

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-157

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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 after receiving the applicant's completed application on May 18, 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 February 25, 2010, 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, a former seaman (SN) who was honorably discharged on January 7, 2000, asked the Board to correct his discharge form, DD 214, by adding 20 days of service so that it will reflect his "full active duty obligation of two years." The applicant alleged that a chief yeoman completed the DD 214 incorrectly so that it does not reflect his two-year obligation. He alleged that he completed his two-year obligation but took accrued leave during the last 20 days, which should count as active duty time. The applicant alleged that he discovered this error in 2008 and that it is in the interest of justice for the Board to excuse the untimeliness of his application because he did fulfill his two-year obligation and the DD 214 is inaccurate.

SUMMARY OF THE RECORD

On January 27, 1998, the applicant enlisted in the Coast Guard for two years. His record contains numerous Page 7s documenting excellent performance during the enlistment. The applicant's DD 214 states that he was released from active duty on January 7, 2000, having completed 1 year, 11 months, and 11 days of active duty. The applicant's Leave and Earnings Statements (LESes) for November and December 1999 and January 2000 were received from the Coast Guard Personnel Service Center (CGPSC) and show the following:

- His November 1999 LES "reflects transactions processed as of 19 NOV 99." It shows that his total pay and allowances for the month amounted to \$1,976.41 and that he started

the month with 26 days of leave, earned 2.5 days of leave during the month, and ended the month with 28.5 days of leave because he had not used any. In addition, a note at the bottom of the LES states, "Your statement of intent has processed showing your intention to be released from active duty on 07 JAN 00."

- The December 1999 LES reflects transactions processed from November 20 through December 20, 1999. It shows that his total pay and allowances for the month amounted to \$2,156.41 (the increase was due to a \$172.50 payment for "LVRATS") and that he started the month with 28.5 days of leave, earned 2.5 days, and ended the month with a leave balance of just 8.0 days because he had used 23.0 days of leave since November 20, 1999.
- The January 2000 LES reflects transactions processed from December 21, 1999, through February 17, 2000. It shows that his total pay and allowances for the month amounted to \$624.31 and that he began the month with 8.0 days of leave, earned 1.0 day of leave, and ended the month with a zero leave balance because he had used 7.0 days of leave and sold 2.0 days of leave upon his release from active duty on January 7, 2000. The LES further shows that all pay and allowances were stopped on January 7, 2000.

VIEWS OF THE COAST GUARD

On July 28, 2009, the Judge Advocate General of the Coast Guard recommended that the Board deny relief based on the findings and analysis provided in a memorandum submitted by the CGPSC.

CGPSC alleged that the applicant's LESes show that he was released from active duty on January 7, 2000, at which time he sold just two days of accrued, unused leave. CGPSC stated that under Article 12.B.7.b. and 12.B.8.a. of the Personnel Manual, members may be separated prior to the end of their enlistments, and such early separation is often authorized. CGPSC argued that the applicant's LESes and DD 214 are presumptively correct and that the applicant has not submitted any evidence to refute the information therein. Therefore, CGPSC recommended that the Board deny the applicant's request.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 29, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 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 10 U.S.C. § 1552.

2. An application to the Board must be filed within three years of the date the applicant discovers, or reasonably should have discovered, the alleged error in his record.¹ Although the applicant claimed that he discovered the allegedly erroneous date of separation on his DD 214 in 2008, the Board finds that he knew or should have known the date of his separation in 2000 because he received pay and allowances for only the first seven days of January 2000. Therefore, 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 (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.”² 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.”³

4. The applicant did not explain or justify his long delay in seeking the requested correction of his DD 214.

5. A cursory review of the merits of this case indicates that the applicant’s allegation that he was not released from active duty on January 7, 2000, but was on leave from January 8 to 26, 2000, has no merit. His LESes show that the applicant had requested early separation from active duty and that his request to be separated on January 7, 2000, was approved and processed. His LESes further show that upon his release from active duty on January 7, 2000, he had a zero leave balance because he had recently used most of his accrued leave and sold the remaining 2.0 days of accrued leave that he had not used. In addition, he was paid for only seven days of service in January 2000. In light of the information in the LESes, the Board finds that the applicant’s claim cannot prevail on the merits.

6. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

¹ 10 U.S.C. § 1552; 33 C.F.R. § 52.22.

² *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

³ *Id.* at 164-65; see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

ORDER

The application of former SN xxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Bruce D. Burkley

Francis H. Esposito

Erin McMunigal