

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-067

XXXXXXXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

████████████████████

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 February 12, 2004, upon receipt of the applicant's complete application for correction of his military record.

This final decision, dated October 28, 2004, 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 correct his DD Form 214 to show that he was awarded the Grenada Campaign Ribbon. He further requested that his DD Form 214 be corrected to show that he served in Grenada, West Indies.

The applicant submitted a copy of a Certificate of Achievement that he received for his service while on temporary assigned duty (TAD) in Grenada. The Certificate was awarded to the applicant for "outstanding service and achievement while assigned as ██████████ for the United States Coast Guard Surveillance Force, United States Military Support Element, Grenada, West Indies" from June 13, 1984 to June 29, 1984.

The applicant enlisted in the Coast Guard on January 5, 1981 for four years. Subsequently, he was assigned permanently to a unit in ██████████. On June 13, 1984, he reported for TAD to a unit located in Grenada, West Indies. He returned to his permanent unit in ██████████ on June 29, 1984.

The applicant was released from active duty on January 5, 1985 after four years of service. He stated that he did not discover the alleged error until January 20, 2004.

VIEWS OF THE COAST GUARD

On May 28, 2004, the Board received an advisory opinion from the Judge Advocate General (TJAG) of the Coast Guard recommending that the Board deny relief. TJAG argued that the application was untimely and that the applicant failed to explain why it is in the interest of justice to excuse the delay. In addition, TJAG asserted that the applicant has not presented sufficient evidence establishing that he is entitled to the award.

A memorandum from the Commander, Coast Guard Personnel Command (CGPC) was attached to the advisory opinion as Enclosure (1). TJAG adopted the memorandum as part of the advisory opinion. CGPC stated that based on input from the Medals and Awards Section of CGPC, the Armed Forces Expeditionary Medal (AFEM) was the only campaign medal awarded for the Grenada Operation. CGPC further stated that according to the Medal and Awards Branch, the AFEM "was awarded to Coast Guard members who served on the CGC CHASE from October 23, 1983 to November 21, 1984, or who were crew members for special flights HC-130B 1700 and/or HC130B 1701. CGPC also stated that a member could earn the award by serving in the area of operation for at least 30 days.

CGPC stated that Department of Defense is authorized to award the AFEM for all military units. However, the Coast Guard establishes the minimum criteria that a Coast Guard unit or member must meet to be considered by DOD for an AFEM. CGPC stated that OPNAV published a master list of Units that have received Awards and Campaign Medals on September 18, 2002. The OPNAV notice did not list the "United States Coast Guard Surveillance Force" or the "United States Military Support Element Grenada" as being entitled to an AFEM. CGPC concluded with the following:

Based on the Applicant's record and supplemental information . . . there is no evidence that the applicant met any of the criteria to receive the AFEM for his temporary assignment to Grenada. First, there is no evidence that the unit to which the Applicant was assigned was authorized the AFEM . . . Secondly, if the unit had been authorized the AFEM, it appears that the Applicant would not have met the service time (at least 30 days for operations lasting 30 days or more) requirement to be eligible. The "Certificate of Achievement" . . . [submitted] by the applicant for his service in Grenada appears to have been locally designed by the unit, and

does not establish eligibility for the AFEM. If the applicant has any other information that may document his eligibility, I encourage him to submit that information.

In reviewing this case, an error was discovered in block 12.f. of the Applicant's DD-214 . . . in that it fails to record his foreign service in Grenada . . . We have administratively corrected this document through issuance of a DD-215.

Applicant's Response to the Views of the Coast Guard

On June 1, 2004, a copy of the advisory opinion was sent to the applicant for his review and comment. He did not submit a response.

APPLICABLE REGULATION

Medals and Awards Manual (COMDTINST M1650.26C)

Under Chapter 5.B.2. of the regulation, members are eligible for the AFEM if they are bona fide members of a unit engaged in the operation or meet one of the following:

"(1) Serve not less than 30 consecutive days in the area of operations;

"(2) Engage in direct support of the operation for 30 consecutive days or 60 non-consecutive days, provided such support involves entering the area of operations;

"(3) Serve for the full period when an operation is less than 30 days duration;

"(4) Engage in actual combat or duty which is equally as hazardous as combat duty, during an operation against armed opposition, regardless of time in the area;

"(5) Participate as a regularly assigned crew member of an aircraft flying into, out of, within, or over the area in support of the military operation;
. . . "

FINDINGS AND CONCLUSIONS

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

1. The BCMR has jurisdiction over this matter pursuant to section 1552 of title 10 of the United States Code.

2. The application was not timely. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered or should have discovered the alleged error or injustice. See 33 CFR 52.22. This application was submitted approximately 16 years beyond the statute of limitations.

3. The Board may still consider the application on the merits, however, if it finds it is in the interest of justice to do so. The interest of justice is determined by taking into consideration the reasons for and the length of the delay and the likelihood of success on the merits of the claim. See Dickson v. Secretary of Defense, 68 F.3d 1396 (D.C. Cir. 1995).

4. The applicant stated that he discovered the alleged error on January 20, 2004. However, he should have discovered the error sooner because the DD Form 214 that he signed does not list any awards, medals or decorations. The applicant did not explain why he could not have discovered the alleged error sooner. Accordingly, the applicant has failed to offer a reasonable explanation for not filing his application sooner.

5. Although the applicant's reason, or lack thereof, for not filing his application sooner is not persuasive, the Board must consider the applicant's likelihood of success on the merits of his claim in deciding whether to waive the statute of limitations. In this regard, the Board finds that it is not likely that the applicant would prevail on the merits of this claim, even if the Board were to waive the statute of limitations. He has not submitted evidence establishing that he was assigned to a command or unit that was designated to receive the AFEM for the Grenada Operation. The Certificate of Achievement that he submitted shows that he was assigned to the United States Coast Guard Surveillance Force, which was not a unit designated for the AFEM, the only medal approved for the Grenada Operation. Nor has he established that he met any of the other requirements stated in Chapter 5.B.2. of COMDTINST M1650.26C that would entitle him to the AFEM, such as serving in the area of operation for a minimum consecutive 30 day period.

6. TJAG stated that the Coast Guard has already corrected the applicant's DD Form 214 to show that he served in Grenada, West Indies through the issuance of a DD Form 215. Therefore, this portion of the applicant's request is rendered moot.

7. Therefore, based on the length of the delay, the lack of persuasive reasons for not acting sooner to correct his record, and the probable lack of success on the merits of his claim, the Board finds it is not in the interest of justice to waive the three-year statute of limitations in this case.

8. Accordingly, the applicant's request for relief should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

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



