

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2011-163**

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**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 on May 5, 2011, and subsequently prepared the final decision as required by 33 CFR § 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 ALLEGATION**

The applicant asked the Board to correct his July 31, 2002 DD 214 to show that he entered active duty on April 7, 1980 instead of June 6, 1989. He alleges that the date is incorrect.

The applicant's military record shows that he enlisted in the Coast Guard Reserve Delayed Entry Program on April 7, 1980 and was discharged from that Program on July 21, 1980 for immediate enlistment in the regular Coast Guard. An administrative remarks page dated July 21, 1980 explains that the time in the Delayed Entry Program does not count toward active service.

The applicant's military record shows that he began active duty on July 21, 1980, and retired from active service on July 31, 2002. He received two DD 214s covering his active duty service. The first DD 214 covered his first active duty enlistment from July 21, 1980 to July 5, 1989. It shows that at the expiration of that enlistment, the applicant had 8 years, 10 months, and 15 days on active duty.

A second DD 214 covered his reenlistments from July 6, 1989 to July 31, 2002 for a total of 13 years, 1 month, 25 days of active duty. Block 18 of the DD 214 states that it "covers the following multiple enlistments/ reenlistments as reflected in blocks 12a, 12b, and 12 c.: . . . June

6, 1989 to June 3, 1993, June 4, 1993 to June 1, 1997, June 2, 1997 to May 2, 2000, and [May 3], 2000 to July 31, 2002.”

### **VIEWS OF THE COAST GUARD**

On August 25, 2011, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC).

PSC recommended that the application be denied because it was untimely and because the applicant’s military record is correct. The Coast Guard stated that it found no errors on the DD 214. PSC stated that the Coast Guard is presumed to have correctly prepared the applicant’s DD 214 and he has not shown otherwise.

### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On August 26, 2011, the Board sent a copy of the views of the Coast Guard to the applicant for a response. The Board did not receive a reply from the applicant.

### **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 submission 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 application was not timely. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered the alleged error or injustice. *See* 33 CFR 52.22. The applicant alleged that he discovered the error on February 9, 2010. However, his signature on the DD 214 proves that he was aware (or should have been aware) on the date of his separation for retirement in 2002 that the DD 214 showed June 6, 1989 as the date he began that period of active duty.. If he had questions about this date, he should have raised them within three years of receipt of the DD 214. He did not file an application with the Board until April 1, 2011.

4. Although the application is untimely, the Board must still perform at least a cursory review of the merits to determine whether it is the interest of justice to waive the statute of limitations. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing 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 stated 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.

5. A cursory examination of the merits indicates that the applicant is not likely to prevail because his record is correct. April 7, 1980 is the date the applicant enlisted in the Coast Guard Reserve and was assigned to the Delayed Entry Program. He was not on active duty while in the Delayed Entry Program; therefore that period is not counted as active duty. The DD 214 records a member's active duty service. See COMDTISNT M1900.4D. In addition, the 2002 DD 214 properly records the applicant's continuous periods of active duty from June 6, 1989 to July 31, 2002. The 1989 DD 214 accurately reflects the applicant's active duty from July 21, 1980 to June 5, 1989.

6. The application should be denied because it is untimely and because it lacks merit.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

The application of XXXXXXXXXXXXXXXXXXXX for correction of his military record is denied.

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Katia Cervoni

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Lillian Cheng

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Ashley A. Darbo