

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

Application for Correction
of the Coast Guard Record of:

BCMR Docket No. 2011-120

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

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 upon receipt of the applicant's completed application on March 8, 2011, and subsequently prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 18, 2011, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED AND ALLEGATIONS

The applicant asked the Board to correct his DD 214 (certificate of discharge or release from active duty) by adding the words "active on ship" and "we were search and rescue patrolling for cold war enemies on the west Coast." The applicant stated that he needs to have the comments added to his DD 214 to qualify for medical benefits through the Department of Veterans' Affairs (DVA).

The applicant submitted a page from his DVA application for medical benefits in which he indicated that he has a disability caused by his exposure to asbestos while on active duty. He stated on the DVA application that he was exposed to asbestos while working in damage control on a Coast Guard cutter where he repaired leaky valves or couplings that were wrapped in asbestos. He also stated that in the early 1970s he began having breathing problems and that a doctor, who is now deceased, diagnosed him with sarcoidosis. According to the applicant, the doctor asked him if he had ever been in contact with asbestos and he explained to the doctor that he had been in contact with asbestos while on a cutter.

The applicant stated that he discovered the alleged error in December 2010 and that it is in the interest of justice to consider his application even if it is untimely, because it is the right thing to do. He stated that he served his country and asked little in return and that he is concerned that the asbestos from the cutter is in his lungs.

The military record shows that the applicant enlisted in the Reserve for 6 years on April 10, 1967. He completed recruit training on June 19, 1967, and he completed a period of active duty training on August 29, 1967 that included 2 months and 2 days of sea duty. On August 29, 1967 he was transferred to United States Coast Guard Base, Alameda, CA and on September 8, 1967 he was released from active duty as a fireman apprentice (FA; pay grade E-2). His DD 214 shows that he served on active duty from April 10, 1967 to September 8, 1967, a period of 4 months and 29 days. The DD 214 shows that his last active duty station was the USCGC LAMAR. After his release from active duty, the applicant served in the Reserve. He was honorably discharged from the Reserve on April 9, 1973.

VIEWS OF THE COAST GUARD

On May 13, 2011, the Board received an advisory opinion from the office of the Judge Advocate General (JAG) of the Coast Guard. The JAG noted that the application was untimely and should be denied for that reason. The JAG also concurred with the comments provided by the Commander, Personnel Service Center (PSC), which were attached as an enclosure to the advisory opinion.

PSC noted that the application was untimely and that the applicant did not provide a persuasive reason for not filing his application sooner. On the merits of the application, PSC stated that the Coast Guard is presumptively correct and the applicant has failed to substantiate any error or injustice with regard to his record. In this regard, PSC stated the DD 214 already shows that the applicant was on the USCGC LAMAR for 2 months and 2 days. PSC further stated that COMDTINST M1900.4D does not contain a provision for including language on a DD 214 such as that requested by the applicant. PSC stated the applicant's service record neither confirms nor denies the applicant's participation in search and rescue operations or that he was patrolling for cold war enemies during his active duty service.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 18, 2011, the Board sent the applicant a copy of the Coast Guard views and invited him to submit a reply. The Board did not receive a response from the applicant.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and the Coast Guard, the military record of the applicant, and applicable law.

1. The BCMR has jurisdiction of this case pursuant to section 1552 of title 10, United States Code.

2. The application was not timely. Pursuant to 10 U.S.C. § 1552(b), an application for correction of a military record must be filed within three years after the applicant discovers the alleged error or injustice. Although the applicant stated that he discovered the alleged error in December 2010, the Board finds that he should have discovered it in the 1970s because he was diagnosed with sarcoidosis in the 1970s and was told at that time that his condition could have been caused by contact with asbestos. The applicant received a copy of his DD 214 upon his

discharge in 1967, as witnessed by his signature. Therefore, he was or should have been aware in the 1970s that his DD 214 did not contain any of the language that he is currently seeking to include on his DD 214. The applicant should have filed his application with the Board earlier than February 25, 2011. His explanation that his application should be considered, even if untimely, because it is the right thing to do is not persuasive.

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, 165.

4. With respect to the merits of this case, the applicant is not likely to prevail because DD 214s are prepared according to COMDTINST M1900.4D, and it does not authorize adding the language requested by the applicant to his DD 214. Moreover, as the advisory opinion stated, the military record does not support a finding that the applicant was assigned to search and rescue duties or to patrolling for enemies during the cold war era. In addition, the DD 214 already shows that the applicant was assigned to a ship while on active duty. In this regard, section 12 of the DD 214 shows that the applicant’s last duty station was the USCGC LAMAR and section 22.c. shows 2 months and 2 days of foreign and/or sea duty. The applicant’s DD 214 is correct as it currently stands.

5. Accordingly, it is not in the interest of justice to excuse the untimeliness and the applicant’s application should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXXXXXXXXXXXX USCG, for correction of his military record is denied.

Evan R. Franke

Randall J. Kaplan

H. Quinton Lucie