

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-078

W_____, W__ X__
a.k.a. Z_____, W__ X__
xxx xx xxxx, SA (former)

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 12, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 10, 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, W__ X__ W_____, alleged that he is W__ X__ Z_____, a disabled veteran of the Coast Guard Reserve. He alleged that he served on active duty in the Reserve with an incorrect name (not the name on his birth certificate) and asked the Board to correct his military records, particularly his DD 214, to reflect his legal name as it appears on his birth certificate, which he submitted. The applicant alleged that he discovered the error in 1980 but that he needs his last name corrected "for reasons of employment, mortgage info, identification." The applicant also submitted a copy of the DD 214 of W__ X__ Z_____, but he did not submit any official document bearing both his own legal name and the SSN of the veteran.

SUMMARY OF THE RECORD

The birth certificate submitted by the applicant shows that W__ X__ W_____ was born to A__ B__ W_____ on January XX, 1956, in XXXX, Montgomery County, Alabama. The birth certificate does not list a father. It also indicates that the birth was single (without twin).

The military records of W__ X__ Z_____ show that he enlisted in the Coast Guard Reserve on February 13, 1979, underwent training, and was honorably discharged from active duty due to a physical disability seven months later, on September 10, 1979. His enlistment application, dated January 19, 1979, shows that he was born on January XX, 1956, in XXXX,

Montgomery County, Alabama; that his mother's name was A__ B__ Z_____; and that his father's name was C__ Z_____. His parents were was living in California and he enlisted in California. In Part IV of the enlistment application, the recruiter certified that he had "verified the applicant's name and the date and place of birth" by reviewing his birth certificate.

W__ X__ Z_____'s military records include a copy of a high school graduation certificate issued in the name of "W__ Z_____" and a copy of a Social Security card issued to "W__ X__ Z_____." The military records of W__ X__ Z_____ indicate that he never used the last name W_____ while in the service.

W__ X__ Z_____ requested copies of his military record in 1980 and 1990. W__ X__ W_____ requested copies of the military records under the SSN of W__ X__ Z_____ in 1999.

VIEWS OF THE COAST GUARD

On May 21, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief.

The JAG stated that the application should be denied for untimeliness and lack of merit because the applicant provided "no rationale for his approximately 30-year delay" in applying to the Board for the requested correction.

The JAG also adopted the findings and analysis provided in a memorandum on the case submitted by Commander, Personnel Service Center (PSC), who also recommended that the Board deny relief. The PSC stated that the military records are presumptively correct and that the birth certificate does not prove that the veteran's legal name was W__ X__ W_____ when he served on active duty. The PSC noted that "issuance of additional birth certificates in conjunction with adoption and other legal name changes is not uncommon."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 29, 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.
2. Under 10 U.S.C. § 1552(b) and 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. The applicant wrote on his application form that he discov-

ered the alleged error regarding his name in 1980. Therefore, the applicant knew or should have known of the alleged error in his military record at that time, and his application is 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 164-65; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. The applicant did not explain his long delay in seeking the correction of his name but argued that it is in the interest of justice for the Board to excuse the untimeliness of his application because he is now experiencing problems with employment and a mortgage application because his name on his DD 214 does not match the name on his birth certificate. The Board notes in this regard that recent legislation and the rise in identity theft has greatly increased citizens’ need for clear, consistent identification in legal documents required for employment, travel, and many financial matters.

5. A cursory review of the merits of this case indicates that the applicant, W__ X__ W_____, is likely the same person as W__ X__ Z_____, who served on active duty in the Coast Guard for seven months in 1979. Despite the fact that the applicant’s recruiter certified on the enlistment application that W__ X__ Z_____ was the name shown on the birth certificate he reviewed, the Board believes that the odds of W__ X__ W_____, born to a A__ B__ W_____ in XXXX, Alabama, on January XX, 1956, not being the same person as the Coast Guard veteran W__ X__ Z_____, who was born to A__ B__ Z_____ and C__ Z_____ in XXXX, Alabama, on January XX, 1956, and who was issued an SSN in the name of W__ X__ Z_____, are small. In light of this apparent identity of person, the Board finds that it is in the interest of justice to excuse the untimeliness of the application and consider the applicant’s request on the merits.

6. Although the applicant, W__ X__ W_____, is likely the same person as the veteran W__ X__ Z_____, the applicant did not submit any official document linking his current name with the SSN of W__ X__ Z_____. Without a Social Security card linking the name W__ X__ W_____ with the SSN of W__ X__ Z_____, the Board cannot say for certain that they are one and the same person.

7. Moreover, even assuming that the applicant could submit such evidence, it would not prove that in 1979 the applicant’s legal last name was W_____, rather than Z_____. As the Coast Guard indicated, the applicant could have been born W__ X__ W_____ and been adopted by his father and legally renamed W__ X__ Z_____ upon the marriage of his parents. The applicant’s high school graduation certificate and old Social Security card, which are among his military records, and all of his other military records indicate that his legal name was W__ X__ Z_____ in 1979. The 1956 Alabama birth certificate does not prove that his legal name when he enlisted in California in 1979 was still W__ X__ W_____. The Board

begins every case by presuming that the disputed military records are correct,¹ and the applicant bears the burden of proving by a preponderance of the evidence that the military records are erroneous or unjust. In light of all the evidence in the record, the Board cannot conclude that the applicant has proved by a preponderance of the evidence that his legal name in 1979 was W__ X__ W_____ rather than W__ X__ Z_____.

8. In addition, under Chapter 1.D.2.a. of COMDTINST M1900.4D, the manual for completing DD 214s, a DD 214 is a record of a single period of enlistment, and it is supposed to reflect the facts of that enlistment and to be accurate as of the date of discharge. COMDTINST M1900.4D 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. Once a veteran is no longer a member of and has no ongoing connection with a military service, changes in personal data are recorded by the Department of Veterans' Affairs, not by the military service. Therefore, the Coast Guard's refusal to change the applicant's DD 214 to reflect the name he was apparently born with and is currently using is neither erroneous nor unjust.²

9. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

¹ 33 C.F.R. § 52.24(b); see *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

² 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.

ORDER

The application of W__ X__ W_____ for correction of the military record of former SA
W__ X__ Z_____, xxx xx xxxx, USCGR, is denied.

Bruce D. Burkley

Robert S. Johnson, Jr.

Randall J. Kaplan