

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-031

[REDACTED]

FINAL DECISION

[REDACTED]

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 December 1, 2004, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated August 11, 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 September 13, 1965, to September 12, 1969. He alleged that he injured his right knee on March 1, 1968, while serving as a gunners mate on the Coast Guard Cutter (CGC) [REDACTED] in the Republic of Vietnam. The applicant alleged that he injured his knee when the concussion from an exploding enemy vessel knocked him off his feet and into a mortar box. He further alleged that he did not pursue a Purple Heart for his injury earlier because "at the time I was bitter and felt it was no big deal. Now, 36 years later I feel I deserve it."

SUMMARY OF THE APPLICANT'S RECORDS

The applicant enlisted in the Coast Guard on September 13, 1965. After completing training, he was assigned to the CGC [REDACTED] in [REDACTED].

He was sent to Vietnam in April 1967 and was assigned as a gunners mate on the [REDACTED] in June 1967. According to award citations in the applicant's military record and other documents in the record, in the early morning hours of March 1, 1968, the [REDACTED] encountered an enemy trawler approximately 60 miles off the coast of Da Nang, Republic of Vietnam. The [REDACTED] engaged the trawler with its forward mount machine guns and encountered heavy return fire from the trawler's automatic weapons. As a gunners mate, the applicant provided support to the .50 caliber gunner while engaging the enemy and continued to provide support when the forward mount personnel switched to mortar fire. The award citation indicates that when the trawler finally exploded from sustained machine gun and mortar fire from the [REDACTED] the concussion knocked him off his feet and into a mortar box.

The applicant's military record contains detailed accounts of his conduct during this incident. On March 6, 1968, the applicant's Commanding Officer (CO) issued him a letter of appreciation, commending the applicant for his actions during the encounter with the enemy trawler. The brief letter did not mention that the applicant had been injured during the encounter. On December 7, 1968, the Commander of Coast Guard Activities, Vietnam, recommended that the applicant receive a Bronze Star medal for his heroic service on March 1, 1968. The award recommendation contains a comprehensive account of the applicant's exploits aboard the [REDACTED] during its encounter with the enemy trawler. The Division Commander who wrote the recommendation stated in his "summary of action" that the enemy trawler

exploded and the tremendous resultant concussion wave knocked [the applicant] off his feet and into the mortar box. Although stunned and hurt, [the applicant] immediately reassumed his position at the mortar where he prepared illumination rounds until the action secured at 0330H.

The Division Commander concluded by stating:

[The applicant's] exceptional professionalism, calm and courage during this action reflected great credit upon himself and his unit, providing an outstanding inspirational example to [REDACTED] other crew members, and were in the highest traditions of the Coast Guard and the United States Naval Services.

On December 23, 1968, the applicant was awarded the Bronze Star Medal with Combat "V" for his "heroic achievement while serving with Market Time Forces engaged in armed conflict against the North Vietnamese and Viet Cong communist aggressors in the [R]epublic of Vietnam on March 1, 1968, while serving on board the CGC [REDACTED]. The award citation issued to the applicant by the Commander of the U.S. Naval Forces, Vietnam, on behalf of the President of the United States, indicates that "although injured, [the applicant] immediately resumed his mount position and

continued preparing illumination rounds until the conclusion of the action.” The applicant’s military record does not contain any documents that indicate he was treated for a knee injury sustained in March 1968.

On September 12, 1969, 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 the National Defense Service Medal, Bronze Star Medal with Combat “V”, Vietnam Service Medal with 4 Bronze Stars, and the Vietnam Campaign Medal with Device.

APPLICABLE LAW

The Coast Guard Medals and Awards Manual, COMDTINST M1650.25B, establishes Coast Guard policy and provides detailed instructions for the administration of the military decorations and awards programs of the Coast Guard. Article 2.B.11.b. of the manual states that the Commandant is authorized to award the Purple Heart Medal in the name of the President to any member of the Coast Guard or to any member of an Armed Force under the Jurisdiction of the Department of Transportation or to any civilian national of the United States who, while serving under competent authority in any capacity with the Coast Guard, has been, or may hereafter be wounded or killed:

- (1) In any action against an enemy of the United States;
- (2) In any action with an opposing Armed Force of a foreign country in which the Armed Forces of the United States are or have been engaged;
- (3) While serving with friendly foreign forces engaged in an armed conflict against an opposing Armed Force in which the United States is not a belligerent party;
- (4) As the result of an act of any such enemy or opposing Armed Force;
- (5) The result of an act of any hostile foreign force;
- (6) As the indirect result of enemy action, as for example injuries resulting from parachuting from a plane brought down by enemy or hostile fire; or
- (7) As the result of maltreatment inflicted by captors while a prisoner of war.

The manual further states that a "wound" is defined as an injury to any part of the body from an outside force or agent, sustained while in action as described in the criteria. Finally, the manual states that except in the case of a prisoner of war, the wound for which the award is made must have required treatment by a medical officer. Only one award is authorized for more than one wound or injury received at the same instant from the same missile, force, explosion, or agent. Awards will be made by reason of frostbite, malnutrition, dysentery, and exhaustion.

Article 1.A.2.h. of the Coast Guard Medals and Awards Manual states that only one award of a personal military decoration will be made for the same act, achievement, or period of meritorious service.

VIEWS OF THE COAST GUARD

On April 7, 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 applicant and in his service record to overcome the presumption of regularity afforded the government" and did not support awarding the applicant a Purple Heart. CGPC noted that there was "no evidence in the record that the applicant sustained any injury substantial enough to require attention from a medical officer as a result of his actions on March 1, 1968."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 13, 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 1969 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 33 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. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing whether the interest of justice supports a waiver of the statute of limitations, the Board “should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review.” The court further instructed that “the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.” *Id.* at 164, 165. See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. The applicant provided no explanation for his failure to request the correction of the alleged error in his record at an earlier date, except to describe his previous attitude as “bitter”. However, a cursory review of the record indicates that the applicant served meritoriously and that his request for a Purple Heart has substantial merit. Therefore, the Board finds that it is in the interest of justice to waive the three-year statute of limitations.

5. The Board finds that there is sufficient evidence in the record that the applicant was wounded as a result of enemy action in March of 1968. The record plainly indicates that he was injured when the concussion from an exploding enemy vessel knocked him off his feet and into a mortar box. Also, the Division Commander declared in his recommendation for the applicant’s Bronze Star that the applicant had been “stunned and hurt” by the explosion and fall into the mortar box. Furthermore, the Commander of the U.S. Naval Forces, Vietnam, on behalf of the President of the United States, awarded the applicant the Bronze Star, and the award citation clearly states that “although injured, [the applicant] immediately resumed his mount position and continued preparing illumination rounds until the conclusion of the action.” However, as the JAG argued, there is no evidence in the record that the applicant received medical treatment for his injury, which is a requirement for a Purple Heart.

6. Moreover, Article 1.A.2.h. of the Coast Guard Medals and Awards Manual provides that “only one award of a personal military decoration will be made for the same act achievement, or period of meritorious service.” Accordingly, although the Board recognizes that the applicant was injured on March 1, 1968, he received a Bronze Star for his meritorious service on that date and, pursuant to Article 1.A.2.h., he is not entitled to a second personal award or military decoration for that incident.

7. Accordingly, because the applicant already received a medal for his meritorious service on March 1, 1968, he is not entitled to the Purple Heart medal and relief should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of former [REDACTED], USCG, for correction of his military record is denied.

