

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

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1999-079

FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14, United States Code. It was docketed by the Board on March 18, 1999, upon the Board's receipt of the applicant's complete application for correction of his military record.

This final decision, dated December 9, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former seaman (SN; pay grade E-3) in the Coast Guard, asked the Board to correct his record to show that he received a Purple Heart while serving on active duty. He was discharged on September 13, 1971, after serving for four years on active duty.

SUMMARY OF RECORD AND SUBMISSIONS

The applicant stated that during a combat mission in Vietnam, he was operating a machine gun while under hostile fire from the enemy. During this event, the applicant stated that he was burned by the machine gun barrel. He stated that he received a 5 to 6 inch burn on his right side and a burn on his knee, which he self-treated. He stated that he informed his executive officer about the injury but nothing was done. He stated that due to the passage of time, it is difficult for him to find corroborating evidence of the alleged injuries.

The applicant did not provide the date that he discovered the alleged error or injustice. He provided the following as his reason why the Board should find it in the interest of justice to waive the three year statute of limitations in his case: "I feel that as an honorably discharged Vietnam veteran and because of my injuries sustained during a combat mission, I was unfairly denied consideration for [the] Purple Heart."

Applicant's Record

The applicant's military record shows that he served eight months and 16 days of foreign service in the Republic of Vietnam. He earned the National Defense Service Ribbon, the Vietnam Service Medal with three bronze stars, the Republic of Vietnam Campaign Ribbon with 1960/device, the Republic of Vietnam Meritorious Unit Citation (Gallantry Cross Medal Color with Palm, the Republic of Vietnam Meritorious Unit Citation (Civil Actions Medal, First Class Color with Palm), the combat action Ribbon, and a Good Conduct Award.

Views of the Coast Guard

On September 30, 1999, the Board received the views of the Coast Guard, recommending that the applicant be granted conditional relief. In this regard, the Chief Counsel stated that the applicant had not provided proof that he was injured in Vietnam or explained why he did not receive medical treatment. Article 2.B.11. of the Medals and Awards Manual states, in part, that the Commandant may award the Purple Heart to any member who is wounded while serving in the Coast Guard, in "[a]ny action with an opposing Armed Force of a foreign country in which the Armed Forces of the United States are or have been engaged." This provision of the Manual states that the injury must have required medical treatment.

The Chief Counsel stated that if the applicant's allegations are true, he would satisfy the requirements for the Purple Heart because he was wounded in combat. The Chief Counsel stated that there is nothing in the applicant's performance record to support his claim that he was injured in Vietnam. The Chief Counsel stated that the Coast Guard sought the applicant's medical record from both the National Personnel Records Center and Coast Guard Personnel Command, but neither entity had the applicant's medical record.

The Chief Counsel recommended that the Board grant relief to the applicant on the condition that he provides evidence of his injuries and the circumstances that precluded receipt of medical treatment.

With respect to the timeliness of this application, the Chief Counsel stated that despite the fact that the statute of limitations has run in this case, it would be an injustice to deny relief if the applicant did, in fact, sustain the combat injuries alleged.

Applicant's Response to the Views of the Coast Guard

On October 27, 1999, the Board received the applicant's response to the views of the Coast Guard. The applicant indicated that he was unable to find the two persons on the boat at that time that might have seen the burns. The applicant described the events that led to his injuries, as follows:

While [in a] firefight, I requested help from [a fellow soldier] . . . in changing the barrel on my weapon. . . . I reached over the barrel with my right arm and attached a spanner wrench to remove the barrel. As I did, I slipped on brass shell casings on the deck and landed on the hot barrel of the machine gun on my right side, just under my ribs. The ensuing burn caused by the hot metal pulled skin off of my side and was approximately 3" x 1 1/2" in size. When I felt the burn, I dropped the spanner wrench on the deck. When I knelt down to get the wrench I placed my knee on a hot spent 50-cal. Shell casing which burned my right knee. That burn was approximately 2" by 1/2". All the while, we were still in a combat situation, we continued our task and changed the barrel and I resumed firing in the direction of the suspected incoming fire. If memory serves me correctly, this was the event that caused me to be awarded the Combat Action Ribbon.

After . . . completion of our mission, and our return to open water . . . I made mention to my Commanding Officer [CO] that I had been burned and even asked at that time if I qualified for the Purple Heart. [The CO] just shrugged it off and laughed as if I was joking with him. . . . When all of this happened, we were on the morning of the second day of a seven-day run on patrol in the lower Mekong Delta region. We would not be back in . . . or off the boat for another 5 days minimum and possibly longer if needed to assist in another area. We had no medical officer or corpsman on board and all personnel records were on the base in Cat-lo. Any and all medical attention was what we could do for and amongst ourselves unless severe enough to be medivaced out. I began self-treating the burns with ointment found in the first aid kits and did so for about 6 or 7 days with the ointment. By the time we returned to our base in Cat-lo, 6 days had passed and the wounds were healing OK. Since I had begun treating them and they were 6 days healed and showed no signs of infection, I saw no real reason to go to the corpsman at the base medical facility. Also, since I was "belittled" into thinking they did not qualify for the Purple Heart, I saw no real reason to seek treatment and have it documented thinking the corpsman would react the same. I continued self-treatment for about two more weeks.

After the burns healed, they left dark, almost black marks on my body for quite a long time, many years in fact. When I went on R&R in Hawaii and again after I returned home, I showed them to my wife . . . and explained to her how I got them. Now divorced . . . I have contacted her and I have asked her to confirm the marks left by those burns I received while in combat in Vietnam.

The applicant's ex-wife submitted a sworn statement on his behalf. She stated that she was married to the applicant in 1969 and 1970 during his tour in Vietnam. She

stated that when she met the applicant in Hawaii in 1970 for R&R, he showed her two burns on his body. She stated that the applicant told her that the burns were the result of combat action while on a river patrol in Vietnam. The applicant's ex-wife stated that the applicant had a "large very dark mark on his right side just about elbow height, and the other was on his right knee, just under the knee cap line." She stated that later in 1970, when the applicant returned home, the marks were visible and remained so for years.

APPLICABLE REGULATIONS

Article 2.B.11.c. of the Medals and Awards Manual defines as wound "as an injury to any part of the body from an outside force or agent sustained while in action. . . . A physical lesion is not required provided the concussion or other form of injury received was a direct result of the action engaged in, and required treatment by a medical officer.

Article 2.B.11.d. states that "except in the case of a prisoner of war, the wound for which the award is made must have required treatment by a medical officer. Only one award is authorized for more than one wound or injury received at the same instant from the same missile, force explosion, or agent. Awards will be made by reason of frostbite, malnutrition, dysentery, and exhaustion."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions and military record, and applicable law:

1. The BCMR has jurisdiction over this matter pursuant to section 1552 of title 10, United States Code. The application was not timely.

2. To be timely, an application for correction of a military record must be submitted within three years after the discovery of the alleged error or injustice. See 33 CFR 52.22. The applicant was discharged approximately 27 years before he filed his application with the Board. The Board may still consider the application on the merits, however, if it finds it is in the interest of justice to do so. See Allen v. Card, 799 F. Supp 158 (D.D.C. 1992).

3. The applicant did not provide an explanation for not filing his application sooner. He merely stated that he was injured in combat and is entitled to the award.

4. Based on the applicant's and the Coast Guard's submissions, the applicant will not prevail on the merits of his application. He has failed to establish that his injuries were treated by a medical officer. Therefore, he is not eligible for the Purple Heart. According to Article 2.B.11.d of the Medals and Awards Manual, the wound for which the Purple Heart is given "must have required treatment by a medical officer."

5. Therefore due to the passage of time, the applicant's less than compelling reasons for the 27 year delay, and the lack of evidence establishing that he meets the requirements for the Purple Heart, the Board finds that it is not in the interest of justice to waive the statute of limitations in this case.

6. Accordingly, this case is denied for untimeliness and for failure to demonstrate any error or injustice.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of
correction of his military record is denied.

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