

March 5, 2010

Office of Representative Jim Moran
333 N. Fairfax Street
Suite 201
Alexandria, VA 22314
ATTN: Caseworker

SUBJECT: Correction of DD Form 214, Record of Military Service

Dear Congressman Moran,

I am requesting your help to correct a mistake on my DD Form 214, Record of Military Service. As you know, this form is one of the most important documents a former service member has. It shows their length of service, what they did, what awards they received, and what their discharge was (honorable, etc.). It provides justification for Veterans Preference when applying for a Federal job. The list goes on. However, the DD Form 214 is only as good as the information it contains. If this information is not accurate, the form must be corrected. This is the reason for my letter.

I graduated from the United States Military Academy at West Point on June 8, 1977. I was commissioned in the Infantry, and served for five more years after graduation. I received an Honorable discharge from active duty on June 8, 1982. The day I left the Army I reported to the Adjutant General's office at Fort Sam Houston in San Antonio, Texas, where I was stationed. I remember to this day being handed my DD Form 214 to review and sign. It didn't show the four years I was a Cadet at West Point. I asked the officer who handed me the form why this time wasn't shown, and he said they didn't do that. I asked why not, and he just said that's the way it was.

My four years at West Point was active duty in the United States Army. I'm not making this up. It's the law. It is in Title 10 of the United States Code. The reason time at West Point is not shown on the DD Form 214 is because it doesn't count toward military retirement. But this time is still active duty. It is a Catch-22: the time isn't shown on the DD Form 214 because it can't be counted toward retirement, yet it should be shown because it is active duty service, which the DD Form 214 is supposed to reflect. While at West Point I was subject to the Uniform Code of Military Justice, carried a green ID card of an active duty service member, and outranked a Command Sergeant Major. I was paid as a full-time active duty service member by the Department of the Army.

About six months ago I discovered the solution to this dilemma. In 2000 the Chief of Staff of the Army, General Eric Shinseki, signed Army Regulation 635-5. The intent of this regulation is to correct the very issue I am bringing up here. The regulation states:

(p) For a soldier who has CADET STATUS, enter "BLOCK 12C INCLUDES SERVICE AS A USMA CADET FROM (date) TO (date). SERVICE NOT CREDITABLE FOR ANY PURPOSE IN COMMISSIONED OFFICER STATUS."

I was on "Cadet Status" for four years. My time at West Point does not count as "COMMISSIONED OFFICER STATUS," which means it doesn't count toward military retirement. I fully realize that. I am simply asking that my DD Form 214 have the sentence above added to reflect my four years at West Point as being time on active duty. This is a fair and reasonable request.

Based on Army Regulation 635-5, I submitted a DD Form 149, Application for Correction of Military Record, to the Army Review Boards Agency on June 9, 2009. I attached a copy of my DD Form 214, a copy of my transcript from West Point, and a copy of Army Regulation 635-5. I highlighted the pertinent section of the regulation to make it easier for the Board to see the instructions noted above. I felt my case so obvious, and Army Regulation 635-5 so clear, the problem would be resolved by the Board as a matter of course. On June 10, 2009 I received a letter from the Board confirming receipt of my request, and informing me the Board would review my case within twelve months.

On November 18, 2009 I received a letter with the Board's official finding. My request had been denied. The Board's rationale for its decision, and the justification supporting it, made no sense. It wasn't based on the facts, or the law. It appeared to be based entirely on someone's personal opinion. The Board went so far as to state that my time at West Point was not active duty! How could it come to that conclusion when Title 10 U.S.C., § 3075 states the Regular Army is comprised of, among other categories, "...cadets of the United States Military Academy..." The Board doesn't know the law it is supposed to follow when making decisions that have tremendous and lasting impact on the former service members it is there to serve.

Army Regulation 635-5 specifically allows time as a Cadet at West Point to be shown on the DD Form 214. Unfortunately, the Army Review Boards Agency doesn't see it that way. Its position is, because the DD Form 214 is issued at the termination of the most recent period of service, time at West Point can't be shown. The Board is treating my time after West Point as both my most recent "period" of military service, and as my only period of military service. As far as the Board is concerned my four years at West Point never happened. If that is the case, what was I doing all that time? Why was I issued an active duty ID card, where did my pay come from, and why was I subject to the UCMJ?

However, my time at West Point was active duty, even if the Board isn't aware of that. Applying the Board's definition of the most recent "period" of military service, I should have received a DD Form 214 when I graduated from West Point, which would have been at the end of a "period" of military service. But I didn't receive a DD Form 214 when I graduated because I never had a break in active duty service. My service was continuous from the day I entered West Point on July 2, 1973, until the day I was discharged on June 8, 1982. I simply went from being a Cadet to being a commissioned

officer the day I graduated. The Board must be completely unaware of this continuation of active duty service, when Cadets become commissioned officers the day they graduate, yet this has been going on since 1802!

The Board's interpretation is that my active duty service began the day I graduated from West Point, therefore any time before that date does not count. Yet, Army Regulation 635-5 states the DD Form 214 can reflect time at West Point if the soldier is terminated. Based on this the Board is taking the position that by graduating my time there can't be reflected on my DD Form 214, but it can be if I had quit! The Board is splitting hairs and interpreting Army Regulation 635-5 one way for one situation, and another way for another situation. The Board can't use the same regulation two different ways. Yet the Board said its findings are based on "fairness" to the former service member.

In its finding, the Board referred to 10 U.S.C., § 971(b). It stated that, "service as a cadet may not be credited to any commissioned officer for any purpose." I did not ask that my time at West Point be credited toward my commissioned officer time. I asked that it be reflected on my DD Form 214 as time on active duty, which it was and which is allowed per Army Regulation 635-5. Because my West Point time can't be used to calculate commissioned officer time, the Board simply refused my request about something else. What is interesting is the Board made reference to a section in Title 10 to make its case to deny my request about something else. Yet, it conveniently ignored another section of the same title that completely supports my request. One has to wonder about the qualifications of the members of the Army Review Boards Agency. I thought my request was simple, and I still do. But even the simplest things have a way of getting confused.

My situation comes down to this: Upon what basis does the Army Review Boards Agency determine that my active duty service began the day I graduated from West Point, and not sooner, especially when this is totally contrary to the definition of active duty contained in 10 U.S.C. § 3075? If the Board can not demonstrate that my time at West Point is not active duty, rather than pulling that assumption out of thin air, it must grant my request to show that time on my DD Form 214, which is allowed per Army Regulation 635-5. It has to decide in favor of the former service member if it can't justify its decision contrary to the service member's request. Unfortunately, the Board is doing neither. It is not ruling in favor of the former service member, nor is it basing its decision on anything in the law or in regulation.

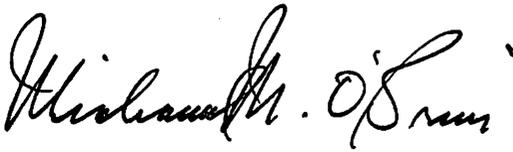
On December 7, 2009, I replied to the Board. I laid out my case, again, showing the mistakes in the Board's denial of my request. I made special mention of the Board's failure to acknowledge my time at West Point as being active duty, which is totally contrary to the law per 10 U.S.C., § 3075. On January 12, 2010, I received another letter from the Board. The Army Review Boards Agency still refuses to consider my case. Army Regulation 635-5 allows for the DD Form 214 to be corrected to reflect active duty military service, and Title 10 U.S.C. includes time as a Cadet at West Point in its definition of "active duty." The Board refuses to put these two pieces together to help me, a former service member who went to it for assistance.

The Board is not serving its clients, former service members who need its help getting their records corrected. That's the Board's job, but apparently it has other things that are more important, such as coming up with reasons not to assist its clients. Because the Army Review Boards Agency refuses to grant my request, I can't prove on a Federal job application that I was on active duty prior to June 8, 1977, the day I graduated from West Point. Yet, I was on active duty for **four years** before that date. The Board's idea of "fairness" is obscene.

I ask for your assistance in this simple, yet very important matter. I request that my DD Form 214 be corrected to show my four years at West Point as being active duty military service. I am not asking that it be counted toward commissioned officer time (i.e., military retirement). My request can easily be resolved by inserting the language from Army Regulation 635-5 onto my DD Form 214. Unfortunately, the Army Review Boards Agency must have an agenda that is contrary to this. What other conclusion can I come to?

Thank you for your attention to this matter.

Sincerely,



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Attachments:

1. DD Form 214
2. West Point Transcript
3. Army Regulation 635-5
4. Title 10 U.S.C., Section 3075
5. Army Review Boards Agency letter dated June 10, 2009
6. Army Review Boards Agency letter dated November 18, 2009
7. Letter to Army Review Boards Agency dated December 7, 2009
8. Army Review Boards Agency letter dated January 12, 2010