

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-115

**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 application upon receipt of the applicant's completed application and military records on March 4, 2010, and subsequently prepared the final decision as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 3, 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 asserted that he served on active duty continuously from March 30, 2003, to September 30, 2008, and requested that his DD 214 be corrected accordingly. He stated that his "continuous [active duty] orders from [October 1, 2003] to [September 30, 2008 are] incorrectly captured on . . . [his] DD 214 [covering the period from October 1, 2006 to September 30, 2008]."

He submitted copies of active duty orders that indicate he was recalled to active duty for the following periods under Executive Order 13223 of September 14, 2001:

August 11, 2003 to September 30, 2003

October 1, 2003 to September 30, 2005

October 1, 2005 to September 30, 2006

October 1, 2006 to September 30, 2007

October 1, 2007 to September 30, 2008

The applicant also served an earlier period of active duty from March 30, 2003 to August 10, 2003, as evidenced by a DD 214. The DD 214 also shows that the applicant had prior active

service of 1 year, 1 month, and 9 days, and 14 years, 7 months, and 22 days of prior inactive service. Block 18 on this DD214 states that the applicant was recalled under title 10 and Executive Order 13223 in support of Operation Liberty and Operation Iraqi Freedom

Subject DD 214 Currently in Record

Block 12.a. shows that the applicant began active duty on October 1, 2006;

Block 12.b. shows that he was separated on September 30, 2008;

Block 12.c. shows that he had 2 years of net active service;

Block 12.d. shows that he no prior active service;

Block 12.e. shows that he had no prior inactive service; and

Block 18 does not mention that the applicant was involuntarily recalled under Executive Order 13223.

Applicant's Request for Changes to DD 214

The applicant requested the following changes to the DD 214 ending on September 30, 2008:

Block 12.a. be corrected to show that he began active duty on March 30, 2003;

Block 12.c. be corrected to show that he had 5 years and 6 months of net active service;

Block 12.d. be corrected to show that he has 1 year, 5 months, and 20 days of prior active service;

Block 12.e. be corrected to show that he has 14 years, 9 months, and 13 days of prior inactive service; and

Block 18 be corrected to add the following comment: "Member called to Coast Guard District Seven for involuntary active duty under title 10 U.S.C. 12302 and executive order 13223 of 14 September 2001, for the period October 1, 2003-September 30, 2008 in support of Operation Liberty Shield, Operation Noble Eagle, Operation Iraqi Freedom, and Operation Enduring Freedom."

VIEWS OF THE COAST GUARD

On July 15, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted a memorandum adopting the comments provided by Commander, Personnel Service Center (PSC), as the Coast Guard's advisory opinion. PSC recommended partial relief as follows:

As the applicant has already been issued a valid DD-214 for the period of March 30, 2003 to August 10, 2003 . . . and for the period October 1, 2006 to September 30, 2008, the applicant should be issued a third DD 214 to account for the period of service from August 11, 2003 to September 30, 2006.

In addition, a DD 215 should be issued to correct block 12.d. and 12.e. of the DD 214 releasing the applicant from active duty on September 30, 2008.

However, PSC disagreed that the applicant had proved that he served on continuous active duty under title 10 of the United States Code from October 1, 2003 to September 30, 2008. In this regard, PSC stated the following:

Notwithstanding the applicant's claim of having served on continuous active duty under Title 10 authority for the period October 1, 2003 to September 30, 2008, no proof is provided by the applicant to substantiate this fact nor does the applicant's official record support his assumption. Therefore, the applicant's claim that he served on continuous active duty orders under Title 10 authority for the entire period in question is unfounded and without merit.

The applicant's requested relief is inconsistent in the corrections he seeks. The requested change to block 12.a. cites a date having no significance. The requested change to block 12.c. suggests including all active duty, beginning March 30, 2003, yet [the August 10, 2003 DD 214] is not in dispute. The requested change to block 12.e. appears to include as additional "Total Prior Inactive Service" the active duty performed from August 11, 2003 to September 30, 2003.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 9, 2010, the Board received the applicant's reply to the views of the Coast Guard. He questioned the Coast Guard's statement that he had not provided proof that he did not serve under Executive Order 13223 and title 10 from October 1, 2003 to September 30, 2008 because the copies of his active duty orders indicate that each recall to active duty was in support of the operations described in Executive Order 13223.

Therefore, the applicant asked that the DD 214 from October 1, 2006 to September 30, 2008 include the statement that he was called to active duty "in support of operations prescribed in Executive Order 13223 of September 2001, for the period 2006 October 1 to 2008 September 30 in support of Operation Iraqi Freedom." He agreed with the Coast Guard that blocks 12.d. should be corrected to show his total prior active service and that block 12.e. should be corrected to show his total prior inactive service.

The applicant agreed that a DD 214 should be issued to record his active duty service from August 11, 2003 to September 30, 2006. He also requested that Block 18. include the statement that he was called to active duty "in support of operations prescribed in Executive Order 13223 of September 2001, for the period August 11, 2003 to September 30, 2006, in support of Operation Iraqi Freedom."

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 section 1552 of title 10 of the United States Code.

2. The Coast Guard recommended, and the applicant agreed, that a separate DD 214 should be issued for the period of active duty from August 11, 2003 to September 30, 2006. It appears to the Board that the applicant served continuously on active duty from August 11, 2003, to September 30, 2008, with no break in service under at least 4 different sets of orders for consecutive periods. Chapter 1.A. of COMDTINST M1900.4D states that the DD 214 is issued to members who change their military status among active duty, reserve, or retired components. However, because there were several sets of separate orders for defined periods of active duty, the JAG's recommendation is a reasonable interpretation of Chapter 1.A. of COMDTINST M1900.4D. Therefore, a separate DD 214 should be issued for the period from August 11, 2003, to September 30, 2006. In directing this action, the Board notes that the applicant agreed with the recommendation and that his record already contains DD 214s for the periods March 30, 2003 to August 10, 2003 and October 1, 2006 to September 30, 2008. Additionally, the Board will direct the Coast Guard to review the applicant's active duty orders for this period and his military record to ascertain whether the applicant was recalled to active duty under title 10 and Executive Order 13223 for this period. If so, Block 18 of the DD 214 should contain a notation that the applicant was recalled under title 10 and Executive Order 13223 of September 14, 2001 for the period August 11, 2003 to September 30, 2006, in support of the Operations prescribed in Executive Order 13223.

3. The Coast Guard recommended that the DD 214 for the period October 1, 2006 to September 30, 2008 be corrected to show the applicant's total prior active service in Block 12.d. and his total prior inactive service in Block 12.e. The DD 214 currently shows that the applicant has no prior active duty and no prior inactive duty, which is clearly erroneous. The applicant agrees with this correction.

4. Additionally, the applicant asked that Block 18 of the DD 214 for the period October 1, 2006 to September 30, 2008, be corrected by noting in Block 18. that his recall to active duty was pursuant to title 10 and Executive Order 13223 of September 14, 2001. While COMDTINST M1900.4D does not require that this information be included in Block 18, it is included on the earlier DD 214 for the period ending August 10, 2003 and his active duty orders indicate that he was recalled for this purpose. Therefore, the Board will direct the Coast Guard to review the applicant's military record and active duty orders for this period to ascertain whether the applicant was recalled to active duty under title 10 and Executive Order 13233. If so, a notation should be made to Block 18 that the applicant was recalled to active duty under title 10 and Executive Order 13223 of September 14, 2001, for the period October 1, 2006 to September 30, 2008, in support of operations prescribed in Executive Order 13223.

5. Accordingly, the applicant should be granted the partial relief recommended above.

ORDER

The application of XXXXXXXXXXXXXXXX, USCGR, for correction of his military record is granted in part, as follows:

(a) The Coast Guard shall issue him a DD 214 for the period from August 11, 2003, to September 30, 2006. Additionally, the Coast Guard shall review his active duty orders and military record and ascertain whether he was recalled under title 10 of the United States Code and Executive Order 13223, and if so, Block 18 of the DD 214 shall contain a notation that the recall to active duty for the period August 11, 2003 to September 30, 2006 was in support of operations prescribed in Executive Order 13223 of September 14, 2001.

(b) The Coast Guard shall correct the DD 214 for the period October 1, 2006 to September 30, 2008 to reflect his total prior active service in Block 12.d. and his total prior inactive service in Block 12.e. The Coast Guard shall review his active duty orders and military record to ascertain whether he was recalled for this period under title 10 of the United States Code and Executive Order 13223, and if so, Block 18 of the DD 214 shall contain a notation that the recall to active duty for the period October 1, 2006 to September 30, 2008 was in support of operations prescribed in Executive Order 13223.

No other relief is granted.

Lillian Cheng

Randall J. Kaplan

James E. McLeod