

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-206

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on September 13, 2007, upon receipt of the applicant's completed application and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated June 12, 2008, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED AND ALLEGATIONS

The applicant asked that the "[United States Coast Guard] Achievement Medal with Operational Distinguishing Device . . . be upgraded to . . . a higher award with a more tangible recognition to the individual involved as per original request . . . " In his application to the Board, the applicant submitted a tape recording and written transcript of the events of May 26, 1982, that allegedly support his argument for a higher level medal. He stated that his actions on the evening in question were "extreme, heroic and daring."

The applicant indicated that he discovered the alleged error on March 16, 1983. However, he argued that the statute of limitations should be waived in this case because his officer-in-charge (OINC) had recommended a higher award, because the award was delivered at his new unit, a distance of 3000 miles from his old one, making it impossible to challenge the medal, and because challenging the award sooner could have damaged the careers of fellow members of the Group who would have been required to explain why a helicopter was not dispatched that morning, although one had been requested. The applicant stated that the day after the May 1982 rescue mission, he questioned the air station commanding officer (CO) to find out why a helicopter had not been dispatched. According to the applicant, his questioning was not appreciated and may have been the reason he did not receive a higher level award.

On February 16, 1983, the Coast Guard Achievement Medal was awarded to the applicant for his efforts in a rescue mission that contributed to the saving of a life. The citation for the medal read in part as follows:

Petty Officer [applicant] is cited for outstanding achievement and superior performance of duty on the early morning of 26 May 1982 while serving as coxswain of Coast Guard Motor Lifeboat [REDACTED] engaged in the rescue of three persons in the turbulent surf of [REDACTED]. The two men and one woman were amid debris from their fifty-six foot trawler . . . which minutes before had been rolled and crushed inverted by a twenty-foot breaker. Prior to the capsizing the crew of the [REDACTED] had been professionally briefed by [the applicant] on crossing the bar, donning life jackets and having flares readily accessible. These actions were critical in their survival. Once realizing the [REDACTED] had capsized [the applicant] immediately and with complete disregard for his own safety, skillfully maneuvered the Coast Guard Motor Lifeboat into the heavy surf. Under extreme darkness, without radar, and in constant danger of being capsized himself, [the applicant] effectively utilized his crew in illuminating the bar with parachute flares, setting a lookout, and broadcasting a loran position for additional group resources. Once a survivor was spotted amid the immense amount of debris from the destroyed vessel, [the applicant] demonstrated exceptional seamanship in maneuvering for the rescue. [The applicant's] exceptional skill, fortitude and sound judgment in spite of personal danger in this rescue mission contributed to the saving of a life. His unselfish actions and zealous devotion to duty reflect great credit upon himself and are in keeping with the highest traditions of the United States Coast Guard.

There were two coxswains involved in the rescue on the morning of May 26, 1982: the applicant and another petty officer second class (PO2). The PO2 was awarded the Coast Guard Commendation medal. The applicant submitted a copy of the PO2's citation that accompanied his Medal in support of his contention that the applicant deserved a higher award. The applicant's and PO2's citations read almost the same except for the following comments (in italics) contained in the PO2's: "Under extreme darkness, without radar, and *with debris from the destroyed vessel caught in his screws*, [PO2] demonstrated exceptional seamanship in maneuvering . . . *into position for his disciplined crew to rescue two survivors*. [PO2's] exceptional skill, fortitude and sound judgment in spite of personal danger in this rescue mission contributed to the saving of *two lives*."

Background

In a December 22, 1982 letter the applicant's then OINC, a chief boatswains mate, informed the applicant that the OINC intended to recommend the applicant for the Coast Guard Medal.¹

On January 4, 1983, the applicant's CO, Commander, Group [REDACTED], recommended to the Commander, 12th Coast Guard District² that the applicant receive the Coast

¹ To earn the Coast Guard Medal, an individual must have performed a voluntary act of heroism in the face of great danger to themselves and such as to stand out distinctly above normal expectations. Article 2.B.7.b. of the Medals and Awards Manual (1982).

² Under Article 1-A-5.c. of the Medals and Awards Manual, District Commanders were delegated authority to approve the following awards: Coast Guard Commendation Medal and the Coast Guard Achievement Medal and other lesser awards.

Guard Commendation Medal³ (a lesser award than the Coast Guard Medal). This recommendation was made on the “Personal Award Recommendation” form as required for use by the Medals and Awards Manual. On the back side of this form under “summary of action” is a full page description of the events of May 25, 1982. The following were noted as attachments to the award recommendation: [REDACTED]

[REDACTED] May 1982, excerpt from transcript of radio communication of May 25, 1982, and the proposed citation.

On February 9, 1983, the 12th Coast Guard District Board of Awards recommended that the applicant receive the Coast Guard Achievement Medal⁴ (not the Coast Guard Commendation Medal) for his action on May 26, 1982.

On February 16, 1983, the Commander, 12th Coast Guard District approved the Coast Guard Achievement Medal as recommended by the Board of Awards.

After the approval of the Coast Guard Achievement Medal for the applicant, the OINC asked the Commander, 12th Coast Guard District to reconsider his decision not to award higher level medals to the crew members. The OINC stated that he had initially recommended that the two coxswains receive the Coast Guard Medal and that the crewmembers receive the Coast Guard Commendation Medal. The OINC noted that the investigating officer recommended that all members involved in the rescue receive the Coast Guard Medal. Instead, the applicant received the Achievement Medal, the other coxswain received the Coast Guard Commendation medal, and the other crewmembers received the Commandant’s Letter of Commendation. The OINC stated that the lesser awards were an injustice.

VIEWS OF THE COAST GUARD

On February 1, 2008, the Board received an advisory opinion from the office of the Judge Advocate General (JAG) of the Coast Guard, recommending that the Board deny relief. He adopted the facts and analysis provided by Commander, Coast Guard Personnel Command (CGPC). CGPC noted that the application was not timely and further stated the following:

The applicant claims that based upon an investigation of events, the investigation officer recommended that those involved be awarded the Coast Guard Medal . . . While the applicant may have been submitted for the award of the Coast Guard Medal, the awarding authority in accordance with [the Medals and Awards Manual] approved the award of the Coast Guard Achievement Medal for the applicant. The applicant’s OINC appealed to the awarding authority for the award to be upgraded . . . However, it is apparent that the awarding authority remained

³ The Coast Guard Commendation Medal is given to armed forces personnel serving with the Coast Guard that distinguish themselves by heroic or meritorious achievement or service. To merit this award, the acts or services must be accomplished or performed in a manner above that normally expected and must be sufficient to distinguish the individual above others of comparable grade or rating performing similar services. Article 2-B-11.b. of the Medals and Awards Manual.

⁴ The Coast Guard Achievement Award is given for professional and/or leadership achievement in a combat or non-combat situation based on sustained performance or specific achievement of a superlative nature and shall be of such merit as to warrant more tangible recognition than is possible by the Commandant’s Letter of Commendation Ribbon, but which does not warrant a Coast Guard Commendation Medal or higher award. Article 2-B-13.b. of the Medals and Awards Manual.

consistent with their determination of the level of award for the applicant and other station members who were recommended for awards. The decision of the awarding authority is final . . .

The applicant further argues that the other coxswain was presented with the Coast Guard Commendation Medal and that in the interest of equity and justice that his award should at least be upgraded to that level. The information provided by the applicant supports that the coxswain of the other vessel encountered and overcame mechanical difficulties resulting from debris being entangled in the propeller. In light of this it is probable that the awarding authority considered such in determining the level of award to bestow. Additionally, the other crew members were presented the Commandant's Letter of Commendation for the events. Based upon . . . the respective levels of awards issued for this evolution the applicant's award of the Coast Guard Achievement Medal is neither in error nor unjust.

The applicant is convinced that his actions warrant a much higher award. Additionally, he purports that this award was unjustly downgraded due to his interactions with the Coast Guard Air Station after the incident. This is not supported by the record. There is no evidence of an error or injustice with regard to the assigning of the applicant's award, and pursuant to [the Medals and Awards Manual] the decision of the awarding authority is final. The applicant's record supports the award of the Coast Guard Achievement Medal.

APPLICANT'S RESPONSE TO COAST GUARD VIEWS

On March 19, 2008, the Board received the applicant's reply to the views of the Coast Guard. He disagreed with them. The applicant argued that the evidence he submitted supports his argument that the OINC's recommendation that the applicant received the Coast Guard Medal was not legitimately processed. In this regard, he argued that the recommendations of the OINC and the investigating officer were overlooked and not considered by the awards board.

FINDINGS AND CONCLUSIONS

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

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, 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 twenty-one years beyond the statute of limitations. The applicant acknowledged that he discovered the alleged error on March 16, 1983. Therefore, the applicant knew or should have known of the alleged error at that time. He explained that he feared repercussions against the helicopter pilot on duty that night because the pilot failed to dispatch a helicopter although one had been requested. He stated that he wanted to wait until that individual was no longer on active duty to file his application. Apparently, there had been an

investigation into the rescue mission and if the pilot had been derelict in his duties, the investigation should have discovered that matter and recommended appropriate action at that time. Therefore, the applicant's reason for not filing his application sooner is not persuasive.

3. The Board may still consider the application on the merits, if it finds 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 stated 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.

4. With respect to the merits, the applicant is not likely to prevail. He argued that his OINC's recommendation that the applicant receive the Coast Guard Medal was not properly processed. However, a review of the military record and the evidence submitted by the applicant indicates that his OINC's recommendation was processed correctly. The OINC had no award approval authority and could only recommend through his chain of command that the applicant receive the Coast Guard Medal. See Article 1-A-9.a. of the Medals and Awards Manual (1982). The Commander, 12th Coast Guard District was the first level awarding authority for the applicant's unit, although even he was not delegated authority to approve the Coast Guard Medal.⁵

5. However, the Medals and Awards Manual stated that recommendations for personal awards not within the authority delegated to others shall be forwarded to the Commandant only if approval for the higher award is recommended. The evidence of record is that, except for the OINC, the Coast Guard Medal was not recommended by any officer in the applicant's chain of command. The applicant's commanding officer downgraded the recommendation for the Coast Guard Medal to a Coast Guard Commendation Medal, and the awards board downgraded the CO's recommendation to a Coast Guard Achievement Medal, which the Commander, 12th Coast District approved. Accordingly under Article 1-B-2-g.(1) of the Medals and Awards Manual (1982) the decision with respect to the Achievement Medal was final because the District's Board of Awards and the Awarding Authority agreed upon the Achievement Medal for the applicant. The evidence of record in this case shows clearly that the Board of Awards and the awarding authority agreed that the applicant should receive the Achievement Medal. The eventual awarding of the Achievement Medal to the applicant was in accordance with the process contemplated by the Medals and Awards Manual.

6. A subsequent letter from the OINC requesting that the Commander, 12th Coast Guard District reconsider his decision to award the Coast Guard Achievement Medal to the applicant does not mean that the OINC's original recommendation was not processed properly. The reconsideration request simply meant that the OINC disagreed with the Commander's decision to award the Achievement Medal. There is no evidence of a response from the Commander, 12th Coast Guard District to the OINC's request for reconsideration. Nor is there any evidence that he

⁵ Article 1-A-10.b. of the Medals and Awards Manual (1982) stated that all award recommendations shall be addressed, and forwarded via the chain of command to the first level awarding authority, (e.g., headquarters office chief, area, MLC, or district commander, Superintendent, Coast Guard Academy, Commander, NPFC, or Commander, MPC). Subsection 1-A-10.b.(1)(a) stated that recommendations for personal awards not within delegated authority that are considered insufficient to warrant the higher award may be downgraded to an award within delegated authority and approved by the awarding authority.

was required to respond since his decision to award the Achievement Medal to the applicant was final.

7. The OINC's and applicant's opinions that he should have received a more prestigious award does not establish error or injustice on the part of the Coast Guard by approving the Coast Guard Achievement Medal for the applicant for his part in the rescue mission on [REDACTED]. Nor does the fact that the PO2 received the Coast Guard Commendation Medal prove that the Coast Guard committed an error or injustice by awarding the Coast Guard Achievement Medal to the applicant.

8. Accordingly, the applicant's request should be denied because it is untimely and because it lacks merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

