


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-102

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION


This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was completed on June 16, 2003, upon receipt of his completed application and military records.

This final decision, dated February 18, 2004, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct his military record to show that he was awarded a Purple Heart for an injury to his right index finger during his enlistment from March 13, 1945, to May 13, 1946. He alleged that he injured the finger and should have received a Purple Heart. He further alleged that he discovered the error in his record on September 2, 2002.

SUMMARY OF THE APPLICANT'S RECORDS

On March 13, 1945, the applicant enlisted as a xxxxxxxxx in the Coast Guard Reserve. After completing training, on July 1, 1945, he was assigned to the U.S.S. XXXXX, where he served until March 10, 1946. Thereafter, he was transferred to the training center in xxxxxxxxxx.

The applicant's military record contains the following medical records:

- a report and certificate signed by a physician attesting to the applicant's fitness for enlistment;
- an inoculation record recording the vaccines he received upon enlistment;
- a Medical History form dated May 11, 1946, showing that the applicant had been examined and was found to be dentally and physically qualified for discharge; and
- a Termination of Health Service form dated May 13, 1946, on which a physician and the applicant himself indicated that he had no physical defects.

No documentation of any illness or injury appears in the applicant's military record.

On May 13, 1946, the applicant was honorably discharged from the Reserve, having served one year, two months, and one day on active duty. At the time of his discharge, it was noted that he had earned and was entitled to wear an Asiatic-Pacific Campaign Medal, an American Area Campaign Medal, and a World War II Victory Medal.

APPLICABLE LAW

During World War II, the Coast Guard was a part of the Navy. SECNAVINST 1650.1G states that during World War II, the Purple Heart was awarded to members of the Armed Forces who have been wounded or killed in action against an enemy of the United States. Paragraph e of the instruction states that "[d]uring World War I, and World War II, and Korea [sic], an individual must have been wounded as a direct result of enemy action. During subsequent conflicts (Vietnam and Operation DESERT STORM), the individual must have been wounded as a result of enemy action (direct or indirect)."

VIEWS OF THE COAST GUARD

On August 13, 2003, the Judge Advocate General of the Coast Guard recommended that the case be administratively closed. He pointed out that the applicant's military record contains "very little in the way of medical records" and no evidence supporting the applicant's allegation of injury. Given the lack of medical evidence, the Judge Advocate General argued that "the case [has been] improperly docketed in accordance with 33 C.F.R. § 52.32¹ because the file lacks the medical records necessary to a proper determination of Applicant's request."

¹ 33 C.F.R. § 52.32(a)(1) allows the Chair to close a case without action by the Board if she determines that the case was erroneously docketed under § 52.21, which requires the Board to receive any applicable military and medical records prior to docketing a case.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 25, 2003, the Chair sent a copy of the Coast Guard's views to the applicant. The Chair asked the applicant to respond within 30 days either by submitting documentation of his alleged injury, by requesting an extension of the time to respond, or by notifying the Board that he had no objection to his case being administratively closed in accordance with the Coast Guard's recommendation. No response was received from the applicant.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.

2. An application to the Board must be filed within three years of the day the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). The applicant was discharged in 1946 and knew or should have known that he had not received the Purple Heart at that time. Therefore, although the applicant alleged that he did not discover the alleged error until September 2002, the Board finds that the application was filed more than 50 years after the statute of limitations expired. Thus, it was untimely.

3. Under 10 U.S.C. § 1552(b), the Board may waive the three-year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board should consider the reasons for the delay and conduct a cursory review of the merits of the case. *Dickson v. Sec'y of Defense*, 68 F.3d 1396 (D.D.C. 1995); *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

4. The applicant provided no explanation for his failure to request the correction of the alleged error in his record at an earlier date.

5. There is no evidence in the record that the applicant was ever wounded as a direct result of enemy action during his enlistment in the Reserve. The applicant has not proved that he met the criterion for a Purple Heart during World War II under SECNAVINST 1650.1G.

6. The Judge Advocate General recommended that the case be administratively closed because of the paucity of medical records in the applicant's military record. However, the applicant's military record contains all of the medical records that the Board would expect to find in the military record of a World War II veteran who was never seriously sick or injured: a pre-enlistment physical examination report; inoculation records; a Medical History; and a Termination of Health Record form. Although the applicant alleges that his finger was injured during his service, the Board will not assume, based upon that allegation alone, that probative medical records are missing from his military records. Moreover, the Board notes that the applicant did not respond to the Chair's invitation to respond to the recommendation of the Judge Advocate General. Therefore, the Board concurs in the Chair's decision not to close the case pursuant to 33 C.F.R. § 52.32(a)(1).

7. Accordingly, in light of the lack of evidence supporting the applicant's allegation and his failure to explain his great delay in filing his application, the Board finds no reason to waive the statute of limitations, and the applicant's request should be denied.

ORDER

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

