

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1999-117

FINAL DECISION

██████████ Chairman:

This is a proceeding under section 1552 of title 10 and section 425 of title 14, United States Code. It was commenced on May 19, 1999, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated April 13, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request

The applicant asked the Board to reinstate his eligibility for the Coast Guard Good Conduct Medal. He alleged that he served on active duty from 1975 through 1979. He alleged that he was not discharged with the Coast Guard Good Conduct Medal because he had been convicted of an offense at a captain's mast.

The applicant alleged that he did not contest the captain's mast proceeding (he pleaded guilty) because he was never informed that loss of the Good Conduct medal was one of the consequences of being awarded nonjudicial punishment at a mast. Twenty-one years later, he filed this action on the ground that he had just learned that a single captain's mast has been dismissed as a criterion for not receiving the Coast Guard medal.

According to his application, a lieutenant put him on report because he refused extra duty. He was then brought before a captain's mast. He said he knew he wasn't going to have much of a chance because he didn't, in fact, perform the extra duty. He claimed he was put on report and mast as a result of a "misunderstanding and a miscommunication." He claimed that he was never told that loss of the Good Conduct medal was one of the consequences of being placed on report and being awarded nonjudicial punishment. "Had I known," he said. "I wouldn't have pleaded guilty."

Views of the Coast Guard

On July 28, 1994, the BCMR received an advisory opinion from the Chief Counsel of the Coast Guard recommending that the applicant be denied relief.

The Chief Counsel said that the Board should deny relief in this case because the applicant failed to prove that the Coast Guard committed either an error or an injustice that would merit a waiver of the statute of limitations. The applicant failed to submit a timely application and has not provided any basis why it is in the interest of justice to excuse the delay. Under section 1552 of title 10, United States Code, an untimely application must set forth reasons why its acceptance is in the interest of justice.

The Chief Counsel said that the applicant did not submit any corroboration as to his views. The Coast Guard accordingly conducted a cursory review of this case on the merits and concluded that the applicant has failed to provide the Board with a sufficient basis to waive the statute of limitations.

The Chief Counsel said that the applicant's allegation that he would not have pleaded guilty if he had been aware that he would thereby lose eligibility for a Coast Guard Good Conduct Medal is purely speculative. The Coast Guard also said that trial by court-martial was an "entirely reasonable [alternative], given the nature of the offenses."

The applicant did not appeal his punishment, which was his right, if he had considered his punishment "unjust or disproportionate to his offenses."

The Chief Counsel said that "[I]t is facially absurd to presume that eligibility for a Good Conduct Medal would continue after subjection to nonjudicial punishment."

The Chief Counsel said that during the entire period that the applicant was on active duty, the Coast Guard required from its enlisted members 4 years of continuous active duty without an NJP in order to be eligible for a Good Conduct Medal. Medals and Awards Manual, COMDTINST M1650.25B, Enclosure (8). The applicant served on active duty from June 16, 1975 until June 15, 1979. The imposition of nonjudicial punishment on October 12, 1978 ended the applicant's eligibility for a Good Conduct Medal that might otherwise have been awarded June 15, 1979.

The Chief Counsel said that the applicant's eligibility was properly terminated in accordance with Coast Guard regulations because it has been Coast Guard policy since 1960 to end eligibility for an award of the Good Conduct Medal following the occurrence of one (1) incident of nonjudicial punishment." Subsection (e) under Coast Guard Good Conduct Medal provides that "conduct and performance of an enlisted person, during tenure. . . must not include any of the following: . . . nonjudicial punishment."

The Chief Counsel accordingly recommended that the Board deny the relief requested.

Response of Applicant

The applicant submitted a substantial response to the advisory opinion of the Coast Guard that reiterated the views expressed in the application.

The applicant said that the "issue is for me . . . one of principle. To me not being awarded the Good Conduct Medal is tantamount to saying my conduct was bad, and I know that's not true."

The applicant admitted that he made a mistake in his application by asking that his captain's mast be expunged. He withdrew the request that it be expunged from the record on the ground that it is "essentially correct."

The applicant made the following statement in several forms: "One more time, I never said my punishment was wrongful . . . [M]y application is based on my contention that my not receiving the Good Conduct Medal is wrong, not that the NJP in and of itself is wrong"

FINDINGS AND CONCLUSIONS

The BCMR makes the following findings and conclusions on the basis of the submissions of the applicant and of the Coast Guard, the military record of the applicable, and applicable law:

1. The BCMR has jurisdiction to determine the application pursuant to section 1552 of title 10, United States Code. It was untimely.

2. Section 1552(b) of the United States Code provides that a claim for correction of a military record shall be made not less than 3 years after the discovery of an alleged error or injustice, unless the Board concludes that it is in the interest of justice to allow late filing.

3. The application in the present case was submitted almost 20 years after the applicant was released from active duty with the Coast Guard.

4. The applicant has not introduced any evidence to suggest that it would be in the interest of justice to consider this application on the merits notwithstanding the fact that the application is extremely untimely.

5. A cursory examination of the merits of this application indicates that the Coast Guard committed neither an error nor an injustice in ruling that a person who has received nonjudicial punishment is not eligible to receive the Coast Guard Good Conduct Medal. Termination of the applicant's eligibility for a good conduct award because of the imposition of NJP on October 12, 1978 was

in accordance with the CG Medals and Awards Manual and with Coast Guard policy.'

6. The application, accordingly, should be denied both for untimeliness and for lack of proof of any error or injustice.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

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

USCG, for

