

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-152

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

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 after receiving the applicant's completed application on May 18, 2009, 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 March 26, 2010, 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, a ship's cook, first class during World War II, asked the Board to correct his military record to show that he was awarded a Purple Heart for injuries he received in Singapore in 1942. The applicant alleged that he was serving aboard a troop transport ship when it came under fire by Japanese planes. He alleged that he was wounded by shrapnel during an explosion. The applicant did not explain why he waited 67 years before requesting the medal.

SUMMARY OF THE RECORD

On April 18, 1939, the applicant enlisted in the Coast Guard. He served as a mess attendant aboard the ITASCA from May 1939 to May 1941 and as a ship's cook aboard the USS WAKEFIELD from June 1941 to September 1942.

According to the Coast Guard's history of the USS WAKEFIELD, on January 30, 1942, the WAKEFIELD was tied up to the dock in Singapore to refuel after offloading British troops and supplies when Japanese planes arrived and began dropping bombs. There was one direct hit to the ship in the ship's hospital area. Five men were killed, and nine were injured.

The applicant's military medical records contain no entry dated in January or February 1942. On May 4, 1942, he underwent a physical examination aboard the WAKEFIELD pursuant

to his reenlistment for three years. The applicant reported “no illness since last examination.” The doctor did not report any illness or injuries, and the applicant was found fit for reenlistment.

Following repairs, the WAKEFIELD delivered Marines to New Zealand in May 1942 and Army troops to Europe in August 1942. On the way back from Europe in September 1942, a large fire broke out and destroyed the WAKEFIELD. Other ships in the convoy rescued the passengers and crew.

After the fire, the applicant served at six different shore units during the next two years. On August 15, 1944, he was hospitalized and diagnosed with “Psychoneurosis, Situational.” He reported feeling increasingly nervous and depressed since shortly after the WAKEFIELD was bombed in Singapore. He remained hospitalized because his condition did not improve.

On March 29, 1945, the applicant was evaluated by a Board of Medical Survey, which found him to be permanently unfit for duty as a result of a situational psychoneurosis that was incident to service and recommended that he be discharged. On May 17, 1945, the applicant received an honorable discharge because of a “physical disability, incident to service,” in accordance with the recommendation of the Board of Medical Survey.

On August 22, 1945, Chief, Personnel Records forwarded the report of the Board of Medical Survey and hospital records to the Veterans’ Administration along with the following summary of the applicant’s other medical treatment while in the Service:

Treated as outpatient CGC ITASCA from 20 to 23 June, 1939, for “Wound, incised, left index finger”; from 17 to 26 July, 1939, for “Infection, right big toe”; on 28 November, 1939, for “Ingrowing nail, right great toe”; from 17 to 20 January, 1940, for “Trichophytosis, feet”; from 26 to 28 July, 1940, for “Common cold.”

Treated as outpatient U.S. Coast Guard YARD, Curtis Bay, Maryland, from 4 to 6 February, 1941, for “Common cold”; from 23 to 25 February, 1941, for “Wound, incised, right eye.”

Treated as outpatient U.S. Coast Guard Training Station, Ellis Island, New York, from 4 to 8 June, 1941, for “Blister, right thumb.”

APPLICABLE LAW

During World War II, the Coast Guard operated as a part of the Navy. Section 230.9 of SECNAVINST 1650.1H states that the Purple Heart is awarded to members of the Armed Forces who have been wounded in action against an enemy of the United States. Paragraph d of this section states that “the wound for which the award is made must have required treatment by a medical officer at the time of injury,” unless the wound was received while the member was a prisoner of war.

Section 831.1 of SECNAVINST 1650.1H states that for World Wars I and II and the Korean War, the Purple Heart is only awarded to members “wounded as a direct result of enemy action.” (For later conflicts, the wound may be an indirect result of enemy action.) Paragraph d of this section states that if adequate document of the cause of the injury is not available “due to the complete or partial loss of an individual’s records, two sworn affidavits from eyewitnesses to

the injury who were present at the time of the injury and have personal knowledge of the circumstances under which the injury occurred, may be submitted for consideration. (Statements from witnesses 'after the fact' will not be considered.)”

Similar criteria for the Purple Heart Medal appear in the Coast Guard Medals and Awards Manual, COMDTINST 1650.25D.

VIEWS OF THE COAST GUARD

On September 24, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request.

The JAG stated that the application was not timely because he “was well aware of what awards or medals he obtained or not prior to his discharge in 1945.” The JAG also noted that the applicant provided no rationale for his long delay in seeking a Purple Heart and no evidence supporting his allegations.

The JAG also adopted the findings in a memorandum on the case prepared by the Coast Guard Personnel Service Center (PSC). PSC noted that under Chapter 2.A.11. of the current Medals and Awards Manual, to receive a Purple Heart, a member must incur a wound that is a direct result of any enemy action and that “required treatment by a medical authority (except in the case of a prisoner of war).” PSC stated that “there is no record of the applicant having been treated by medical authorities for combat related injuries due to an incident resulting from shrapnel or any such combat-related malady. The applicant's claim to be awarded the Purple Heart Medal is therefore not justified.”

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 28, 2009, the Chair sent a copy of the Coast Guard's views to the applicant and invited him to respond within 30 days. The applicant requested and was granted an extension of the time to respond through January 8, 2010. No further 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. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. The applicant waited more than 60 years following his discharge to request a Purple Heart. Therefore, his application is untimely.

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.”¹

4. The applicant provided no explanation for his delay.

5. Purple Heart Medals are awarded to members wounded as a result of enemy action, and the wound must require medical treatment to qualify a member for a Purple Heart unless the member was a prisoner of war at the time.² The Board’s review of the applicant’s military medical records shows that there are no records supporting his claim that he was injured by shrapnel when the WAKEFIELD was bombed in Singapore on January 30, 1942. There is no evidence that he sought treatment for any injury during that period, and no injury was reported during his physical examination on May 4, 1942. These military and medical records are presumptively correct.³ The Board notes that the applicant was medically separated due to a situational psychoneurosis stemming from the bombing of the WAKEFIELD, and under current medical terminology his condition would likely be diagnosed as post-traumatic stress disorder (PTSD). However, Purple Hearts are not awarded for PTSD. Based on the record before it, the Board finds that the applicant’s claim cannot prevail on the merits.

6. Accordingly, the Board will not waive the statute of limitations. The applicant’s request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

¹ *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

² SECNAVINST 1650.1H, § 230.9; COMDTINST 1650.25D, Chap. 2.A.11.

³ 33 C.F.R. § 52.24(b).

ORDER

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

Jeff M. Neurauter

Lynda K. Pilgrim

Kenneth Walton