

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-065

**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 December 18, 2009, and subsequently drafted the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 12, 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 asked the Board to correct his military records to reflect his new name as indicated in the parenthesis in the caption above. The applicant enlisted in the Coast Guard on April 10, 1967, and was discharged on September 2, 1970, under the name listed above. He claimed that in a divorce action in Lincoln County Superior Court of Washington State his name was ordered changed¹ to his birth name.

In support of his allegations regarding his name change, the applicant submitted a partial copy of an order from the Lincoln County Superior court of Washington State dated June 30, 2009, changing his name. He also submitted a photocopy of a social security card and driver's license showing his new name.

VIEWS OF THE COAST GUARD

¹ The applicant's DD 149 indicates that this most recent name change is not his first. The record indicates that sometime after his 1970 discharge, the applicant changed his name from that in official military record to C___ J___ (there is no evidence of this name change in the military record). According to the applicant, his most recent name change was from C___ J___ to that recently obtained.

On April 28, 2010, 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, Personnel Service Center (PSC), who recommended that the Board deny relief.

PSC 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.

PSC stated that the applicant’s legal name change became effective after the period of service indicated on the DD 214. Therefore, there is no error or injustice with regard to the applicant’s name as it appears on the DD 214 or in [other] official military records. PSC stated that there is no error or injustice with regard to the applicant’s records, and that records of former service members are filed based upon Social Security Numbers and the names of the veterans at the time of discharge.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 30, 2010, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. 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 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 obtained a legal name change.

2. The applicant alleged that his military records are erroneous and unjust² because they do not reflect his new name, which is his birth name. 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

² 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.

information is erroneous or unjust.³ Absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties “correctly, lawfully, and in good faith.”⁴

3. The applicant submitted a copy of a portion of a court order that purports to legally change his name. He also submitted a copy of his social security card and a copy of his state driver’s license issued in his new name. However, 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 under the name shown on his DD 214. Therefore, the Board concludes that the applicant’s military records are not erroneous even though they do not reflect his new name.

4. 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.⁵ 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. Therefore, the Coast Guard’s refusal to update the applicant’s active duty military records and 1970 DD 214 is not an error.

5. In the absence of error, the Board must determine whether the applicant’s name as it appears 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 steps to grant thorough and fitting relief.”⁶ For the purposes of the BCMRs, “injustice” is “treatment by the military authorities that shocks the sense of justice but is not technically illegal.”⁷

6. 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 some difficulty if potential employers realize that the name on his DD 214 is different from that he currently uses. However, the applicant has not submitted evidence of such difficulty. Moreover, such treatment would be an injustice caused by 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 or should have court documents to show that his name was once that shown on the DD 214. Therefore, the Board concludes that the applicant has not proved by a preponderance of the

³ 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)).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁵ UNITED STATES COAST GUARD, COMDTINST M1900.4D, Chap. 1.D.2.a.

⁶ *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959).

⁷ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); *see* Decision of the Deputy General Counsel, BCMR Docket No. 346-89.

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.⁸

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

⁸ 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 of former XXXXXXXXXXXXXXX, USCG, for correction of his military record is denied.

Thomas H. Van Horn

Darren S. Wall

George A. Weller