

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-073

**XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX**

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the completed application on January 13, 2009, and subsequently drafted the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 24, 2009, is approved and 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 alleged that he is the veteran whose name and Social Security number (SSN) appear below his name in the case caption above. The veteran enlisted in the Coast Guard on August 4, 1992, and was honorably discharged from the Coast Guard on May 1, 1997. The veteran's military records show that he was female when he served in the Coast Guard. The applicant alleged that he is the veteran and that a XXXXXXXX State court has legally changed his name to the male name shown in the case caption. The applicant asked the Board to correct his military records to reflect his new male name and male gender to eliminate any potential future discrimination and so that his information matches when background investigations are done for employment purposes.

In support of his allegations regarding his identity and name, the applicant submitted a photocopy of a Wake County, North Carolina State court order dated May 9, 2008, ordering that the veteran's original first and middle names be changed from female names to male names, with no change to the last name.

In support of his allegations regarding his gender change, the applicant submitted a photocopy of a letter dated July 18, 2008, from a doctor specializing in plastic and reconstructive surgery, who stated that he had performed permanent and irreversible sex change surgery on the applicant on July 10, 2007, and that the applicant should now be allowed to change the gender on his social security card, birth certificate, and other legal documents to male.

The applicant also submitted a photocopy of a social security card showing that his name has been changed to male and the SSN is the same as that listed on his DD 214. He also submitted a copy of his current state driver's license showing his male name and the same birth date as that listed on his DD 214 and the court order.

VIEWS OF THE COAST GUARD

On February 10, 2009, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum on the case submitted by Commander, Coast Guard Personnel Command (CGPC), who recommended that the Board deny relief.

CGPC stated that in COMDTINST M1900.4D, the manual for preparing DD 214s, Chapter 1.D.2.a. states that "[a]ll entries [on the DD 214], unless specified otherwise (i.e., block 7a, 7b), are for the current period of active duty only from the date of entry as shown in block 12a through the date of separation as shown in block 12b." Pursuant to this regulation, CGPC stated, the DD 214 was properly prepared with the applicant's legal name at the time.

CGPC stated that the applicant's "legal name changes and gender reassignment became effective after the period of service indicated on the DD 214. Therefore, there is no error or injustice with regards to the applicant's name as it appears on the DD 214 or in [other] official military records."

CGPC stated that the applicant's "military records are correct as the applicant served under his earlier name and gender, not the name and gender that were attained subsequent to discharge. There is no error or injustice with regards to the applicant's records. Records of former servicemembers are filed based upon Social Security Number and the name of the veteran at the time of discharge."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 13, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. The Board received no response.

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 over this matter pursuant to 10 U.S.C. § 1552. The application was timely under 10 U.S.C. § 1552(b) because it was filed within three years of the date the applicant completed, and hence discovered, his legal gender and name changes.

2. The applicant alleged that he is the veteran whose female name and SSN are shown in the case caption above and that his military records are erroneous and unjust¹ because they do not reflect his new name and gender. The Board begins its analysis in every case by presuming that the disputed information in the veteran's military record is correct, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² Absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties "correctly, lawfully, and in good faith."³

3. The applicant has proved by a preponderance of the evidence that he is the same person as the veteran whose original, female name and SSN appear in the case caption above. The applicant also submitted a copy of the court order that legally changed his gender to male, a copy of his social security card, and a copy of his state driver's license issued in his male name.

4. The applicant has not proved by a preponderance of the evidence that his military records contain any factual error. The records show that the applicant entered, served in, and was discharged from the Coast Guard as a woman with the female name shown in the case caption. Therefore, the Board concludes that the applicant's military records are not erroneous even though they do not reflect his new name and gender.

5. A DD 214 is a record of a single period of enlistment, like a snapshot, and it is supposed to reflect the facts of that enlistment and to be accurate as of the date of discharge.⁴ COMDTINST M1900.4D, the manual for completing DD 214s, contains no provisions for updating DD 214s when veterans' personal data change after their separation from the Service. For example, the Coast Guard does not correct or issue new DD 214s when members or veterans later change their names due to marriage; change their home address; or earn new awards or time in service. Therefore, the Coast Guard's refusal to update the applicant's active duty military records and 1997 DD 214 is not an error.

6. In the absence of error, the Board must determine whether the applicant's female name and gender in his military records constitute an injustice. The BCMR has "an abiding moral sanction to determine insofar as possible, the true nature of an alleged injustice and to take

¹ Under the BCMR statute, 10 U.S.C. § 1552(a)(1), the Board is empowered to act on behalf of the Secretary to "correct an error or remove an injustice" from any member's or veteran's Coast Guard military record. For the purposes of the BCMRs, "injustice" is "treatment by the military authorities that shocks the sense of justice but is not technically illegal." *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); see Decision of the Deputy General Counsel, BCMR Docket No. 346-89.

² 33 C.F.R. § 52.24(b); see Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁴ UNITED STATES COAST GUARD, COMDTINST M1900.4D, Chap. 1.D.2.a.

steps to grant thorough and fitting relief.”⁵ For the purposes of the BCMRs, “injustice” is “treatment by the military authorities that shocks the sense of justice but is not technically illegal.”⁶

7. Some employers ask job applicants to present their DD 214s if they claim to have previously served in the military. The Board notes that the applicant could theoretically face discrimination and lose job offers if potential employers realize that he was born female and has changed his gender. However, the applicant has not submitted evidence of such discrimination. Moreover, such treatment would be an injustice caused by the prejudice of the employer, not by the Coast Guard’s treatment of the applicant. In refusing to update the applicant’s DD 214 with his new name, the Coast Guard is not treating the applicant differently than any other veteran whose personal data changed after separation. The applicant’s DD 214 bears his SSN, and he has the court documents to prove that his name was once the name shown on the DD 214. Therefore, the Board concludes that the applicant has not proved by a preponderance of the evidence that the original name appearing in his military record and on his DD 214 constitutes treatment by military authorities that shocks the sense of justice.⁷

8. Accordingly, the Board finds that the applicant’s request for correction of his military record should be denied.

⁵ *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959).

⁶ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); see Decision of the Deputy General Counsel, BCMR Docket No. 346-89.

⁷ This finding is consistent with the Board’s decision in BCMR Docket No. 2000-151, in which a veteran who had served in the Coast Guard as a male changed his first and middle names to female names several years after his discharge from the Service.

ORDER

The application for correction of the military record of former
XXXXXXXXXXXXXXXXXXXX, is denied.

Donna M. Bivona

Philip B. Busch

Erin McMunigal