

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-171

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Ulmer, D.

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 on September 1, 2006, upon receipt of the applicant's complete application and military records.

This final decision, dated May 11, 2007, is approved by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED AND ALLEGATIONS

The applicant asked the Board to correct his record to show that he received a Meritorious Service Medal with an operational distinguishing device instead of the Coast Guard Achievement Medal that he received for accomplishments during the period from July 2004 to July 2005. The citation for the applicant's Coast Guard Achievement Medal read in part as follows:

LCDR [applicant] is cited for superior performance of duty while serving at Sector Los Angeles-long beach, California, from July 2004 to July 2005. Demonstrating exceptional initiative and superior professional performance, he researched, developed, and led new initiatives in the Enforcement Division of the Response Department, culminating in many successful multi-agency operations. His intelligence gathering, surveillance, and dive operations led to the seizure of over 100 kilos of cocaine off the M/T REYMAR and the M/T CHIMBORAZO which were the largest amounts ever seized by a shore unit within Coast Guard Pacific Area. He developed and led compliance through boardings of hundreds of vessels within the ports of Los Angeles and Long Beach. In the precedent-setting OPERATION GATEKEEPER, [the applicant] created a comprehensive inter-agency Living Marine Resource and commercial fishing vessel enforcement operation. He brilliantly led efforts in collecting and disseminating information for OPERATION BAJA in which hundreds of vessels were inspected for safety and law enforcement purposes while enroute to the United States. His superb investigative skills and outstanding efforts in interagency operations planning led to the discovery and interdiction of 50 illegal migrants and two smugglers aboard the s/V C'EST LA VIE. Superior follow-on efforts interdicted record numbers of

illegal aliens off recreational, passenger ferry, and commercial fishing vessels. His diligence, perseverance, and devotion to duty are most heartily commended and are in keeping with the highest traditions of the United States Coast Guard.

The applicant requested an objective review of his accomplishments and meritorious service for the period under review so that he can receive an award that “recognizes and is commensurate with my accomplishments and service.”

After thirteen years and nine months in the Coast Guard, the applicant transferred to the Army. His last Coast Guard duty station was MSO/Group Los Angeles-Long Beach (Group LA-LB) in which he served as the operations officer. Subsequently the Group was reorganized into a Sector where the applicant served as the enforcement division chief.

The applicant alleged that the Achievement Medal is not adequate for recognizing his record-setting accomplishments and service and that it was issued to snub him. In this regard, he stated that some of the officers at his unit, who were motivated by jealousy, unprofessionalism, and selfishness, tried to undermine his accomplishments and authority through the awards process.

The applicant alleged that the unit’s awards process was the worst he had seen in his twenty-three years of military service. He stated that the process was slow and unfair. He asserted that there were complaints about officers receiving awards when deserving enlisted people did not. In addition, he alleged that District 11 and his CO added eligibility requirements for awards that were not included in the regulations. The applicant argued that such additional standards were inappropriate and contributed to a process characterized by personal bias or discrimination.

The applicant also stated that he was snubbed by his command because he chose to leave the Coast Guard and transfer to the Army. He stated that people in his command were displeased by his transfer and downgraded his accomplishments to a level that justified only an Achievement Medal. He stated that “the officers of Group and Sector LA-LB had no measurable operational successes in the previous four years before I arrived and have had none since.” He stated that as the last operations officer, he obliterated all previously held expectations, goals, and results for these positions, and proved himself to be the preeminent operator in the Coast Guard during that period. He provided the Board with a summary of the interdictions, operations, and successes that he planned and executed along with some statistics, that according to the applicant, show an increase in the unit’s successful operations during the year that he was assigned to the unit. The following sampling of the applicant’s successful operations at the Sector is taken from his statement:

- Initiated, planned, and supervised an operation that resulted in the interdiction of fifty smuggled Mexicans and two alien smugglers.

- Coordinated and executed the interdiction of thirty-two illegal Chinese aliens smuggled on board the NYK ATHENA in January 2005 and twenty-nine more smuggled on board the NYK ARTEMIS in April 2005.

- Coordinated a multi-agency boarding with several Coast Guard units, the Drug Enforcement Agency (DEA), and Immigration and Customs Enforcement upon

receiving information from the DEA that cocaine and/or heroin had been shipped on board a cutter from Esmeraldas Ecuador to Long Beach.

The applicant submitted a copy of his annual OER for the period July 6, 2004, to April 30, 2005, for which he submitted nineteen pages of information for use by the rating chain in preparing his OER. For this reporting period, the applicant received no mark lower than 5. In fact, the marks in the performance categories were mostly 6s with several 7s. He was marked the equivalent of 5 on the comparison scale as an excellent performer, who should be given the toughest, most challenging leadership assignments. Attached to the OER was the applicant's Defense Meritorious Service Medal for distinguishing himself by exceptionally meritorious service as Coast Guard Attaché, United States Defense Attaché Office Quito, Ecuador and La Paz Bolivia, Directorate for Human Intelligence, Defense Intelligence Agency, from July 2002 to July 2004.

The applicant also submitted several citations that he helped to write for other officers who were awarded the Coast Guard Commendation and Achievements Medals. He submitted these citations for the purpose of having the Board compare his accomplishments with those mentioned in these citations.

On October 1, 2005, the applicant wrote to the CO expressing his disagreement and displeasure with the Achievement Medal. The applicant wrote:

There are several reasons for returning this achievement medal. This was my separation from the Coast Guard after over 13 years of service improving every unit to which I was assigned and increasing the productivity and operational results of all of them. Therefore, this award should have been processed just as a retirement award reflecting my entire time of service. Additionally, this award does not approach accuracy or specificity in recording what I accomplished at your unit, setting numerous Coast Guard, PACAREA, District, and unit historical, operational records in just my first seven months in Los Angeles, interdicting drugs and illegal aliens, enforcing fisheries laws, and in coordinating, planning, and supervising record setting operations of cutters and small boat stations. After all, Achievement Medals are what we award to junior petty officers for individual actions and ensigns and lieutenant junior grades for exercises or for merely completing one or two-years in noncomplex office assignments.

On April 25, 2006, the CO responded to the applicant's letter. He told the applicant that the award was given for his approximately one year of service at that unit, not for his entire thirteen-year plus career in the Coast Guard. The CO also told the applicant that based on his rank, "I believe you clearly meet the criteria to receive this award by achieving significant operational results. By limitation to 15 lines of text, the citation unfortunately cannot include all performance that contributed to the recommendation for a personal award.

VIEWS OF THE COAST GUARD

On January 12, 2007, the Board received an advisory opinion from the office of the Judge Advocate General (TJAG) of the Coast Guard, recommending that the Board deny relief. He adopted the facts and analysis provided by Commander, Coast Guard Personnel Command (CGPC). CGPC stated the following:

Upon completion of a one-year tour at sector LA-LB, the applicant received a [Coast Guard] Achievement Medal recognizing his sustained performance and achievement . . . The commanding officer of Sector LA-LB is the approving authority for both the Coast Guard Achievement Medal and the next senior award, the Coast Guard Commendation Medal . . . there is no indication that the applicant was recommended for a higher award and the commanding officer determined that the applicant's performance and leadership met the criteria for the Coast Guard Achievement Medal and not a higher award.

The applicant contested the award with the issuing authority presenting numerous arguments that demonstrate a lack of understanding of the Coast Guard awards processes . . . The commanding officer reviewed the applicant's concerns and maintained that the award of the Coast Guard Achievement Medal was appropriate given the applicant's service . . . This authority is delegated directly to the commanding officer through the Medals and Awards Manual . . . Further, there is no specific requirement that an individual receive an award upon transfer or termination of service, rather the provisions state that an individual "may" be recommended for an award. Pursuant to [the Medals and Awards Manual] approval authorities shall employ an internal command screening to consider awards for approval/disapproval. There is no indication that the command did not employ a process, and the applicant's statement to the BCMR affirms that there was a screening process within the command and the district.

The applicant presents numerous allegations of bias and jealousy within his chain of command and that his superiors initiated a substandard award to spite him. There is nothing to support these allegations in the applicant's record other than the applicant's own statement to the BCMR. The applicant declares that his award should be elevated to that of the Meritorious Service Medal since personnel junior to him received awards to the level of Coast Guard Commendation Medal. Pursuant to the Medals and Awards Manual, individual awards take into account expected performance given an individual's grade, rate, training and experience. Accomplishments must exceed that which is normally required or expected. The determination was made within the applicant's chain of command that his performance merited the award of the Coast Guard Achievement medal.

The applicant is convinced that his actions warrant a much higher award. However, there is no evidence of an error or injustice with regard to the assigning of the applicant's award. The applicant's record supports the award of the Coast Guard Achievement Medal.

APPLICANT'S RESPONSE TO COAST GUARD VIEWS

On January 17, 2003, the Board sent a copy of the views of the Coast Guard to the applicant together with an invitation to submit a response within 30 days. The BCMR did not receive a response from the applicant.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and the Coast Guard, the military record of the applicant, and applicable law.

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant alleged that the award's process at his then unit was biased against him. However, he offered no proof on this point, except for his own allegations. The applicant's mere allegation is insufficient to prove that his CO ignored his accomplishments or permitted them to be downgraded to support awarding the applicant the Coast Guard Achievement Medal rather than a Meritorious Service Medal. The applicant has failed to prove that the CO or other officers of his then-unit were biased against him.

3. The applicant also has failed to prove that his achievements and performance while at Sector LA earned the Meritorious Service Medal rather than the Achievement Medal. While the applicant was very successful in the performance of his duties at the Sector, which the CO described in the citation as superior and, in one instance, brilliant, the CO determined, as authorized by the Medals and Awards Manual, that the applicant's accomplishments and performance merited the Coast Guard Achievement Award. There is no evidence in the record that the applicant was ever considered for anything other than a Coast Guard Achievement Medal upon his departure from the unit and Coast Guard; nor is there evidence that the CO abused his discretion in processing and awarding the Achievement Medal to the applicant.

4. The applicant's opinion that he should have been awarded the Meritorious Service Award does not establish error or injustice with respect to the awarding of the Coast Guard Achievement Medal. The Board notes that he failed to submit any statements from officers or others with knowledge of or experience in the awards process that his performance and accomplishments while at Sector LA-LB were "distinguished . . . by outstanding noncombat meritorious achievement or service to the United States" and therefore justified his receipt of the Meritorious Service Medal.¹ Nor are there any supporting statements that the Achievement Medal awarded for his superior performance of duty was of insufficient stature to recognize his accomplishments.² The Board will not substitute its judgment for that of the CO in the absence of clear error or injustice. The Board finds that neither was proven in this case.

¹ Article 2.7. of the Medals and Awards Manual states that the Meritorious Service Medal is awarded to persons who have distinguished themselves by outstanding noncombat achievement or service to the United States. To justify this decoration, the acts or service rendered must have been comparable to that required for the Legion of Merit but in a duty of lesser though considerable responsibility. This provision also states that the Meritorious Service Medal is the noncombat counterpart of the Bronze Star Medal for recognition of meritorious service and is parallel to the Air Medal.

² Article 2.10 of the Medals and Awards Manual also states that to merit the Coast Guard Achievement Medal a member must meet the following eligibility requirements:

5. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURE S ON NEXT PAGE]

“(1) Professional Achievement. To merit the award, professional achievement must clearly exceed that which is normally required or expected, considering the individual grade or rate, training and experience, and must be an important contribution that is beneficial to the United States and the United States Coast Guard.

“(2) Leadership Achievement. To merit this award, leadership achievement must be noteworthy; be sustained so as to demonstrate a high state of development or, if for a specific achievement, be of such merit as to earn singular recognition for the act(s); and reflect most creditably on the efforts of the individual toward the accomplishments of the mission.”

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG for correction of his military record is denied.

Toby Bishop

James E. McLeod

Adrian Sevier