

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-165

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

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 May 5, 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 February 9, 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 discharge form DD 214 to show in block 12.c. that he completed 4 years, 0 months, and 0 days of active duty instead of 3 years, 11 months, and 28 days of active duty. The applicant stated that his DD 214 should reflect 4 full years of active duty because he honorably completed his 4-year enlistment contract and never had any “time lost”—i.e., unauthorized absences or periods of confinement.

The applicant alleged that he discovered the error on April 1, 2011, and also that it is in the interest of justice for the Board to excuse the untimeliness of his application because he is a municipal firefighter and because of the error, he is “unable to buy back 4 years of active duty service for my current pension in order to use my military service for retirement accrual with my current employer.”

SUMMARY OF THE EVIDENCE

The applicant enlisted for 4 years on July 16, 1996. His military records show that he was honorably released from active duty into the Reserve on July 13, 2000, a Thursday. The separation authority noted on his DD 214 is Article 12.B.11. of the Personnel Manual. His DD 214, which he signed, also shows in blocks 23 through 28 that he was honorably released from active duty due to “completion of required active service” and, in block 29, that he had no “time lost.” Block 12 contains the following entries, in pertinent part:

12. RECORD OF SERVICE	Year(s)	Month(s)	Day(s)
a. Date Entered AD [Active Duty] This Period	96	07	16
b. Separation Date This Period	00	07	13
c. Net Active Service This Period	03	11	28

Upon his release from active duty, the applicant entered the Individual Ready Reserve (IRR). There is no evidence in the record before the Board that he performed any active service while in the IRR.

VIEWS OF THE COAST GUARD

On August 25, 2011, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis in a memorandum provided by the Personnel Service Center (PSC).

The PSC alleged that the applicant is not timely and should be denied due to its untimeliness. The PSC noted that the applicant does not contest his dates of enlistment or discharge and alleged that the calculation of his time net active service in block 12.c. of the DD 214 is correct. The PSC stated that there is no indication in the record of why the applicant was discharged two days before his enlistment contract ended, but his military records are presumptively correct. Therefore, the PSC recommended that the Board deny the applicant's request.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 26, 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.

APPLICABLE REGULATIONS

Article 12.B.11. of the Personnel Manual in effect in 2000 governed the separation of members due to the end of their enlistment. Article 12.B.11.a. stated the following:

Unless a member voluntarily or involuntarily remains beyond the normal enlistment expiration date as provided in this Article or by other instructions the Commandant issues, a member shall be discharged or released from active duty and transferred to the Reserve to fulfill any remaining service obligation on the day before the applicable enlistment anniversary date. [See] Article 12.B.7. for conditions allowing early separation within three months of the date service normally expires. ... Members whose normal enlistment expiration date falls on Friday, Saturday, Sunday, or a holiday shall not be separated more than seven days before the normal separation date.

DD 214s are completed in accordance with a manual, COMDTINST M1900.4D. Chapter 1.E. of the manual provides the following instructions for completing block 12 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). ...

Appendix C of the Personnel and Pay Procedures Manual requires creditable active service to be calculated as follows: the date of separation minus the date of entry plus one “inclusive” day.

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. 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 on July 13, 2000, and therefore presumably knew the date of his discharge and the net service reflected in block 12.c. at that time. Therefore, his application is not timely.
3. 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).
4. Regarding the delay of his application, the applicant stated that he only recently discovered that he would not be able to “buy back” four full years of military service as creditable service for retirement purposes with his current civilian employer.
5. A cursory review of the merits of this case indicates that the applicant’s claim cannot prevail. His military records clearly show that the applicant was discharged because he had completed his military obligation but also that he was discharged on Thursday, July 13, 2000, two days shy of the date he would have accumulated exactly four years of service. These military records are presumptively correct under 33 C.F.R. § 52.24(b), and he has submitted no evidence to rebut them. While the reason for his early discharge cannot now be determined, it may have occurred because his discharge date would otherwise have been a Saturday, rather than a regular work day. Article 12.B.11.a. of the Personnel Manual then in effect allowed members to be discharged up to a week early if their ends of enlistment occurred on a weekend or holiday.
6. DD 214s are prepared in accordance with military regulations, and Chapter 1.E. of COMDTINST M1900.4D requires the entry in block 12.c. of a DD 214 to equal the time from

the date of entry up in block 12.a. up to and including the date of discharge in block 12.b. The applicant's DD 214 is correct in this regard.

7. The Board notes that the applicant is not alone in having his DD 214 reflect almost, but not quite, four full years of service because a substantial proportion of military members' enlistment periods end on a date that happens to be a Saturday, Sunday, or holiday and so they are discharged a day or two early. The Coast Guard could in theory have a policy of refusing to discharge members a day or two before a weekend or of crediting such members with four full years of service, but it does not. It is extremely unfortunate if the applicant's civilian employer does not recognize that a substantial proportion of military members are discharged a day or two shy of their end of enlistment because of weekends and holidays and take that fact into account in drafting its retirement policy. However, the applicant has not even submitted his employer's retirement policy to show that he has been prejudiced by the Coast Guard's policy. Without such evidence of prejudice, there is no basis for finding that the applicant's release from active duty two days early was unjust or currently constitutes an injustice.

8. The Board concludes that the applicant's request should be denied but that further consideration should be granted if the applicant submits his employer's policy showing that he has been substantially prejudiced by the Coast Guard's decision to release him with 3 years, 11 months, and 28 days of active duty, instead of 4 full years of active duty.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied, but the Board will grant further consideration if, within 180 days of the date of this decision, he submits his employer's policy showing that he has been substantially prejudiced by the Coast Guard's decision to release him with 3 years, 11 months, and 28 days of active duty instead of 4 full years of active duty.

Troy D. Byers

Dana Ledger

Donna A. Lewis