

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

Application for Correction
of the Coast Guard Record of:

BCMR Docket No. 2009-041

XXXXXXXXXX.

XXXXXXXXXX, PS2 (former)

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 on December 5, 2008, upon receipt of the applicant's completed application, and subsequently prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 16, 2009, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, who was a member of the Reserve, asked the Board to correct his record to show that he received a DD 214 for several two-week periods of active duty for training between May 20, 1979 and May 19, 1983. During this period the applicant served on active duty for training on three different occasions. The first and third period covered 12 days each and the second period covered 13 days. He stated that the DD 214 is needed for government employment and for retirement buy back. In support of his application, the applicant submitted copies of his retirement points statements.

VIEWS OF THE COAST GUARD

On April 9, 2009, the Board received an advisory opinion from the office of the Judge Advocate General (JAG) of the Coast Guard. He recommended that the Board deny relief to the applicant. In this regard, the JAG stated that the application was not timely and that the applicant had not provided any documentation to support his allegations. The JAG 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 applicant had provided no justification for not filing his application within three years. Moreover, PSC stated that Chapter 1.B.10. of COMDTINST M1900.4D prohibits the issuance of a DD 214 for "reservist released from continuous active duty training (ADT) less than 90 days." PSC stated that based upon a review of the applicant's reserve

retirement points statements there were no periods of service that satisfied the requirement for the issuance of a DD 214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 10, 2009, 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 the case pursuant to section 1552 of title 10, United States Code. The application was not timely.

2. Under 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. Although the applicant stated that he discovered the alleged error on August 10, 2008, he should have discovered it sooner. He was aware of the existence of DD 214s as early as November 3, 1978, because he received one at that time for an earlier period of active duty. The two-week ADT periods about which he complained occurred between May 20, 1979 and May 19, 1983. Therefore, he should have been aware at the end of each ADT period that he had not received a DD 214. If the applicant believed he was entitled to a DD 214 for each ADT period, he should have raised the matter with the Board within three years of the termination date of each ADT period.

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 according to Article 1.B.10 of COMDTINST M1900.4D, a DD 214 will not be issued to reservists released from active duty for training that covers a period of less than 90 days.

5. Accordingly, the applicant's request should be denied because it is untimely and because it has no merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXXXXXX., xxxxxxxx, USCGR, for correction of his military record is denied.

Lillian Cheng

Nancy L. Friedman

Vicki J. Ray