

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1999-159

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 commenced on July 27, 1999, upon receipt of the applicant's application for correction of his military record.¹

This final decision, dated March 22, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant asked the Board to correct his record to show that he received the Purple Heart award while serving on active duty. He enlisted in the Coast Guard on November 19, 1942, and was honorably discharged on March 21, 1946. He alleged that he was injured in action (combat) in 1945 during an encounter with a German. He provided no other evidence in support of this allegation.

The applicant stated that he did not discover the alleged error or injustice until June 1999, when "someone said [he] was [entitled to the Purple Heart]."

Views of the Coast Guard

On August 15, 2000, the Board received the advisory opinion from the Chief Counsel of the Coast Guard recommending that Board deny relief. The Chief Counsel stated that the applicant has failed to prove by a preponderance of the evidence that he sustained injuries that satisfy the requirements for the Purple Heart award. According to the Medals and Awards Manual, the Purple Heart is awarded to a service member who sustains combat-related injuries requiring medical treatment. In this regard, the Chief Counsel stated as follow:

Applicant's record shows that he was admitted as an in-patient to U.S.A. Marine Hospital Stapleton, New York on September 6, 1945 for a herniated nucleus pulposus. His medical record indicates Applicant complained of pain in the small of his back which was the result of "pulling in a line" the previous December (1944). . . . In December 1944, Applicant was assigned as a crewmember to the USS ██████████ However,

¹ The Board received the applicant's military record on May 1, 2000. His application was complete and ready for processing on this date.

Applicant has provided no evidence, nor is there any indication in his record that the USS [REDACTED] was in combat when he sustained the herniated disc injury. Therefore, the Board should deny relief unless Applicant is able to prove that the injury was sustained in combat.

The Chief Counsel stated that even if the applicant could prove that his unit was in combat in December 1944, there is insufficient evidence to prove that his back injury was sustained during that time-period. He further stated the following:

Applicant was seen at US Marine Hospital Stapleton, New York on February 24, 1945 for Spinalis Myositis. That medical record entry for that date indicates *he developed pain in his right lumbar region when he picked up some rope two day ago*. Seven months later when he was admitted in-patient to the same medical facility, his record indicates he told the medical staff that his back pain developed in December 1944 rather than February 1945. Therefore, Applicant has failed to prove that the back injury he was seen for in September 1945 was sustained on a date in December 1944 or on any other specific date associated with combat action.

Applicant's Response to the Views of the Coast Guard

On August 16, 2000, a copy of the advisory opinion was sent to the applicant for his review and comment. The applicant responded with a request for an extension to obtain his medical record.

On October 5, 2000, the applicant was advised that the board had obtained his medical record. He was told his medical record showed that he had received treatment for his back, but there was nothing in the medical record indicating that his back problem was incurred during combat. He was advised that upon his request, the Board would grant him an extension of time to obtain evidence showing that he incurred the back injury during combat. As of this date, the applicant has not responded to the October 5, 2000 letter.

Applicant's Military Record

The applicant's military record contains a document entitled Medical History Questionnaire, dated March 21, 1946. The applicant answered no to the following question on this document: "Have you been in combat?"

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 alleged error or injustice was discovered or should have been discovered. See 33 CFR 52.22. The applicant was discharged approximately 54 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's reason for not filing his application sooner – he was not aware that he was entitled to the award – is not persuasive.

4. The applicant has submitted insufficient evidence establishing that he is entitled to the Purple Heart. In this regard, he failed to prove that he incurred an injury during combat. Although, his medical record indicates that he received medical treatment for his back, there is nothing in the record indicating that the back injury was incurred during combat. Moreover, the applicant admitted on the Medical History Questionnaire that he had not been in combat. According to Section 2.B.11 of the Awards and Medals Manual, the applicant must have been wounded or injured as a result of "any action against an enemy of the United States." The applicant has not submitted sufficient evidence establishing that he was wounded or injured in action against an enemy of the United States.

5. Therefore, due to the passage of time, the applicant's less than compelling reasons for the 54-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 should be denied.

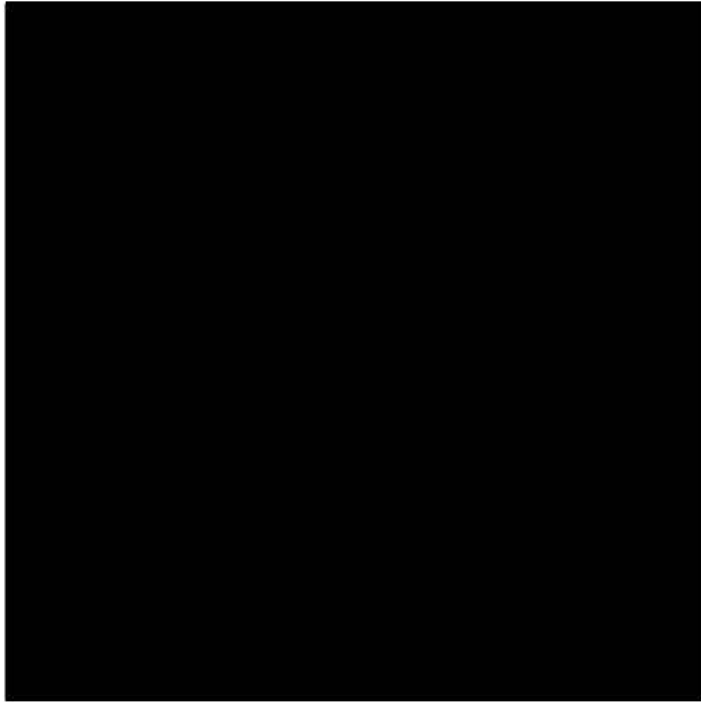


[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of _____
for correction of his military record is denied.

_____, JSCG,



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