

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

Application for Correction
of Coast Guard Record of:

BCMR Docket No. 2000-170

FINAL DECISION

██████ Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on July 26, 2000, upon the Board's receipt of the applicant's complete application for correction of his military record.

This final decision, dated July 12, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant enlisted in the Coast Guard on December 9, 1942. On October 4, 1945, he was discharged as unfit for service for medical reasons.

The applicant asked the Board to correct his record to show that he received a Purple Heart while serving on active duty. He alleged that he was injured while on active service "by direct enemy action."

SUMMARY OF RECORD

The applicant wrote the following account of the alleged circumstances surrounding his injury, but he did not provide the date that he was wounded, the name of the doctor who treated him, the name of the Captain of the ship on which he was as wounded, or the names of any witnesses to the attack and his wounding.

Was wounded while anchored about 1/4 to 1/2 mile off New Guinea. General quarters was sounded, ran to my position, on stern of the ship. Japanese bombers were dropping bombs. I received shrapnel wound on my lower left leg. I felt something, but I kept running, my gun loader, told me blood was running down my left leg. Called doctor from the bridge, he bandaged my wound and told me to come to the sick bay, after General quarters was over. I went to sick bay [and] the doctor and two pharmacists laid me on the table and removed shrapnel pieces from my leg, cleaned and bandaged my leg. . . . Due to combat action and

shrapnel wound, and operations, I should have received the purple heart, now in my old age, I would like to have what belongs to me, "The Purple Heart".

According to his medical record, he was examined by three doctors who constituted a Board of Medical Survey. The Board recommended him for discharge upon a diagnosis of psychoneurosis. The applicant, the Board found, was "anxious, sleepless, depressed and hypochondriacal [and] had repeated nightmares of impending disaster. . . . He became tense and insubordinate. His condition was so obvious due to his distraught condition that he was not punished."

On September 26, 2000, November 2, 2000, November 22, 2000, and December 20, 2000, the applicant sent motions for extension of deadlines to the BCMR on the ground that a request for further information is pending before the National Archives. The Board granted an extension to make final submissions on February 4, 2001.

VIEWS OF THE COAST GUARD

On September 22, 2000, the Board received the Coast Guard's advisory opinion from the Chief Counsel of the Coast Guard. The Chief Counsel recommended that relief be denied to the applicant.

COMDTINST 1650.25B of the Coast Guard Medals and Awards Manual, provides that a member must have a combat-related injury requiring medical treatment to qualify for the Purple Heart award. In this case, the Chief Counsel says, there is insufficient evidence to support the applicant's allegation that he received an injury in combat. In the absence of substantial evidence proving that the leg injury was sustained in combat, the Chief Counsel concluded that the applicant's request should be denied.

The Chief Counsel concluded that the applicant failed to prove by a preponderance of the evidence that he sustained a "combat-related" injury to his leg. His record shows that he was treated on the USS Rockford on August 5, 1944 for a puncture wound over his left tibia. The Chief Counsel said that the applicant's record does not indicate how the wound was sustained. There is also no record that the USS Rockford was engaged in combat with the enemy on the date he sustained his puncture wound.

The Chief Counsel was able to obtain copies of the official logs of the USS Rockford for the period when the applicant received the puncture wound. The log entries, according to the Chief Counsel, were "devoid of any evidence indicating the USS Rockford was engaged in combat action with the enemy." One log entry for August 5 "[S]tarted taking on water," illustrates how detailed the logs were.

The Chief Counsel said that "it would be reasonable to conclude that any event related to an enemy attack on the USS Rockford . . . would have been documented in the vessel's official logs."

The Chief Counsel took yet another significant step in determining the truth of the applicant's allegations. The Chief Counsel located a former seaman on the Rockford, using information in the logs. The former seaman "indicated with certainty that USS Rockford never came under enemy fire on 05 August 1944."

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On September 22, 2000, a copy of the views of the Coast Guard was sent to the applicant, along with an invitation to submit a response within 15 days.

The applicant requested several extensions of the deadline for submitting a response. Extensions were granted, but no response was ever received by the Board.

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.

2. The application for correction was not submitted timely, under section 1552(b) of title 10 of the U. S. Code, which states that applications should be submitted within three years after an error or injustice. The applicant submitted his claim more than 50 years after the allegedly qualifying incident.

3. Notwithstanding the time limit in 10 U.S.C. § 1552(b), the Board is authorized to waive this timeliness requirement in the interest of justice.

4. The Chief Counsel stated that it would be unfair and unjust to deny recovery because of the breach of a timeliness requirement, if the victim in fact suffered wounds from combat.

5. The Chief Counsel said that "[it] could properly assert that the Statute of Limitations has expired, it would be an injustice to deny relief in this case" if the applicant did, in fact, sustain the alleged combat injuries. The Chief Counsel stated that the timeliness requirement should be waived in the interest of justice. The applicant agreed.

6. The applicant shows that he was treated on the USS Rockford on August 5, 1944 "for a puncture wound over his left tibia." The record contains no evidence as to the cause of the wound. There is no evidence in the official logs of the USS Rockford for August 5, 1944 that states or suggests that the ship was ever under enemy attack or enemy fire.

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7. With help from the ship's logs, the Coast Guard located a former seaman on the Rockford. That seaman indicated "with certainty," in a telephone interview, that the ship never came under enemy fire on August 5, 1944.

8. The applicant failed to prove by a preponderance of the evidence that his puncture wound was sustained in combat.

9. Accordingly, the application should be denied because the applicant has not proved that the Coast Guard committed any error or injustice with respect to whether he qualified to receive a Purple Heart.

[CORRECTIONS AND SIGNATURES ON FOLLOWING PAGE]

ORDER

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

