from August 19, 1985, until his eight-year enlistment expired on August 18, 1993, he never completed more than 90 days of continuous active duty and so is not entitled to a DD 214. The Coast Guard noted that if the applicant needs documentation of his military service, he may request a Statement of Creditable Service from the Pay and Personnel Center via the internet.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 9, 2011, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received.

APPLICABLE LAW

COMDTINST M1900.4D is the manual for preparing DD 214s. Chapter 1.B. states that “[t]he DD Form 214 will NOT be issued to members: ... 10. Who are reservists released from continuous active duty for training (ADT) less than 90 days.”

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 concerning this matter pursuant to 10 U.S.C. § 1552.
2. The application was untimely because it was filed more than three years after the applicant knew he had not received a DD 214.¹ Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application if it is in the interest of justice to do so. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that to determine whether the interest of justice supports excusing the untimeliness of an application, the Board “should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review.” The Board's cursory review of this case shows that the applicant is a veteran of the Coast Guard Reserve who needs documentation of his military service for the purpose of seeking benefits from the DVA. Although the record indicates that he is not entitled to the relief he requests, he is entitled to alternative relief. Therefore, the Board finds that it is in the interest of justice to excuse the untimeliness of the application and consider the case on the merits.

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

3. The applicant requested documentation of his military service and specifically requested a DD 214. However, his military records, which are presumptively correct,² show that he never performed continuous active duty for a period of 90 days or longer and so is not entitled to a DD 214.³ However, reservists without DD 214s may receive documentation of their military service on a Statement of Creditable Service (SOCS). The Coast Guard recommended that the Board deny relief and that the applicant apply for an SOCS on line. However, the applicant's official military record is now in the Board's possession and it will be needed by the Coast Guard to prepare an SOCS. Therefore, rather than denying all relief and returning the military record to the National Personnel Record Center in St. Louis so that the Coast Guard must order the military record back from St. Louis, which can take several months, the Board finds that in the interest of administrative efficiency and justice for the applicant, the Board should order the Coast Guard to prepare an SOCS for the applicant if it has not done so already.

4. Accordingly, the applicant's request for a DD 214 should be denied, but alternative relief should be granted by ordering the Coast Guard to prepare an SOCS for the applicant if it has not done so already.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

² 33 C.F.R. § 52.24(b).

³ COMDTINST M1900.4D, Chap. 1.B.

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is denied, but alternative relief is granted in that the Coast Guard shall prepare a Statement of Creditable Service for him if it has not already done so.

Anthony C. DeFelice

Frank E. Howard

Jeff M. Neurauter