

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-191

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

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 June 1, 2010, 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 March 10, 2011, 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, who was honorably discharged on December 7, 1995, alleged that three dates in block 12 of his discharge form DD 214 are erroneous and should be fixed. He alleged that the date of entry on active duty in block 12a, which now shows December 10, 1992, should instead be August 29, 1983; that the "net active service this period" in block 12c, which now shows 2 years, 11 months, and 28 days of active service, should be 12 years, 3 months, and 9 days; and that his "effective date of pay grade" in block 12h, which now shows August 29, 1983, should be December 10, 1992. He also complained that he could not understand block 12d, which shows that he had 9 years, 3 months, and 11 days of prior active duty, and that the first name of his nearest relative in block 19b should be Barbara, rather than Barbvara.

The applicant alleged that he discovered the alleged errors on May 7, 2010, because he failed to review his DD 214 when he received it. He argued that it is in the interest of justice for the Board to excuse the untimeliness of his application because the errors affect his possible retirement date from the U.S. Army Corps of Engineers, where he now works.

VIEWS OF THE COAST GUARD

On June 16, 2010, in response to the application, the Coast Guard Personnel Service Center issued the applicant a DD 215, the form that corrects a DD 214. The DD 215 changes the effective date of pay grade in block 12h of the DD 214 from August 29, 1983, to June 1, 1994, which is not the date the applicant alleged is correct. The DD 215 also corrects the spelling of

the first name of the applicant's nearest relative in block 19b from Barbvara to Barbara. The Coast Guard alleged that no other corrections are warranted and recommended that the Board administratively close the case.

APPLICANT'S RESPONSE

In response to the Coast Guard, the applicant repeated his allegations of error. He alleged that he never had a break in service and that because of the erroneous DD 214, the U.S. Office of Personnel Management believes that he served only 2 years, 11 months, and 28 days of active duty. He submitted a copy of a Military Service History printout from a database, which shows that he served from August 29, 1983, to December 7, 1995, but also shows that his total active service is just 2 years, 11 months, and 28 days.

SUMMARY OF THE RECORD

On August 29, 1983, the applicant enlisted in the Coast Guard for four years. He remained on continuous active duty and extended his first enlistment several times. On December 10, 1992, while still a BM3, he reenlisted for three years by signing a "Discharge and Reenlistment Contract." There is no DD 214 in the applicant's record to document his first enlistment, which extended from August 29, 1983, to December 9, 1992.

On December 7, 1995, the applicant was discharged from active duty and issued a DD 214. The DD 214, as corrected by the DD 215 dated June 16, 2010, shows the following, in pertinent part:

DD 214 Entry & Description		DD 214	DD 215	Applicant's Request
12a	Date entered active duty this period	92/12/10	No change	83/08/29
12b	Separation date this period	95/12/07	No change	No change
12c	Net active service this period	02/11/28	No change	12/03/09
12d	Total prior active service	09/03/11	No change	00/00/00
[uncontested entries omitted]				
12h	Effective date of pay grade	83/08/29	94/06/01	92/12/10
[uncontested entries omitted]				
19b	Nearest relative	Barbvara	Barbara	Barbara

The DD 214 also contains the following remarks in block 18:

... This DD-214 covers multiple enlistments/reenlistments as reflected in blocks 12A, 12B, and 12C. The following information applies regarding each enlistment/reenlistment:

Period of Service	RE CODE	SPD	TL
83 08 29 to 92 12 09	RE-1	MBK	NONE
92 12 10 to 95 12 07	RE-1	KBK	NONE

With regard to the applicant's date of pay grade as a BM2/E-5, the record shows that he enlisted as a seaman recruit (SR/E-1); graduated from "A" School and advanced to BM3/E-4 on September 20, 1985; and was still a BM3 when he signed his reenlistment contract on December 10, 1992. The performance evaluations he received in 1993 and on March 31, 1994, show that his rate was BM3/E-4. The earliest documentation of his advancement to BM2/E-5 in the record

supplied by the National Personnel Record Center is his semi-annual performance evaluation dated October 31, 1994. His date of rank as a BM2 is not noted on the Achievement Sheet in his record.

APPLICABLE LAW

DD 214s are completed in accordance with a manual, COMDTINST M1900.4D, which provides the following pertinent regulations:

Under Chapter 1.A., a DD 214 is normally issued upon a member's discharge to civilian status from a continuous period of active duty of at least 90 days. However, Chapter 1.B.6. states that DD 214s are not normally issued to members who are discharged for the purpose of immediate reenlistment.

Chapter 1.E. provides the following instructions for filling the blocks on a DD 214:

Block 12a. Date Entered Active Duty This Period. Enter the date of entry on active duty.

Block 12b. Separation Date This Period. Enter the effective date of release/discharge. ...

Block 12c. Net Active Service This Period. Enter the years, months, and days of service creditable for basic pay purposes for the period from date entered active duty this period (block 12a) through date of separation (block 12b). ...

Block 12d. Total Prior Active Service. Enter the years, months, and days of service creditable for basic pay for all active service prior to the date entered in block 12a. ...

• • •

Block 12h. Effective Date of Pay Grade. Enter the year, month, and day as follows:

1. Enlisted Personnel. Date of advancement.

• • •

Block 18. Remarks. Entries in this block consist of information not shown elsewhere on the form. Only the entries specified below or in supplementary directives will be made in this block....

Enlistment/Reenlistment Information: Enter the following statement, inserting the appropriate Period of Service, Reenlistment (RE) Code, Separation Program Designator (SPD), and Time Lost (TL) during this period as shown below. "This DD-214 covers multiple enlistments/reenlistments as reflected in blocks 12a, 12b, and 12c. The following information applied regarding each enlistment/reenlistment:"

<u>Period of Service</u>	<u>RE Code</u>	<u>SPD</u>	<u>TL</u>
86 02 01 to 89 03 01	RE-1	JBK	None
89 03 02 to 93 04 03	RE-1	JBK	None

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 after the applicant discovers, or reasonably should have discovered, the alleged error in his record.¹ The applicant contests data on his DD 214, which he reasonably should have noticed when the DD 214 was given to him in 1995. Therefore, his application is untimely.

3. Under 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.”²

4. The applicant explained that he did not know of the problems with the data on his DD 214 until the U.S. Office of Personnel Management revealed that his records show that, although he served from August 29, 1983, to December 7, 1995, he has only 2 years, 11 months, and 28 days of active military service. This discrepancy is apparently causing significant problems for the applicant’s retirement from federal service. In light of this clear injustice and certain discrepancies between the information on the applicant’s DD 214 and the instructions in the manual for preparing DD 214s, the Board finds that it is in the interest of justice to waive the statute of limitations. Therefore, the statute of limitations is waived in this case.

5. The purpose of a DD 214 is to document a member’s service on active duty for any period of at least 90 continuous days. Under Chapter 1.A. of COMDTINST M1900.4D, the applicant is entitled to a DD 214 properly documenting all of his continuous service on active duty from August 29, 1983, to December 7, 1995. As shown by his enlistment and extension contracts in his record and in block 18 of his DD 214, that period covers two separate enlistments: his first, running from August 29, 1983, to December 9, 1992; and his second, which ran from December 10, 1992, to December 7, 1995. If the Coast Guard had issued the applicant a DD 214 upon his discharge on December 9, 1992, his second DD 214 would properly document only his second enlistment. However, because he immediately reenlisted, no DD 214 was issued upon the applicant’s discharge on December 9, 1992, in accordance with Chapter 1.B.6. of COMDTINST M1900.4D. Therefore, his DD 214 dated December 7, 1995, must fully document his entire period of active duty from August 29, 1983, to December 7, 1995.

6. The instructions for block 12a in Chapter 1.e. of COMDTINST M1900.4D state that it should reflect the “date of entry on active duty.” Block 12a of the applicant’s DD 214 currently shows his reenlistment date, December 10, 1992, and he argues that it should be his original date of entry on active duty, August 29, 1983. The instructions for block 18 state that when a DD 214 covers more than one period of enlistment, block 18 shall include the following notation: “This DD-214 covers multiple enlistments/reenlistments *as reflected in blocks 12a, 12b, and 12c.*” [Emphasis added.] Therefore, the Board agrees with the applicant that the entry in block 12a of his DD 214 is erroneous because his multiple (two) enlistments are clearly sup-

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

² *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

posed to be “reflected in blocks 12a, 12b, and 12c.” Therefore, block 12a of the applicant’s DD 214 should be corrected to show that he entered active duty on August 29, 1983.

7. Chapter 1.E. of COMDTINST M1900.4D states that block 12c of a DD 214 should reflect “the years, months, and days of service creditable for basic pay purposes for the period from date entered active duty this period (block 12a) through date of separation (block 12b).” Therefore, block 12c on the applicant’s DD 214 should show the years, months, and days of his service from August 29, 1983, to December 7, 1995. Appendix C of the Personnel and Pay Procedures Manual (PPPM) requires creditable service to be calculated as follows: the date of separation minus the date of entry plus one “inclusive” day. Thus, the applicant’s creditable active service can be calculated by subtracting his date of entry in block 12a, August 29, 1983, from his date of discharge in block 12b, December 7, 1995, and adding one inclusive day:

Date of separation		1995	12	07
Date of enlistment	–	1983	08	29
Subtotal			xx	xx
Inclusive day	+			01
Net active service				

Under Appendix C of the PPPM, because one cannot subtract 29 days from 7 days, a month of days (30 days) must be taken from the month column of the date of separation, which is therefore reduced by one month, and added to the day column, so that the subtraction is performed as follows:

Date of separation		1995	11	37
Date of enlistment	–	1983	08	29
Subtotal			12	03
Inclusive day	+			01
Net active service			12	03

Therefore, the Board agrees with the applicant that block 12c of his DD 214 should be corrected to show 12 years, 3 months, and 9 days of active service.

8. Chapter 1.E. of COMDTINST M1900.4D states that block 12d of a DD 214 should show “the years, months, and days of service creditable for basic pay for all active service prior to the date entered in block 12a.” Because the applicant did not perform active duty prior to his enlistment in the Coast Guard on August 29, 1983, block 12d of his DD 214 should be corrected to show zero years, months, and days, as he alleged.

9. Under Chapter 1.E. of COMDTINST M1900.4D, block 12h of a DD 214 is supposed to show the year, month, and day of the member’s latest advancement (date of rank). The applicant alleged that his effective date of pay grade in block 12h should be December 10, 1992, which was the day he reenlisted. He submitted nothing to show that he advanced from BM3/E-4 to BM2/E-5 on December 10, 1992. Moreover, his reenlistment contract dated December 10, 1992, clearly shows that he was still a BM3 in pay grade E-4 when he reenlisted. In addition, his semi-annual performance evaluations for 1993 and March 31, 1994, show that he was still a

BM3/E-4 when he received them. The Coast Guard has stated that the applicant was advanced on June 1, 1994, and has corrected the applicant's DD 214 to reflect that date. The earliest document in the military record provided to the Board by the National Personnel Records Center that shows the applicant to be a BM2/E-5 is his performance evaluation dated October 31, 1994. Therefore, the Board finds that the applicant has not proved by a preponderance of the evidence that the June 1, 1994, date of rank in block 12h on his DD 214, as corrected by the DD 215, is erroneous.

10. Because the Coast Guard has already corrected the spelling of the first name of the applicant's nearest relative in block 19b of the DD 214, no further correction is required in that block.

11. Accordingly, relief should be granted by ordering the Coast Guard to issue another DD 215 to correct blocks 12a, 12c, and 12d on the applicant's DD 214 to ensure that those entries reflect his entire period of active duty during two enlistments since there is no other DD 214 documenting his first enlistment. Specifically, block 12a should show his date of entry on active duty as August 29, 1983; block 12c should show his net active service during the period as 12 years, 03 months, and 09 days; and block 12d should show zero prior active service.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows:

- Block 12a of his DD 214 shall be corrected to show August 29, 1983 (83 08 29).
- Block 12c of his DD 214 shall be corrected to show 12 years, 03 months, and 09 days of net active service (12 03 09).
- Block 12d of his DD 214 shall be corrected to show zero prior active service (00 00 00).

No other relief is granted.

Lillian Cheng

Megan Gemunder

Donna A. Lewis