

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-161

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

This proceeding was conducted 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 upon receiving the completed application on April 28, 2011, 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 January 26, 2012, 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 record to show that the year of active service he performed from September 23, 1964, to November 16, 1965, was active duty in the regular Coast Guard instead of active duty for training in the Coast Guard Reserve. He stated that it is in the interest of justice for the Board to waive the three-year statute of limitations in his case to “restore [his] eligibility for VA benefits.”

SUMMARY OF THE EVIDENCE

The applicant enlisted in the Coast Guard Reserve for six years on September 23, 1964. His enlistment documents show that he was to attend basic training and then drill at a Reserve unit but that he was also “guaranteed ‘A’ School” for training as a boatswain’s mate (BM). On September 30, 1964, the applicant’s assignment to the drilling unit was “cancelled effective 16 November 1964 due to departure on twelve months training duty. Assigned to Category (JF), Administrative Reserve Unit. Ordered to active duty for training to report to Commanding Officer, CG Receiving Center, Cape May, New Jersey prior to 2400 on 17 November 1964 for twelve months training duty.” During his year of active service, he served on various cutters and attended BM “A” School.

The applicant’s DD 214 shows that he was “released from active military service” on November 16, 1965, upon the “expiration of term of active obligated service.” His character of service was honorable. The DD 214 also shows that the “source of entry” for that period of

active service was not induction, enlistment, or reenlistment, but “OTHER: Ordered to 12 months ADTRA.” The applicant signed the DD 214.

There is no evidence that the applicant ever enlisted in the regular Coast Guard. As a reservist he drilled, performed annual training, and advanced to BM2/E-5. He was honorably discharged from the Reserve on September 22, 1970, at the end of his six-year Reserve enlistment.

VIEWS OF THE COAST GUARD

On August 25, 2011, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny relief in this case.

The JAG stated that the application should be denied because of its untimeliness and because there is no documentation or other evidence supporting the applicant’s claim. The JAG argued that “due to the length of the delay, the lack of compelling reasons for not filing his application sooner, and the probable lack of success on the merits of the applicant’s claim, the Board should find that it is not in the interest of justice to waive the statute of limitations.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 12, 2011, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within thirty 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 concerning this matter pursuant to 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. *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”).
3. Under 10 U.S.C. § 1552(b), an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record. The applicant signed and received his DD 214 in 1965 and therefore presumably knew that it characterized his service as active duty training at that time. Therefore, his application is not timely.
4. Pursuant to 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.” *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

5. Regarding the delay of his application, the applicant alleged that he is being denied veterans’ benefits for which he would be eligible if his DD 214 showed that he had served on regular active duty. He did not submit evidence to support this allegation.

6. A cursory review of the merits of this case indicates that the applicant’s request lacks merit. The record shows that the applicant enlisted in the Reserve and, upon completing basic training, served a year of active duty training. There are no documents in his record indicating that he ever enlisted in the regular Coast Guard. His military records are presumptively correct under 33 C.F.R. § 52.24(b). Based on the record before it, the Board finds that the applicant’s request cannot prevail on the merits.

7. Accordingly, the applicant’s request should be denied because it is untimely and lacks merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is denied.

Katia Cervoni

Lillian Cheng

Ashley A. Darbo