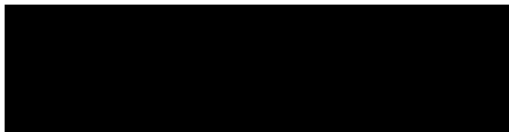


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-184



FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. After receiving the application and confirming that neither the Coast Guard nor the National Archives has an official personnel data record (PDR) for the applicant, the Chair docketed the case on July 25, 2014, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 8, 2015, 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 restore his service record so that he will have a military record stored at the National Archives' National Personnel Records Center (NPRC), like other veterans of his era, and so that his record can be corrected by the addition of a Sea Service Ribbon with at least one bronze star.¹ The applicant alleged that he discovered that he was entitled to this ribbon on June 2, 2014. He alleged that he served on the cutters [REDACTED] on the [REDACTED] for a trip from the Yard to the Academy in December 1969; and aboard the [REDACTED] for cadets' summer cruises in 1970 and 1971, respectively.

Regarding his missing military record, the applicant explained that when he was discharged in 1976, the Coast Guard should have forwarded his PDR to the NPRC for storage. Instead, his original PDR (not just a copy) was sent to the U.S. attorney who was handling a

¹ After receiving the applicant's original application, which requested only the correction of his military record by addition of the Sea Service Ribbon with one bronze star, the Chair searched for the applicant's military record in order to docket the case, as required by 33 C.F.R. § 52.21(c)(2). When neither NPRC nor the Coast Guard could find the applicant's military record and the Coast Guard admitted that it had been lost, the Chair recommended that the applicant amend his application to include creation of a military record so that it could be corrected.

lawsuit the applicant had filed² and consequently lost track of. In support of his request, the applicant submitted copies of the following documents:

- His DD 214 shows that he served on active duty for 12 years and 28 days from June 3, 1964, to June 30 1976, including 7 years, 3 months, and 29 days of “foreign and/or sea service.” His DD 214 also shows that he received numerous medals and awards for his service in Vietnam.
- A prior DD 214 documents the applicant’s service as a cadet from July 15, 1960, through June 2, 1964.
- A letter from Commander, Coast Guard Personnel Command to a congressman dated April 1, 2004, states that the Coast Guard did not have his service records and had been unable to find the applicant’s records at NPRC. He noted that some records relating to the applicant’s service are held at the National Records Center in Washington, DC.
- Military pay records showing the applicant’s receipt of pay.
- A Transcript of Sea Service sent by the Commandant to Commander, [REDACTED] Section, dated May 2, 1973, shows that the applicant had served aboard—
 - the USCGC [REDACTED] from June 3 to August 18, 1964 (77 days);
 - the USCGC [REDACTED] from August 18, 1964, to January 11, 1966 (511 days);
 - the USCGC [REDACTED] from January 11 to December 14, 1966 (337 days);
 - the USCGC [REDACTED] from December 14, 1966, to October 27, 1967 (317 days), and from December 3, 1967, to February 25, 1968 (85 days);
 - the USCGC [REDACTED] from February 25, 1968, to July 31, 1969 (522 days); and
 - the USCGC [REDACTED] for cruises while assigned to the Coast Guard Academy.
- A memorandum from the Commandant to the Commanding officer of a Marine Inspection Office, dated January 24, 1975, states with regard to the applicant’s qualification for a Master’s license that the applicant had served aboard Coast Guard vessels of between 67 and 800 gross tons for a total of 5 years, 5 months, and 29 days, including 13 months as a deck watch officer on a buoy tender, 23 months as the CO of various vessels, and 17 months as the XO of a buoy tender.
- A motion entered by the Government in the applicant’s lawsuit requests a waiver of reproduction of the administrative record because it filled five volumes and the applicant already had a copy.

VIEWS OF THE COAST GUARD

On October 8, 2014, the Coast Guard sent the applicant a DD 215, correcting his DD 214 by adding the Sea Service Ribbon with one bronze star. The Coast Guard also recommended that the BCMR administratively close the case “[s]ince there is no further correction necessary.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response, the applicant complained that the Coast Guard is still not properly accounting for his military records. He sent the Coast Guard a request for copies of its regulations and

² [REDACTED]

policies concerning the handling of PDRs and a request that any copies of his military records previously sent to the National Records Center in Washington, DC, be retrieved and properly disposed of by sending them to NPRC or the Department of Veterans Affairs, where his medical records would presumably belong. The Coast Guard responded to the applicant's request with forms to fill out and copies of various documents, including a DD 215 issued on March 24, 2006, to correct the applicant's DD 214 by adding the Combat Action Ribbon.

APPLICABLE REGULATIONS

Chapter 3 of COMDTINST M1080.10I, the Military Personnel Data Records (PDR) System Manual issued on May 2011 contains the current rules for disposition of members' PDRs.

Chapter 5.A.21. of the Medals and Awards Manual states the following regarding a member's eligibility for a Sea Service Ribbon, which was first authorized on March 3, 1984:

a. Eligibility requirements. Awarded to active and inactive duty members of the Coast Guard and Coast Guard Reserve or non-Coast Guard personnel who, under temporary or permanent assignment, satisfactorily complete a minimum of 12 months cumulative sea duty (first award). For the purposes of the award, sea duty is defined as duty performed:

- (1) Aboard any commissioned Coast Guard cutter 65 feet or more in length;
- (2) While assigned to an Afloat Training Group (ATG); or
- (3) Aboard certain Coast Guard and non-Coast Guard vessels or units under official Coast Guard orders such as the Navy Exchange Program, Tactical Law Enforcement Team (TACLET), or Law Enforcement Detachment (LEDET).

b. Verification of entitlement and issuance. Commanding officers or officers in charge are authorized to verify service records and issue this award to eligible individuals based upon cumulative qualifying duty time. For those personnel whose service records do not clearly show entitlement, an affidavit certified by the member, showing dates of service and the name of the unit, may be used.

c. Subsequent awards. A 3/16-inch bronze star is authorized for each additional three-year period of eligible sea duty. A 3/16-inch silver star denotes the sixth award.

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 over this matter pursuant to 10 U.S.C. § 1552.
2. The applicant's request for a PDR is untimely under 10 U.S.C. § 1552(b) because it was not filed within three years of the date the applicant discovered the alleged error in his record. In this regard, the Board notes that the preponderance of the evidence shows that the applicant discovered that he had no PDR at the Coast Guard and NPRC by April 2004 but did not request correction of this problem until 2014. The applicant's request for a Sea Service Ribbon appears to be timely, however, because the ribbon was not authorized until after his discharge from the Coast Guard and, if he had known of the ribbon, he would presumably have

requested in in 2006, when a DD 215 was issued adding the Combat Action Ribbon to his record.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.³ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review”⁴ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted 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.”⁵

4. The applicant provided no reason or justification for his delay in requesting creation of a PDR, but it is very important for any veteran to have an official military record. Therefore, the Board will consider the merits of this request along with the applicant’s request for a Sea Service Ribbon.

5. The applicant has proven by a preponderance of the evidence that the Coast Guard lost track of his PDR many years ago even though it retains pay records in its database proving his years of service. Although the policy for handling PDRs in 1976 is unknown, current policy is contained in COMDTINST M1080.10I. Therefore, the Board finds that in the interest of justice, the Coast Guard should establish a PDR for the applicant with the copies of his military records available in his application to the Board, as well as the DD 215 issued on March 24, 2006, awarding him the combat action ribbon, and a copy of this BCMR decision, and shall follow the disposition guidelines for the PDRs of discharged members in COMDTINST M1080.10I and any other applicable policy.

6. The applicant requested a Sea Service Ribbon with at least one bronze star, and the Coast Guard created a DD 215 showing that he is entitled to wear a Sea Service Ribbon with one bronze star. The Coast Guard did not explain how it concluded that he is entitled to one bronze star. Under Chapter 5.A.21. of the Medals and Awards Manual, a member receives the ribbon for the first 12 months of sea service and is entitled to attach one bronze star for each additional three years of cumulative qualifying sea service. The applicant’s DD 214 shows that he served 7 years, 3 months, and 29 days of total foreign and sea service while in the Coast Guard. The Transcript of Sea Service the applicant submitted shows that as of May 2, 1973, the applicant had performed 1,849 days (5 years, 24 days) of sea service aboard various cutters as well as three cruises lasting a few weeks each aboard the [REDACTED] while assigned to the Academy. There is no evidence that the applicant performed additional sea service after the transcript was created, and the applicant did not allege any further sea service. Therefore, the preponderance of the evidence shows that the applicant performed between 5 and 6 years of accumulated sea service, which entitles him to wear the Sea Service Ribbon with one bronze star, as shown on the DD 215 prepared by the Coast Guard. This DD 215 should also be entered in the PDR established for the applicant.

³ 10 U.S.C. § 1552(b).

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n.14, 1407 n.19 (D.C. Cir. 1995).

7. Accordingly, relief should be granted. The Coast Guard should be directed to establish a PDR for the applicant with the available copies of his DD 214, two DD 215s entitling him to wear the Combat Action Ribbon and Sea Service Ribbon with one bronze star, the Transcript of Sea Service dated May 2, 1973, and other military records submitted by him or in the Coast Guard's possession that were or should have been in his PDR and to process his PDR in accordance with the disposition rules for the PDRs of discharged members in COMDTINST M1080.10I.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall establish an officer's personnel data record (PDR) for him with his two DD 214s, two DD 215s entitling him to wear the Combat Action Ribbon and Sea Service Ribbon with one bronze star, the Transcript of Sea Service dated May 2, 1973, and other military records submitted by him or in the Coast Guard's possession that were or should have been in his PDR and shall process his PDR in accordance with the disposition rules for the PDRs of discharged members in COMDTINST M1080.10I.

May 8, 2015

