


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-035

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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 docketed on December 8, 2003, upon receipt of the completed application and military records.

This final decision, dated August 19, 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 lifesaving medal for his service aboard the cutter *Xxxxx*. He alleged that he was entitled to the medal because "[w]e rescued a salmon fishing boat off the Washington State coastline in 1947." In support of his allegation, he submitted a copy of the cutter's roster showing that he was a member of the crew at the time.

The applicant alleged that he discovered the error in his record on July 4, 2003. He provided no other reason as to why he did not apply for the lifesaving medal earlier.

SUMMARY OF THE APPLICANT'S MILITARY RECORD

On December 29, 1947, the applicant enlisted as an apprentice seaman in the Coast Guard for a term of four years. Upon completing boot camp in February 1948, he was advanced to seaman second class and assigned to the cutter *Xxxxx*.

On April 2, 1948, the applicant was reduced in rank to seaman apprentice. In May 1948, the applicant went away without leave (AWOL) for six days. At a deck court on June 9, 1948, he pleaded guilty and was fined \$40 and assigned 25 extra hours of duty. On July 19, 1948, the applicant was taken to mast for having gone AWOL for 1.5 hours and for "direct disobedience of orders." He was awarded "loss of 15 liberties."

Also on July 19, 1948, the applicant was transferred from the Xxxxx to a Marine Hospital because of enuresis. On July 25, 1948, a doctor noted that the applicant complained of having been very anxious and having had enuresis almost every night since he enlisted. The doctor also noted that the applicant "usually gets intoxicated every night" and that the enuresis might stop if he stopped drinking alcohol. A medical board of survey found that the applicant suffered from "simple adult maladjustment [with] enuresis" and recommended that he be discharged.

On August 21, 1948, the applicant submitted a statement on his own behalf. He stated that he did not want to be discharged, that he had stopped drinking alcohol, and that he did not think the enuresis would continue.

On August 25, 1948, the applicant's commanding officer (CO) recommended to the Commandant that the applicant be discharged for unsuitability because he had been diagnosed with enuresis. The CO also noted that the applicant was "a constant offender against ship's discipline and would be the subject of a request for a discharge by reason of inaptitude if it [were] deemed more fitting than a discharge by reason of unsuitability." He noted that the applicant had been awarded five days' confinement at a mast on August 16, 1948, and had been placed on report for sleeping while on watch on August 20, 1948.

On September 24, 1948, the applicant received a general discharge under honorable conditions by reason of "unsuitability." The Service Record form (NCG 2500C) in his record contains no entries under the heading "Commendations and Awards."

APPLICABLE LAW

Lifesaving medals are awarded in accordance with the provisions of Chapter 4 of the Medals and Awards Manual (COMDTINST M1650.25C), which is entitled "U.S. Nonmilitary Decorations." Paragraph 4.B.1.b(1) provides that the Commandant may award a lifesaving medal to "any person who rescues or endeavors to rescue any other person from drowning, shipwreck, or other perils of the water." However, paragraph 4.B.1.b(2) states that "[m]ilitary personnel serving on active duty normally should not be recommended for the Gold and Silver Lifesaving Medals. However, personnel may be recommended for a Lifesaving Medal if the act of heroism was performed while the member was in a leave or liberty status."

VIEWS OF THE COAST GUARD

On March 30, 2004, the Judge Advocate General (TJAG) of the Coast Guard recommended that the Board deny the applicant's request because it is untimely and lacks merit. He alleged that the applicant knew or should have known that he did not receive a lifesaving medal upon his discharge in 1948, and he pointed out that the applicant did not provide a reason as to why he waited more than 50 years to request the medal.

Regarding the merits of the case, TJAG stated that under the Medals and Awards Manual, lifesaving medals are not supposed to be awarded to members serving on active duty although military members are entitled to wear such medals. He also stated that there is no evidence that the applicant was eligible for the award. Therefore, he argued, it is not in the interest of justice for the Board to waive its three-year statute of limitations to consider this case.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 31, 2004, the Chair sent a copy of the Coast Guard's views to the applicant and invited him to respond within 30 days. No response was received.

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 1948 and knew or should have known that he had not received a lifesaving medal at that time. Therefore, although the applicant alleged that he did not discover the alleged error until July 4, 2003, 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 within three years of his discharge.

5. There is no evidence in the record that the applicant is entitled to a life-saving medal in accordance with the eligibility requirements in Chapter 4.B.1.b. of the Medals and Awards Manual. Moreover, although the applicant alleged that he assisted in the rescue of the crew of a fishing boat while he was stationed aboard the *Xxxxx*, he submitted no evidence in support of his allegation that his own actions during the rescue merited any award.

6. 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 xxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

