

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-050

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Andrews, J.

This proceeding was conducted 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 February 10, 2006, upon receipt of the applicant's completed application and military records.

This final decision, dated September 28, 2006, 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, a former store keeper second class in the Coast Guard Reserve, asked the Board to correct his discharge form, DD Form 214, to show that he was discharged in 1976 since his enlistment expired in 1976. He also alleged that the DD Form 214 was erroneous in failing to document his active duty training periods in 1973, 1974, and 1975. The applicant alleged that he did not discover the errors until recently.

SUMMARY OF THE RECORD

On March 15, 1968, the applicant enlisted in the Coast Guard Reserve for six years, through March 14, 1974. From March 16 to August 15, 1968, the applicant performed initial active duty for training (ADT). A DD Form 214 and DD Form 215 covering this period show that he performed exactly five months of active duty and had one day of prior inactive service when he was released from active duty on August 15, 1968.

The applicant's record shows that as a reservist he drilled regularly and performed annual ADT during his anniversary years ending on March 14 of 1970, 1971, 1972, and 1973. An Administrative Remarks page in his record dated January 16, 1974, indicates that upon the applicant's request, the Commandant waived his annual ADT requirement for his anniversary year ending on March 14, 1974. On February 24, 1974, the applicant extended his enlistment for one year, through March 14, 1975.

On November 17, 1974, the applicant extended his enlistment for a second year, through March 14, 1976. Another Administrative Remarks page indicates that in December 1974, the applicant again requested a waiver of the annual ADT requirement due to problems with his business. On January 3, 1975, the Commandant granted the waiver for the applicant's ADT requirement for the anniversary year ending on March 14, 1975.

ADT orders in the applicant's record indicate that in June 1975, he performed annual ADT for his anniversary year ending on March 14, 1976, by attending advanced storekeeper school. An Administrative Remarks entry indicates that he completed the course.

On March 14, 1976, the applicant was honorably discharged from the Reserve upon the expiration of his enlistment as extended. He reenlisted for another three years on March 15, 1976. However, there is no evidence of further Reserve participation in his record. The applicant was honorably discharged from the Reserve upon the expiration of his enlistment on March 14, 1979.

On May 8, 2001, the National Personnel Records Center sent the applicant a Certification of Military Service, which reflects his five months of initial ADT and his four periods of ADT for his anniversary years ending on March 14 of 1970, 1971, 1972, and 1973. The certificate does not mention the applicant's ADT in June 1975.

VIEWS OF THE COAST GUARD

On June 26, 2006, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request based on an attached memorandum on the case prepared by CGPC.

CGPC pointed out that the application was untimely. CGPC further stated that in accordance with the DD Form 214 Instruction, COMDTINST M1900.4, DD Form 214s are issued only for continuous periods of active duty of at least 90 days. Therefore, CGPC alleged, the applicant's record is correct in reflecting only one DD Form 214 for his initial ADT since that was his only period of active duty of at least 90 continuous days. CGPC stated that the applicant's subsequent periods of ADT cannot properly be reflected on a DD Form 214 because they were for periods of less than 90 days.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 27, 2006, 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.

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 after the applicant discovers the alleged error in his record. 10 U.S.C. § 1552. The applicant was discharged in 1979 and knew or should have known at that time that his periods of annual ADT were not reflected in his record on a DD Form 214. Therefore, the Board finds that his application was 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, 165.

4. The applicant stated only that he had discovered the alleged errors recently and did not provide any explanation as to why he did not submit an application sooner.

5. As CGPC stated, under COMDTINST M1900.4, DD Form 214s are issued only to document periods of active duty of at least 90 consecutive days. The applicant's record includes only one such period, his initial ADT in 1968, and it was documented correctly with a DD Form 214 and DD Form 215. The applicant is not entitled to have his short periods of annual ADT documented on a DD Form 214. Furthermore, the applicant's record properly reflects that he was honorably discharged on March 14, 1976, upon the expiration of his enlistment as twice extended, and again on March 14, 1979.

6. The National Personnel Records Center (NPRC) has issued the applicant a Certification of Military Service, which reflects his five months of initial ADT in 1968 and his four periods of annual ADT for his anniversary years ending on March 14 of 1970, 1971, 1972, and 1973, but omits his ADT at advanced storekeeper school in 1975. However, the applicant has not asked the Board to remove this document from his record.

7. Accordingly, due to the lack of a persuasive reason for the applicant's delay in filing his application and to the probable lack of success on the merits of his claim, the Board finds it is not in the interest of justice to waive the statute of limitations in this case, and it should be denied because it is untimely and it lacks merit.

ORDER

The application of former SK2 xxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is denied.

Julia Andrews

H. Lee Einsel, Jr.

Kathryn Sinniger