

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-185

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 on August 15, 2008, upon receipt of the applicant's completed application, 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 April 30, 2009, 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 wrote on her application form that "[t]he Defense Authorization Act of Fiscal Year 1998 (Public Law 105-85) of November 18, 1997, contains a provision (section 1102 of Title X1) which accords Veterans' preference to everyone who served on active duty during the period beginning August 2, 1990, and ending January 2, 1992, provided, of course, the veteran is otherwise eligible.^[1] I was not awarded this ribbon on my DD 214."

¹ Section 1102 of Public Law 105-85 is entitled "Veterans' Preference Status for Certain Veterans who Served on Active Duty During the Persian Gulf War," and it amended 5 U.S.C. § 2108 to change the definition of the word "veteran" to include not only those who (A) "served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955," or (B) "served on active duty as defined by section 101(21) of title 38 at any time in the armed forces for a period of more than 180 consecutive days any part of which occurred after January 31, 1955, and before October 15, 1976, not including service under section 12103(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve," but also those who (C) "served on active duty as defined by section 101(21) of title 38 in the armed forces during the period beginning on August 2, 1990, and ending on January 2, 1992."

Section 1102 of Public Law 105-85 makes no mention of any ribbon or medal. Subtitle G of Title V of Public Law 105-85 concerns "Military Decorations and Awards," but the sections therein concern matters that are apparently inapplicable to the applicant: limitations on eligibility for the Purple Heart; an Armed Forces Expeditionary Medal for service in Operation Joint Endeavor or Operation Joint Guard in Eastern Europe in the mid 1990s; the waiver of certain time limitations regarding medals for specific persons and for intelligence personnel; the eligibility of particular World War II veterans for certain awards; and the retroactivity of the Medal of Honor special pension.

The applicant's DD 214 shows that she served on active duty as a member of the regular Coast Guard from March 4, 1985, to January 3, 1991, when she was honorably discharged due to the expiration of her enlistment. She had no foreign service or sea service. The DD 214 also lists the following medals: Good Conduct Medal; Meritorious Unit Commendation Ribbon with gold star and "O" device; Bicentennial Unit Commendation Ribbon; Marksman Pistol Ribbon.

The applicant did not state what date she discovered the alleged errors in her record and did not explain her delay in requesting correction of her DD 214.

VIEWS OF THE COAST GUARD

On January 12, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum prepared by the Coast Guard Personnel Command (CGPC).

CGPC pointed out that the application was not timely. However, CGPC's review of the applicant's record and the Medals and Awards Manual (COMDTINST M1650.25D) revealed that the applicant is entitled to a National Defense Service Medal. Therefore, CGPC recommended that the Board order that her DD 214 be corrected by issuance of a DD 215 to reflect the award of this medal.

With regard to the applicant's reference to a "veteran's preference" under Public Law 105-85, CGPC stated that the applicant's DD 214 clearly shows that she was on active duty from March 4, 1985, to January 3, 1991, which overlaps with the period August 2, 1990, to January 2, 1992. Therefore, she is clearly entitled to claim a veteran's preference when seeking Government employment because of her service from August 2, 1990 (the beginning of the eligibility period), to January 3, 1991 (her separation date).

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 26, 2009, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

Chapter 1.E. of COMDTINST M1900.4D states that when preparing a discharge form, DD 214, the administrative officer should "[e]nter all decorations, medals, badges, commendations, citations, and campaign ribbons awarded or authorized for all periods of service." This manual does not provide for any reference to or indication of a veteran's preference on the DD 214.

COMDTINST M1650.25D, the Coast Guard's current Medals and Awards Manual, contains the rules governing the eligibility of Coast Guard members for various awards and medals. Chapter 5.A.5.a.(1) states the following as the primary eligibility criterion for a National Defense Service Medal:

Honorable active service as a member of the Armed Forces for any period (inclusive) from 27 June 1950 to 28 July 1954; from 1 January 1961 to 14 August 1974; from 2 August 1990 to 30

November 1995; or from 12 September 2001 to a date to be determined by the Secretary of Defense.

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. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. Gulf War-era veterans have been entitled to a National Defense Service Medal and to a veteran's preference in Government employment for many years.² The applicant provided no date of discovery of the alleged errors in her record. However, she clearly could have discovered the alleged errors upon simple inquiry many more than three years ago. Therefore, her application is untimely.
3. 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 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." 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." *Id.* at 164-65; see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).
4. Although the applicant failed to provide any justification for her delay, a cursory review of the record shows that she is entitled to a medal that is not noted on her DD 214. Therefore, the Board will waive the statute of limitations for this case in the interest of justice.
5. Under Chapter 5.A.5.a.(1) of the Medals and Awards Manual, COMDTINST M1650.25D, the applicant is clearly entitled to a National Defense Service Medal because she served on active duty from before August 2, 1990—the beginning of the eligibility period for Gulf War-era veterans—until her discharge on January 3, 1991. Therefore, her record should be corrected to show that she is entitled to this medal.
6. The applicant's DD 149 contains an unclear reference to the veteran's preference authorized for all Gulf War-era veterans under section 1102 of the National Defense Authorization Act for Fiscal Year 1998. While she clearly falls within the definition of a "veteran" under that law, codified at 5 U.S.C. § 2108, she has not shown that her military record contains any error or injustice in this regard. Nor has she shown that she has been denied a veteran's preference by the Government. The manual for preparing DD 214s does not allow eligibility for a veteran's preference to be entered anywhere on the form, and the Board is unaware of any other

² Exec. Order No. 12,776, 1991 WL 353263, 56 Fed. Reg. 51,315 (1991); U.S. COAST GUARD, COMDTINST M1650.25B, MEDALS AND AWARDS MANUAL, Chap. 5.B.11. (March 29, 1995); National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105-85, § 1102, 111 Stat 1629 (1997).

form where such information would be recorded in a veteran's military record. Moreover, the Board believes that eligibility for such a preference is assessed not by the Armed Forces upon discharge, but by the U.S. Office of Personnel Management, since the preference is applied broadly to candidates for civilian Government employment with a certain amount or type of military service. The Board finds that the applicant has not proved that her Coast Guard military record contains any error or injustice with regard to her eligibility for a veteran's preference.

7. Accordingly, partial relief should be granted by correcting the applicant's DD 214 to show that she is entitled to the National Defense Service Medal.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

