

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-051

XXXXXXXXXXXXXX
XXXXXXXXXXXXXX, EM1/E-6 (former)

FINAL DECISION

AUTHOR: Hale, D.

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 February 10, 2006, upon receipt of the applicant's completed application for correction.

This final decision, dated October 19, 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 electrician's mate first class (EM1; pay grade E-6) who retired from the Coast Guard on October 31, 1988, asked the Board to correct his DD Form 214 (certificate of release or discharge from active duty) to show that he completed 20 years of federal service. He alleged that the DD Form 214 he received upon retirement does not indicate that he completed 20 years of federal service, and that this error, in turn, has caused him to be "rejected from continued work with the Gettysburg, PA, NPS [National Park Service]." In addition, he asked the Board to correct his record to show that he is entitled to "ship-over-pay"¹ for the last six-year extension contract he signed while in the Coast Guard. He alleged that the ship over pay was never offered to him for "prejudicial reasons" and "that this was a continuance

¹ The Board presumes that the applicant is referring to a selective reenlistment bonus (SRB). SRBs allow the Coast Guard to offer a reenlistment incentive to members who possess highly desired skills at certain points during their career. SRBs vary according to the length of each member's active duty service, the number of months of service newly obligated by the reenlistment or extension of enlistment contract, and the need of the Coast Guard for personnel with the member's particular skills, which is reflected in the "multiple" of the SRB authorized for the member's skill/rating, which is published in an ALCOAST.

of belittlement of veterans.” The applicant did not provide any evidence to support his assertion that he is entitled to ship over pay for his last extension contract, nor did he provide any support for his allegation that the pay was denied for prejudicial reasons.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 24, 1972, after having served in the Marine Corps for approximately 4 years. On May 20, 1976, the applicant reenlisted for a term of 3 years and received a \$1633.50 reenlistment bonus. He later extended this reenlistment for 8 months.

On January 17, 1980, the applicant was discharged from the Coast Guard. He reenlisted on January 18, 1980, for six years and the record indicates that he received a \$366.50 SRB for this reenlistment. He received a DD 214 showing that he had 11 years, 9 months, and 1 day of prior active service. On June 5, 1980, the Coast Guard issued the applicant a DD Form 215 (correction to DD 214) and corrected the total active service on his January 17, 1980, DD 214. The DD 215 indicates that the applicant had 11 years, 2 months, and 2 days of total active service. The applicant extended his January 18, 1980, reenlistment twice, for a total of 2 years and ten months.

On October 26, 1988, the Coast Guard prepared a statement of service for the applicant, which indicates that as of October 26, 1988, (five days prior to his retirement), the applicant had completed 20 years and 12 days of active service.

The applicant retired from the Coast Guard on October 31, 1988. He was issued a DD 214 to cover his service from January 18, 1980, through October 31, 1988. The DD 214 indicates that his total active prior service was 11 years, 2 months, and 19 days. The narrative reason for separation on his DD 214 states "RETIREMENT AFTER 20 YEARS ACTIVE FEDERAL SERVICE," and the separation program designator (SPD) code is "RBD" (sufficient service for retirement, voluntary).

On April 5, 2006, in response to the applicant's BCMR request, the Coast Guard issued the applicant another DD 215 to reflect total prior active service of 11 years, 2 months, and 29 days.

VIEWS OF THE COAST GUARD

On May 19, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard Personnel Command (CGPC) and recommended that the Board deny the applicant's request. The JAG argued that the Coast Guard already issued a DD 215 to correct the applicant's total prior service listed on his October 31, 1988, DD 214.

With respect to the ship over pay, the JAG stated that the applicant's allegation that he was not offered and did not receive "ship over pay" is not substantiated. The JAG stated that the applicant reenlisted for three years on May 20, 1976, and received a

\$1633.50 reenlistment bonus, and that there does not appear to be “any discrepancy with regards to bonus entitlement of payment.” Finally, the JAG stated that although the applicant alleges prejudice and belittlement of veterans, “there is nothing to support the allegation within the applicant’s statement or record.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the advisory opinion, the applicant expressed thanks for correcting his DD 214. However, he stated “Gettysburg, PA NPS has still not responded to me with an apology or the need to pay equal pay for a retired veteran.” Addressing the Coast Guard’s response to his allegation that he did not receive ship over pay, the applicant expressed thanks for “reminding me of this pay” and that “my own opinion was greyed by the amount others had received for their service – 20 to 30 thousand.” The applicant did not clearly indicate whether he agreed or disagreed with the views of the Coast Guard.

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 the day the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). The applicant was issued the DD 214 that he claims to be erroneous on October 31 1988, upon his retirement from the Coast Guard. Accordingly, he knew or should have known of any discrepancies on the DD 214 upon his retirement in 1988. Therefore, the Board finds that the application was filed more than 14 years after the statute of limitations expired and is untimely.

3. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

4. Under 10 U.S.C. § 1552(b), the Board may waive the three-year statute of limitations 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 in assessing 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. *See also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

5. Although the applicant requested that his DD 214 be corrected to show that he retired with 20 years of service, the Board notes that the applicant’s October 31, 1988, DD 214 clearly states that he was being voluntarily retired from the Coast Guard after completing 20 years of active service. Specifically, block 28, narrative reason for separation, on the DD 214 states:

“RETIREMENT AFTER 20 YEARS ACTIVE FEDERAL SERVICE”

Moreover, the applicant’s DD 214 contains an “RBD” separation code, which indicates that he voluntarily retired from the Coast Guard after completing sufficient service to retire.

6. In his application to the BCMR, the applicant also alleged that he did not receive ‘ship over pay’ for the last six-year extension contract he signed while in the Coast Guard. However, the applicant’s record indicates that he received a \$366.50 SRB for the six-year reenlistment contract that he signed on January 18, 1980. This was the last six-year contract he signed before retiring in 1988. As the JAG noted, “In the absence of any specific supporting documentation presented by the applicant, there does not appear to be any discrepancy with regards to bonus entitlement or payment.”

7. Accordingly, due to the fact that the applicant’s DD 214 clearly states that he retired from the Coast Guard after completing 20 years of active service and the fact that he received an SRB for his January 18, 1980, six-year reenlistment, the Board finds that 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.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former EM1 XXXXXXXXXXXXXXXX, xxxxxxxxxxxx, USCG, for correction of his military record is denied.

Philip B. Busch

Francis H. Esposito

William R. Kraus