

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-259

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

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 September 21, 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 June 16, 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 asked the Board to correct block 12.g. on his discharge form DD 214 to show that he performed sea service. His DD 214 currently reflects zero days of sea service. The applicant alleged that he served on two cutters, the POINT LEDGE¹ and the CAPE CARTER,² for a total of at least six months. He alleged that he discovered the error on his DD 214 on August 23, 2010, and that it is in the interest of justice for the Board to consider his application because he is applying for a captain's license.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 5, 1979. His military record shows that upon graduating from boot camp, he was assigned to a shore unit, Coast Guard Station Humboldt Bay. Following a series of offenses under the Uniform Code of Military Justice, the applicant was reassigned to Group Humboldt Bay, and he was still working there when he received a general discharge for unsuitability on November 26, 1980, based on misconduct and a psychological evaluation showing that he was unable to adjust to military service. Although the

¹ From 1962 to 1994, the USCGC POINT LEDGE, a 82' vessel, was homeported at Fort Bragg, California, which is approximately 100 miles south of Coast Guard Station Humboldt Bay.

² From 1961 to 1982, the USCGC CAPE CARTER, a 95' vessel, was homeported at Crescent City, California, which is approximately 50 miles north of Coast Guard Station Humboldt Bay.

applicant qualified as a boat³ crewmember on April 29, 1980, there are no documents in his record indicating that he ever served sea duty or received sea pay.⁴ Upon his discharge on November 26, 1980, the applicant signed his DD 214, showing zero sea service, as well as an Administrative Remarks page noting that he had “completed 00 years, 00 months, 00 days [of] sea duty this enlistment.”

APPLICABLE REGULATIONS

Chapter 1.E. of COMDTINST M1900.4D, the manual for preparing DD 214s, provides the following instructions for completing block 12.g. on a DD 214:

Block 12g. Sea Service. Enter the years, months, and days of sea service from the date entered in block 12a through the date entered in block 12b. The sea service computation entered in this block will be sea service performed which qualifies the member for payment under the Career Sea Pay Law. (See Chapter 4, Section B, CG PAYMAN, COMDTINST M7220.29 (series)).

Chapter 4.B. of COMDTINST M7220.29, the Pay Manual, states the following regarding “sea service” that qualifies a member for sea pay:

1. Authority. Career Sea Pay (CSEAPAY) is authorized for eligible officer and enlisted personnel by Title 37 USC section 305a.

2. Definition of Career Sea Pay. CSEAPAY is a special pay authorized for all members in paygrades E1 through O6. Eligible members must be permanently or temporarily assigned for duty to a vessel, ship-based staff (including a mobile unit) or ship-based aviation unit pursuant to orders issued by competent authority and the vessels/units primary mission must be accomplished underway. ...

3. Definition of a Vessel.

a. The term “vessel,” “ship,” “cutter,” or “ship contracted by the U. S. Coast Guard for the performance of operational missions,” means a self-propelled vessel at least 65 feet in length in an active status, in commission, in service, or under contract, and equipped with Government operated or contractor furnished berthing and Government operated or contract furnished messing facilities which are regularly used for the intended purpose (65 foot cutters are considered career sea pay eligible vessels even though a government-operated or contractor-furnished messing facility is not provided.) All Coast Guard vessels of 65 feet or more in length, perform their primary missions underway. ...

VIEWS OF THE COAST GUARD

On December 9, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant’s request and adopting the

³ “Boats” are usually less than 65’ long and include powerboats, small boats, barges, and yachts. “Boats” do not have permanently assigned crews, whereas any vessel called a “cutter” is usually at least 65’ long and has a permanently assigned crew. COMDTINST M5440.2, Chapter 1.A (definitions); COMDTINST M7220.29, Chapter 4.B. (definition of “cutter”); COMDTINST M16114.32, Chapter 1.B. (types of “boats”).

⁴ In the glossary of terms in Chapter 4 of the Coast Guard Personnel Manual, “sea duty” is defined as an “assignment to a floating unit; a unit listed in Operating Facilities (OPFAC) of the U.S. Coast Guard, COMDTINST M5440.2 (series); a unit 65 feet or longer; and all tugs (excluding barges) during which the member is entitled to sea pay in accordance with the CG Pay Manual, COMDTINST M7220.29 (series).”

findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

The PSC noted that the application is not timely filed and argued that it should be denied for untimeliness. The PSC stated that it reviewed the applicant's record in its entirety and found that he was never assigned to or officially served aboard a Coast Guard cutter. Therefore, the PSC recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 14, 2010, 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 over this matter under 10 U.S.C. § 1552.
2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁵
3. 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.⁶ Although the applicant claimed that he discovered the alleged error in his record on August 23, 2010, he signed two documents upon his discharge in 1980 showing that he had not been credited with any sea service. Therefore, although he may have forgotten in the interim that he had not been credited with sea service, the Board finds that he knew in 1980 that he had not been credited with sea service, and so his application is untimely.
4. 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."⁷

⁵ See *Steen v. United States*, No. 436-74, 1977 U.S. Ct. Cl. LEXIS 585, at *21 (Dec. 7, 1977) (holding that "whether to grant such a hearing is a decision entirely within the discretion of the Board"); *Flute v. United States*, 210 Ct. Cl. 34, 40 (1976) ("The denial of a hearing before the BCMR does not *per se* deprive plaintiff of due process."); *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

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

⁷ *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).

5. The applicant did not provide any compelling reason for failing to apply for correction of the alleged error in his record sooner. However, he explained that the correction would be useful to him because he is applying for a captain's license.

6. The Board's cursory review of the merits of the case shows that the applicant never performed any sea service or sea duty that can be documented in block 12.g. of a DD 214 even though he qualified as a boat crewmember. Only "sea service performed which qualifies the member for payment under the Career Sea Pay Law" may be documented in block 12.g. of a DD 214.⁸ To be entitled to Career Sea Pay, a member must receive transfer orders either permanently or temporarily assigning him to a vessel that is at least 65' long, has berthing, and has a primary mission that is accomplished underway.⁹ According to his military record, the applicant was never assigned to the POINT LEDGE, the CAPE CARTER, or any other Coast Guard cutter. These records are presumptively correct,¹⁰ and the applicant has submitted nothing to rebut them. Therefore, his claim cannot prevail on the merits.

7. 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]

⁸ COMDTINST M1900.4D, Chapter 1.E.

⁹ COMDTINST M7220.29, Chapter 4.B.

¹⁰ 33 C.F.R. § 52.24(b); *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (noting that absent evidence to the contrary, Government officials are presumed to have carried out their duties "correctly, lawfully, and in good faith").

ORDER

The application of former SR xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Donna M. Bivona

Bruce D. Burkley

Randall J. Kaplan