

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-005

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 October 18, 2004, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated June 30, 2005, 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 knee during his enlistment from June 26, 1941, to June 27, 1946. He alleged that he injured his right knee in 1944, when he jumped from his landing craft into the water during an amphibious assault in the invasion and occupation of the Eniwetok Atoll in the South Pacific. He further alleged that several of his shipmates had to pull him out of the water and onto the beach, where he remained until the gunfire had ceased. He did not provide a reason why he waited nearly 60 years to seek this correction to his military record.

SUMMARY OF THE APPLICANT'S RECORDS

The applicant enlisted in the Coast Guard on June 21, 1941. After completing training, he was assigned to the ██████████. The applicant's military record contains a detailed recording of his meritorious conduct while assigned to the U.S.S. ██████████. The Commanding Officer (CO) of the ██████████ with detail all

of the medals and awards the applicant had received. The CO did not mention that the applicant had ever been injured in battle or that he was entitled to the Purple Heart. The CO also noted the various battle campaigns in which the applicant had participated, including the landing operations for the invasion and occupation of the Eniwetok Atoll in February 1944.

On March 8, 1944, he was sent to the naval hospital at Pearl Harbor where he underwent an operation to repair an internal derangement of his right knee. He voluntarily extended his enlistment on June 26, 1944, and served in a variety of assignments until his honorable discharge on June 27, 1946.

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

- a Special Temporary Enlistment Contract dated June 26, 1941, on which it was noted that the applicant had a 2-inch scar on the right side of his right knee and a 3-inch scar on the right side of his left knee;
- a Report and Certificate dated June 26, 1941, signed by a physician attesting to the applicant's fitness for enlistment;
- a Medical History dated March 8, 1944, indicating that the applicant had injured his right knee in 1940 (prior to enlistment) and underwent a surgical operation on March 24, 1944, to repair the knee;
- a Final Medical Certificate dated March 20, 1944, stating that the applicant was diagnosed and with an internal derangement of the right knee, and was being admitted to the hospital for inpatient care;
- a Final Medical Certificate dated May 2, 1944, stating that the applicant had been diagnosed and treated for an internal derangement of the right knee, a dislocation of the left knee, and was discharged from outpatient treatment and was fit for duty;
- a Termination of Health Service form dated June 26, 1946, on which the applicant indicated that during his enlistment he had undergone an operation of his right knee.

On June 27, 1946, the applicant was honorably discharged from the Coast Guard. At the time of his discharge, it was noted that he had earned and was entitled to wear an American Defense Ribbon, American Area Campaign Ribbon, World War II Victory Ribbon, Asiatic-Pacific Area Campaign Medal, Navy and Marine Corps Medal for heroism, and the Philippine Liberation Area Campaign Ribbon. There is nothing in the records indicating that the applicant was injured as a result of enemy action.

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 were wounded or killed in action against an enemy of the United States. 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 February 25, 2005, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard Personnel Command (CGPC) in a memorandum on the case and recommended that the Board deny the applicant's request.

The JAG stated that there is "insufficient evidence available in the material provided by the applicant and in his service record to overcome the presumption of regularity afforded the government" and that the evidence did not support awarding the applicant a Purple Heart. CGPC noted that the applicant's injury to his right knee was originally sustained prior to his enlistment in the Coast Guard, and while this original injury may have been aggravated during his enlistment, there is no evidence to directly link the medical treatment he received in March of 1944 to his participation in the invasion of Eniwetok Atoll. CGPC also noted that there is no mention in the applicant's medical record of any injury sustained during military operations in 1944.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 1, 2005, the Chair sent a copy of the views of the Coast Guard 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 1946 and knew or should have known that he had not received the Purple Heart at that time. Therefore, the Board finds that the application was filed more than 55 years after the statute of limitations expired and is 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. The Board notes that there is insufficient evidence in the record to support the applicant's claim that he was wounded as a direct result of enemy action. The record indicates that the applicant injured his knees in 1940, prior to his enlistment in the Coast Guard in 1941, and it was noted upon his enlistment that both knees bore long scars. The applicant alleged that he injured his right knee again when he jumped out of his landing craft during an amphibious assault in the South Pacific in 1944. The record does show that the applicant sought treatment for his right knee on March 8, 1944, and eventually underwent an operation to repair his right knee and also sought treatment for his left knee, but the applicant's medical records do not mention that any of his knee injuries were sustained as the direct result of enemy action. His record indicates that his ship's command carefully recorded the applicant's meritorious conduct but made no mention of any injury incurred during the invasion of Eniwetok Atoll. Accordingly, the Board finds insufficient evidence that the applicant met the criterion for a Purple Heart during World War II under SECNAVINST 1650.1G. to overcome the presumption of regularity afforded the Coast Guard.

6. The applicant has not submitted evidence to support his claim that his knee was injured during the invasion of the Eniwetok Atoll. If he should submit such evidence, such as supporting statements from crewmates who knew when he was injured, or other contemporaneous documents, the Board will reconsider his case.

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. The applicant's request should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

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

