

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-260

**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 September 22, 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, a former reservist, asked the Board to correct her form DD 214 dated September 30, 2003, to show that she was then a yeoman, second class in pay grade E-5 (YN2/E-5) instead of a YN3/E-4. She stated that she believes the error was simply an oversight on the part of the YN1 who signed the DD 214 and herself. She alleged that she filed the DD 214 away and did not discover the error until June 30, 2010, when she needed the DD 214 to apply for educational and medical benefits. In support of her allegations, the applicant submitted a copy of a Coast Guard Reserve identification card, which was issued to her on August 19, 2004, and which shows that she was a PO2 (petty officer, second class) in pay grade E-5.

SUMMARY OF THE RECORD

On February 28, 2003, the applicant was a reservist and was issued orders to report on March 3, 2003, for a period of active duty of "365 days unless released sooner." The orders indicate that she was a YN3. The applicant was released from active duty on September 30, 2003, and she signed and received her DD 214 showing that she was a YN3/E-4 on that date. The Coast Guard's Direct Access database shows that she was a YN3/E-4 up through July 31, 2004, and advanced to YN2/E-5 on August 1, 2004.

VIEWS OF THE COAST GUARD

On December 1, 2010, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The PSC stated that the application is untimely but “should be considered by the Board.” The PSC submitted a print-out from its Direct Access database, which shows that the applicant advanced from YN3 to YN2 on August 1, 2004. The PSC stated that DD 214s are only issued to document periods of active duty longer than 90 days, and because the applicant did not serve on active duty for a period longer than 90 days following her advancement to YN2, there is no DD 214 in her record showing her final rate and pay grade. The PSC concluded that the applicant’s DD 214 is correct as issued and that no relief should be granted.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 6, 2010, the applicant responded to the views of the Coast Guard by email. She complained that block 15 of her DD 214 erroneously cites Article 12.A.7. of the Personnel Manual as the authority for her release from active duty, when that article refers only to officers, not petty officers. The applicant also stated that based on the documentation she attached to her email, which was a copy of her orders dated February 28, 2003, the Board should correct her DD 214 to show that her rate was YN2/E-5.

APPLICABLE REGULATIONS

Chapter 1.E. of COMDTINST M1900.4D, the manual for preparing DD 214s, states that for enlisted members, blocks 4.a. and 4.b. of a DD 214 should show their rate and pay grade on the day they are separated from active duty.

Chapter 1.B. of COMDTINST M1900.4D states, “The DD Form 214 will NOT be issued to members: ... 10. Who are reservists released from continuous active duty for training (ADT) less than 90 days.”

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 her record.¹ Although the applicant claimed that she discovered the alleged error in June 2010, she must have known that she was a YN3 when she was released from active duty on September 30, 2003, and so the Board finds that she knew or should have known that any document issued to her at that time would

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

show her rate and pay grade as YN3/E-4. In addition, she must have known that she had advanced to YN2/E-5 when she was actually advanced on August 1, 2004. Therefore, her 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 did not explain her delay in seeking the requested correction except to claim that she discovered the alleged error in June 2010. The Board finds that the applicant’s claim in this regard is neither persuasive nor compelling as a justification for her delay.

5. The Board’s cursory review of the merits of this case shows that it lacks merit. The applicant’s DD 214 documents her active duty from March 3 through September 30, 2003, and was issued upon her release from active duty. Therefore, her DD 214 properly shows, in accordance with Chapter 1.E. of COMDTINST M1900.4D, that her rate and pay grade on September 30, 2003, were YN3/E-4. There is no evidence that she had already advanced to YN2/E-5 on September 30, 2003, and the Coast Guard’s database shows that she was not advanced until August 1, 2004, ten months after her DD 214 was issued. The copy of the identification card that the applicant submitted shows that her rate and pay grade were YN2/E-4, but it was issued on August 19, 2004, following her advancement.

6. DD 214s are issued when reservists leave active duty if they have served on active duty for a period of more than 90 days.³ DD 214s are intended to document that particular period of active duty and are not reissued or updated to reflect subsequent events, such as new qualifications, awards, advancements, or demotions. The applicant’s DD 214 is presumptively correct,⁴ and she has not submitted evidence that overcomes the presumption. Therefore, the Board finds that her claim cannot prevail on the merits.

7. The Board notes that in her response to the advisory opinion, the applicant complained about the article of the Personnel Manual that was cited on her DD 214 as the authority for her separation. This is a new issue that was not raised in her application, DD 149, and so the Coast Guard has not had an opportunity to respond to it. If the applicant wants the Board to consider this new complaint, she should submit another application.

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

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).

³ COMDTINST M1900.4D, Chapter 1.B.10.

⁴ 33 C.F.R. § 52.24(b).

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of her military record is denied.

Donna M. Bivona

Bruce D. Burkley

Randall J. Kaplan