DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 2004-003

FINAL DECISION

This is a proceeding under section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on June 24, 2002, upon the Board's receipt of the applicant's complete application for the correction of her military record.

The final decision, dated June 10, 2004, is 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 asked the Board to change the name on her DD Form 214 (discharge certificate from the Coast Guard) from her married name to her maiden name. She stated that she needs her record corrected "for veteran services for [her]self and her children."

The applicant enlisted in the Coast Guard on November 26, 1987, and was unmarried. While in the Coast Guard, the applicant married and assumed her husband's last name. All documents in her military record were corrected to reflect her married name. She was released from active duty into the Reserve on November 24, 1991. On December 13, 1995, she was discharged from the Coast Guard Reserve.

On March 30, 2001, the applicant was divorced in the Commonwealth of Massachusetts and the Judgment of Divorce directed that she could resume using her maiden name.

VIEWS OF THE COAST GUARD

On February 25, 2004, the Judge Advocate General (TJAG) of the Coast Guard recommended that the Board deny the applicant's request because it is untimely and because she failed to prove an error or injustice in her military record.

TJAG argued that the application was untimely. He stated that applications for correction of military records must be filed within three years of the date the alleged error or injustice was, or should have been, discovered. 33 CFR § 52.22. He said that the Board could waive the statute of limitations and consider the case if the applicant presents sufficient evidence that it is in the interest of justice to do so. He further stated as follows:

> Here, Applicant's record was correct at the time it was issued in 1991. It was not until Applicant voluntarily changed her name in 2001 that the alleged "error" was created. Applicant should not be able to create an "error" ten years after the creation of a record and seven years after the statute of limitations has run and use that newly created "error" as the starting point for her BCMR petition.

TJAG argued that in deciding whether to waive the statute of limitations, the Board should consider the length of the delay, the reasons for the delay, and the likelihood of the applicant's success on the merits of her claim. He argued there is very little chance that the applicant will prevail because the DD Form 214 accurately documents the name under which the applicant served on active duty and her subsequent name change is irrelevant to the accuracy of the DD Form 214.

TJAG further argued that the applicant's situation fails to rise to the level of an injustice because the Coast Guard took no action against the applicant that shocks one's sense of justice. See Reale v. United States, 298 Ct. Cl. 1010, 1011 (1976). He further stated that the applicant's decision to change her name upon her divorce was voluntary and that she has offered no evidence that her current DD Form 214, together with her Judgment of Divorce ordering her name change, are insufficient documentation to establish entitlement to veterans benefits. He asserted that without a reasonable chance of prevailing on the merits, it is not in the interest of justice to waive the statute of limitations in this case.

TJAG stated that the applicant offered no evidence that the Coast Guard erred in any way in this case. He further stated that absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith. Arens v. United States, 969 F.2d 1034, 1037 (1992). Moreover applicant bears the burden of proving error. 33 C.F.R. § 52.24. Here, applicant offers no evidence that the Coast Guard committed and error or injustice at the time of her separation.

TJAG attached a memorandum from the Commander, Coast Guard Personnel Command (CGPC) as Enclosure (1) to the advisory opinion. CGPC noted that COMDTINST M1900.4D (Coast Guard DD Form 214 Instruction) states, "[the] DD Form 214 provides the member and the service with a concise record of a period of service

with the Armed Forces at the time of the member's separation or discharge." CGPC argued that there are no provisions in the instruction for reissuing a DD Form 214 under a person's different name subsequent to its issuance, except in clear cases of administrative error.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 1, 2004, a copy of the Coast Guard views was mailed to the applicant inviting her to submit a reply. She did not respond.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction of the case pursuant to section 1552 of title 10 of the United States Code.

2. An application for correction of a record must be filed within three years after the applicant discovered or reasonably should have discovered the error or injustice. See 33 CFR § 52.22. The applicant in this case could not have discovered the alleged error or injustice until she was granted a Judgment of Divorce on March 30, 2001 that allowed her to resume using her maiden name. She filed her correction application within three years of that date. Therefore, her application is timely.

3. The applicant has not established that the Coast Guard committed any error or injustice regarding her name as it appears on the DD Form 214 that was issued to her in 1991. Nor has the applicant produced evidence that the 2001 court order regarding her name change has any effect on events in 1991. Finally, even if relevant, the applicant produced no evidence that she is encountering any prejudice by having her DD Form 214 reflect her then married name rather than her maiden name, which she is currently using.

4. The Judgment of Divorce, together with her DD Form 214, should be sufficient evidence to establish the applicant's identity for entitlement to any benefits through the Department of Veterans Affairs and otherwise.

5. Accordingly, the application should be denied.

ORDER

The application of former XXXXXXXXXXXXXX, USCG, for correction of her military record is denied.

William R. Kraus

Audrey Roh

Dorothy J. Ulmer