

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1998-015

FINAL DECISION

ANDREWS, Attorney-Advisor:

This proceeding was conducted according to the provisions of section 1552 of title 10 of the United States Code. It was commenced upon the BCMR's receipt of the applicant's application on October 24, 1997.

This final decision, dated February 25, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a retired xxxxxxxxxxxxxxxxxxxx, asked the Board to correct the DD Form 214 issued to him on October 31, 199x, to show that he had performed foreign service.

APPLICANT'S ALLEGATIONS

The applicant alleged that before retiring in 199x, he had signed a blank DD Form 214 because he was going on leave for 90 days and did not wish to return to his post to sign the form later. When he received the form, he noticed that it omitted his foreign service, but he did not try to have it corrected. Now, however, he stated that he is "applying for the Southwest Asia Bonus" and so wants his DD Form 214 corrected.

The applicant alleged that he had completed 10 months and 20 days of foreign service. He submitted a copy of a DD Form 214 dated July 28, 195x, from the United States Navy, which shows that he performed 10 months and 20 days of "foreign and/or sea service."

VIEWS OF THE COAST GUARD

On January 21, 1999, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the requested relief. He stated that the applicant's DD Form dated October 31, 199x, is correct, and that the applicant's sea and foreign service were properly documented on his other DD Form 214s.

The Chief Counsel attached to his advisory opinion a memorandum dated July 27, 1998, from the Coast Guard Personnel Command (CGPC). CGPC explained that DD Form 214s are not cumulative; they reflect only the service performed during the period covered by the form. Therefore, the applicant's Coast Guard foreign/sea service should be reflected only on the DD Form 214 that covers the period during which he performed that service. The applicant's Coast Guard records indicate that he served 1 year, 11 months, and 21 days of "foreign/sea service" in the 1970s. This service is properly documented on the DD Form 214 issued to him on January 27, 198x.

The DD Form 214 issued on October 31, 199x, covers the period from January 27, 198x, to October 31, 199x. The applicant did not perform any foreign/sea service during this time. Therefore, the DD Form 214 issued on October 31, 199x, should not reflect any foreign/sea service.

SUMMARY OF THE RECORD

The applicant submitted a DD Form 214 dated July 28, 195x, from the U.S. Navy. The form shows that he had completed 10 months and 20 days of foreign/sea service during his 3 years and 2 days on active duty in the Navy.

On March 27, 197x, the applicant enlisted in the Coast Guard for four years. On February 6, 1975, the applicant reported to Coast Guard District xxxxxxxx in xxxxxxxxx. On January 26, 1977, the applicant was discharged and issued a DD Form 214. The form indicates that he performed 1 year, 11 months, and 21 days of foreign and/or sea service during his first enlistment in the Coast Guard.

The next day, January 27, 1977, the applicant reenlisted for a term of 6 years. On January 26, 1983, the applicant was discharged upon the expiration of his enlistment. His DD Form 214 shows he did not perform any foreign or sea service during his second, 6-year enlistment.

On January 27, 1983, the applicant reenlisted for another 6 years. He extended this enlistment for 6 more years on November 10, 1988. He retired on

October 31, 199x, after completing more than 20 years of active military service in the Coast Guard and Navy. His DD Form 214 issued on that date indicates that he did not perform any foreign or sea service during his final enlistment.

APPLICABLE LAWS

Commandant Instruction M1900.4C governed the preparation of DD Form 214s at the time of the applicant's discharge in 199x. Article 1-C of the instruction contains the following:

Block 12a. Date Entered Active Duty This Period. Enter the date of entry on the current period of active duty

Block 12 b. Separation Date This Period. Enter the effective date of release, discharge, or change of status. For personnel being retired, enter the last day of active duty in this block

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Block 12 f. Foreign Service. Enter the years, months, and days of foreign service from the date entered in block 12a through the date entered in block 12 b. . . .

Block 12g. Sea Service. Enter the years, months, and days of sea service from the date entered in block 12 a through the date entered in block 12 b.

. . .

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 section 1552 of title 10 of the United States Code.

2. An application to the Board must be filed within three years of when the applicant discovers the alleged error in his record. 10 U.S.C. § 1552. The applicant admitted that he discovered the error in 199x but did not apply to the Board until October 1997. Therefore, the Board finds that the applicant filed his application almost 7 years after he first discovered the alleged error. Thus, his application was untimely.

3. Pursuant to 10 U.S.C. § 1552, the Board may waive the three-year statute of limitations if it is in the interest of justice. To determine whether it is in the interest of justice to waive the statute of limitations, the Board should conduct a cursory review of the merits of the case. Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992).

4. The applicant alleged that his DD Form 214 issued on October 31, 199x, is in error because it does not reflect his prior sea and foreign service. The DD Form 214 issued on October 31, 199x, covered the applicant's final enlistment, which ran from January 27, 1983, to October 31, 199x. A cursory review of the applicant's record indicates that he did not perform any sea or foreign service between those dates. The regulations require only foreign and sea service performed during the most recent enlistment to be reflected on the DD Form 214 covering that enlistment. Therefore, the Board finds that the Coast Guard has not committed any error with regard to this matter.

5. The applicant appears to be confused about the nature of DD Form 214s. As CGPC stated in its memorandum, the forms are not cumulative and reflect only the service performed during the enlistment from which the member is being discharged. Therefore, the foreign and/or sea duty performed by the applicant for the U.S. Navy in the 1950s properly appears only on the DD Form 214 dated July 28, 195x, which he received for that enlistment in the Navy. Likewise the foreign and/or sea service performed by the applicant for the Coast Guard in the 1970s properly appears only on the DD Form 214 dated January 26, 1983, which he received for that enlistment.

6. Without evidence that the Coast Guard has committed an error or injustice, the Board will not waive the statute of limitations.

7. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application for correction of the military record of retired XXXXXXXX, USCG, is hereby denied.

Robert H. Joost

Walter K. Myers

Michael K. Nolan