

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-103

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 February 16, 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 November 18, 2011, 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, who was honorably discharged on March 4, 1977, asked the Board to correct his record to show that he is entitled to wear a Good Conduct Medal (GCM). He alleged that he lost eligibility for the GCM because he "was put on report for being 10 min. late to my duty station even though [he] put in a wake up call," which was not made. He alleged that a chief warrant officer (CWO T) did not like him at all. He stated that if CWO T could receive a GCM "after swinging a foot-long rubber dildo on the officer deck, I should too."

The applicant alleged that while in the Service, he was hospitalized for back pain, but CWO T and others believed he was faking his injury. The day he returned to duty on his ship, he saw two other enlisted members on the deck who dropped what they had in their hands and began walking toward him in a threatening way. Another petty officer ran into the wardroom. The applicant left quickly because he thought his life was in danger. He returned to the ship on a busy weekday to receive his honorable discharge. A lieutenant on board wanted to humiliate him and so made one of the cooks give him a haircut and made the applicant sign a paper saying he could never join the Coast Guard again. The applicant saw CWO T laughing.

SUMMARY OF THE RECORD

The applicant enlisted on March 5, 1973. Upon completing recruit training, he advanced to pay grade E-2.

On March 7, 1974, a Letter of Appreciation was entered in the applicant's record to acknowledge his good work in performing various maintenance jobs around the training center. On March 12, 1974, another Letter of Appreciation was entered in the applicant's record to commend him for doing an excellent job preparing barracks for new recruits. On March 25, 1974, the applicant was awarded 48 hours of liberty based on the letters.

On June 9, 1974, the applicant was arrested for drunk driving while on liberty. He pled guilty to a reduced charge of reckless driving and was fined \$315. The record does not show that he received any military punishment for this offense.

On March 1, 1976, the applicant was counseled in writing by the Executive Officer of his cutter about having missed the ship's movement on February 29, 1976.

On December 30, 1976, the applicant was awarded non-judicial punishment (NJP). His alleged offense(s) are not stated in the record, but the applicant was awarded restriction to the cutter for seven days with two hours of extra duty each day.

On January 6, 1977, the applicant appealed the NJP. He argued that his punishment was disproportionate to the offense because although he had asked for a wake-up call, he had not received one. The applicant also alleged that he had been singled out for punishment for an offense others had not been punished for. He noted that another member had arrived very late on three occasions but had not been placed on report. The applicant admitted that his work performance and attitude had not been satisfactory recently because of his marital problems, but he alleged that his performance had improved after he was placed on report. To make up for lost time, he had painted the entire mess deck in two days. He noted that a master chief petty officer had testified at mast that his performance had greatly improved and argued that his punishment was therefore unnecessary and harsh. The applicant also noted that the mast was his first offense in almost four years and asked the District Commander to set aside the NJP.

On January 18, 1977, the District Commander advised the applicant that his appeal of his NJP was denied because his punishment was neither unjust nor disproportionate.

The applicant was honorably discharged on March 4, 1977, with a JBK separation code and an RE-4 reenlistment code (ineligible to reenlist). Upon his discharge, his final average marks were 3.09 for proficiency and 3.85 for conduct. He received no marks for leadership because he never advanced beyond E-2.

VIEWS OF THE COAST GUARD

On May 4, 2011, 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 based on the untimeliness of the application and the lack of any relevant documentation or rationale supporting the applicant's claim. The JAG also adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The PSC stated that Under Chapter 5.A.2.a. of the Medals and Awards Manual, the GCM is awarded to members who have satisfactorily completed three consecutive years¹ of creditable service and that the requisite period of service is broken when a member is convicted by civilian authorities or is awarded NJP. The PSC stated that because of the applicant's civil conviction in 1974 and his NJP in 1976, he is not entitled to wear the GCM.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

In his response to the views of the Coast Guard, the applicant stated that he was arrested on June 9, 1974, only because his three passengers were drunk and so noisy that he almost hit a traffic cone because of the distraction. The chief petty officer who came to get him out of jail advised him to plead guilty so he could leave, and the applicant regrets taking his advice.

The applicant also alleged that while in the Service, his wife abandoned him and their baby daughter, whom he had to take care of, which took a great toll on him and caused him to try to end his life at one point. A member from his unit picked him up from the hospital and took him to a bar.

The applicant also repeated his allegations about receiving NJP due to the lack of a wake-up call, about the threatening reception he received when he returned to his cutter after sick leave, and about once seeing CWO T swinging a foot-long dildo around and laughing about it. The applicant concluded that he believes that he deserved the GCM.

APPLICABLE REGULATIONS

Enclosure (11) to the Medals and Awards Manual, COMDTINST M1650.25D, states that from November 1963 through December 1979, to receive a Good Conduct Medal, a member had to complete four consecutive years of service with no court-martial, no NJP, no misconduct, and no civil conviction for an offense involving moral turpitude, as well as minimum average marks of 3.0 for proficiency, leadership, and conduct.

Since 1983, a GCM has required three consecutive years with no court-martial or equivalent civil conviction, no NJP, no misconduct, a performance factor average in each marking period of not less than 3 in any factor, and no conduct characteristic mark less than 4.

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 the alleged error or injustice. The

¹ The Board notes that 3 consecutive years with no misconduct is the current stand for the GCM, but from November 1963 through December 1979, 4 consecutive years with no misconduct were required. COMDTINST M1650.25D, Enc. (11).

applicant knew in 1977 that he had been awarded NJP and had not received a GCM. 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.” *Id.* at 164-65; see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. The applicant failed to provide any justification for his delay in seeking correction of his record. His desire for the GCM is not a compelling reason to waive the statute of limitations.

5. A cursory review of the merits shows that the applicant is not entitled to wear a GCM because he did not perform four consecutive years of active duty without misconduct or NJP, as required by Enclosure (11) to the Medals and Awards Manual. Although the applicant alleges that his offense was minor and not his fault, that others did not receive NJP for similar offenses, and that he should not have received NJP, he submitted no evidence to support his allegations that the NJP was erroneous or unjust. Absent evidence to the contrary, the Board must presume that his military records, including the NJP and the lack of an award of the GCM, are correct. 33 C.F.R. § 52.24(b). In addition, the Board notes that the applicant made similar arguments in his NJP appeal, which was reviewed and denied by the District Commander, who would have had the documentation of the mast and the appeal before him. Therefore, the Board finds that the applicant’s claim cannot prevail on the merits.

6. Accordingly, relief should be denied based on the untimeliness of the application and its apparent lack of merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former SA xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his Coast Guard military record is denied.

Evan R. Franke

Randall J. Kaplan

H. Quinton Lucie