

**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 144-96

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**FINAL DECISION**

████████ Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on July 29, 1996, upon the BCMR's receipt of the applicant's request for correction of his military record.

The final decision, dated August 29, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.<sup>1</sup>

**Applicant's Request for Correction**

The applicant enlisted in the Coast Guard on March 29, 1955. He was discharged on March 28, 1963 with the grade of boatswain's mate second class (BM2).

The applicant's wife asked the BCMR to correct the applicant's record to show that he should be awarded the Coast Guard's gold or silver lifesaving medal for his rescue activity in 1956 and 1957. In 1956, he was the officer in charge of a Coast Guard cutter that took the crew off a stranded vessel about midnight. In 1957, he participated in saving the lives of two boys and in attempting to save their mother from the ocean surf.

**Views of the Coast Guard**

On July 3, 1997, the Chief Counsel of the Coast Guard recommended that the relief requested by the applicant be denied for untimeliness and lack of proof.

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<sup>1</sup> Upon the applicant's representation that 15 days was insufficient to respond to the views of the Coast Guard, the Board granted him a one-month extension, which automatically extended the due date for the decision.

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The Chief Counsel stated that the award of gold or silver lifesaving medals are governed by the regulations in 33 CFR § 13.01. Those regulations require submissions, with affidavits, to the commander of the Coast Guard district in which the incident took place, followed by investigation and decision-making by the Commandant.

The Chief Counsel recommended that no relief be granted because no such submissions, investigation, and Commandant decision-making was ever conducted. The Chief Counsel said "[i]t appears that Applicant was unaware of these regulations."

The Chief Counsel also recommended that relief be denied on the ground that the applicant didn't show that the Coast Guard had committed an error or injustice. The Chief Counsel also recommended denial of the claim on the ground that it was not timely under the applicable statute of limitations. The applicable statute requires all BCMR cases to be filed within three years after the alleged error or injustice. In the present case, the application was filed within 37 years after the year in which the recent rescue activity took place and it was not in the interest of justice to waive that delay.

**Response of the Applicant to the Views of the Coast Guard**

On July 9, 1997, a copy of the views of the Coast Guard was sent to the applicant with an invitation to respond to the views of the Service. On August 25, 1997, the BCMR received the applicant's response to those views.

The applicant's first observation was as follows:

Seems as if I must be 37 years too late in applying. Hogwash! Medals are being given out currently by the various forces for acts of bravery performed in World War II and the whole of the story is usually that its been overlooked.

The applicant said that he had called the Coast Guard district that has primary jurisdiction under the gold or silver lifesaving medals regulations. That office told him to apply to the BCMR. It made "[n]o mention of submitting an application to their office."

The applicant disagreed with the Chief Counsel's view that a lifesaving medal is never awarded to military personnel in the performance of their military duties. The applicant said he personally knows of one Chief who "received the Gold Lifesaving Medal in performance of his military duties."

In the final paragraph of his response, the applicant said that "[t]o recognize bravery, especially when lives are saved, [will] make other Americans proud of our people in uniform."

### 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 is timely.

2. The Coast Guard stated that "Applicant was unaware of [the] regulations" with respect to obtaining silver and gold lifesaving medals." The Thirteenth Coast Guard District, which was the office that was responsible for receiving the applicant's application for a lifesaving medal and for receiving affidavits, appears also to have been unaware of its responsibility under the applicable regulations. The Coast Guard committed error because the Thirteenth District told the applicant to apply to the BCMR, rather than to it, as required by the regulations. 33 CFR § 13.01-15.

3. The regulations regarding lifesaver medals (33 CFR § 13.01) do not set any time limit for applying for a lifesaver medal. It is not in the interest of justice to administratively apply a time limit on an unrestricted right.

4. Lifesaving medals, according to 33 CFR 13.01-5, "may be awarded to any person who rescues or endeavors to rescue any other person from drowning, . . ." (emphasis added). The quoted provision makes it clear that a Coast Guard member may earn a gold or silver lifesaving medal as a result of rescue activity regardless of whether it was part of a military or a civilian activity.

5. The relief can not be granted by the Board, however, because of 33 CFR § 52.13(b). That section provides that "no application shall be considered by the Board until the applicant has exhausted all effective administrative remedies." The applicant should be told to apply to the Thirteenth District and to the Commandant, in accordance with the aforementioned regulations, for a gold or silver lifesaving medal. A copy of these regulations (33 CFR §13 .01 are attached to this decision. The Board expresses no opinion on the merits of this case.

6. If the applicant believes there is an error or injustice in those deliberations, he may apply for review to the BCMR.

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**ORDER**

The application of former [REDACTED], USCG, for correction of his military record, is granted, as follows: The applicant is authorized to apply to the Thirteenth Coast Guard District and to the Commandant for a Gold or Silver Lifesaving Medal in accordance with 33 CFR § 13.01. If the applicant disagrees with the finding of the 13th Coast Guard District Commander and the Commandant, he shall be eligible to apply again to the BCMR.

