

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-218

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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. The Chair docketed the case on September 26, 2007, upon receipt of the applicant's completed application, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 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.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a former radioman second class (RM2/E-5), who was honorably separated from active duty on July 11, 1964, upon the expiration of his enlistment, asked the Board to award him a Good Conduct Medal. The applicant alleged that he failed to receive the medal because in July 1961, while attending radio school, he received nonjudicial punishment (NJP or "captain's mast") for creating a disturbance in the barracks and smoking after taps. The applicant alleged that he did not create a disturbance in the barracks. He alleged that the NJP and his resulting ineligibility for a Good Conduct Medal constitute "cruel, unusual, and disproportionate [punishment] to the offenses."

The applicant alleged that his two roommates were actually guilty of the offenses he himself was charged with, but they were not charged and did not speak up for him. Moreover, he alleged, even those two roommates were not speaking loudly enough to create a disturbance. The applicant alleged that he himself was not talking or making any noise at all. Moreover, the applicant alleged, the incident occurred at 2210 hours, when the barracks "was still 'settling down' for the night" and not everyone was yet quiet. In addition, he alleged that some other members who were housed upstairs "did as they pleased."

The applicant alleged that the base legal officer told him in private that he was "going to 'make an example' out of [him]." Therefore, when the legal officer asked him whether he had

anything to say for himself, he replied, “No sir,” because he did not think anything he said would make a difference in the outcome of his case and his roommates would not testify on his behalf. The applicant alleged that under “ordinary circumstances” the most punishment he would have received was a warning that a further infraction might result in NJP. He further alleged that if his commanding officer (CO) had known all the facts, he would not have been taken to mast. He stated that at mast, the CO also asked him if he had anything to say for himself. He again replied, “No sir,” because he was “an extremely shy 19 year old” and because given the legal officer’s statement, he still did not think anything he said would make a difference. He alleged that even his Division Officer thought the charges were outrageous and called the legal officer “demented.”

The applicant further alleged that his roommates were cruel and thought they were being funny when they recorded their accusations against him in the station log. He alleged that one of them killed a woman and her children just a month later. The other laughed at him and tried to embarrass him when he met him at a Coast Guard recruiting station several years later.

The applicant alleged that the charges against him were inconsistent with his character and pointed to the fact that the remainder of his record is “entirely unblemished with marks in conduct of 4.0.” He also alleged that on the date of his discharge, he was within seventeen days of having the three consecutive years of faultless service required to receive a Good Conduct Medal. The applicant stated that he also served honorably in the Reserve following his release from active duty and suggested that this time should be added to his active duty to justify his receipt of the medal.

The applicant alleged that the long-term consequences of not receiving a Good Conduct Medal have been “extremely devastating” ... “amount[ing] to an undeserved life sentence of humiliation and dishonor for once having done literally nothing more than smoking a cigarette.” He alleged that when someone sees him in a veterans’ parade, “they assume the worst—that I have committed some horrible crime and not just the minor infraction of an obscure, arbitrarily enforced rule. ... And, I have actually been asked why I am not wearing a Good Conduct Medal.”

Regarding his delay in applying to the BCMR, the applicant alleged that he discovered the error in his record on May 10, 2003. He further stated that he has always believed that he was treated unfairly when he was taken to mast but that he never knew that he could appeal the error until he contacted the office of the Master Chief Petty Officer of the Coast Guard in 2007.

The applicant submitted copies of his military records but submitted no evidence to support his arguments and allegations of false charges and cruel mistreatment.

SUMMARY OF THE RECORD

On July 12, 1960, the applicant enlisted on active duty in the Coast Guard. He attended radioman school from July 3 to December 15, 1961. A CG-3307 (“Page 7”) in his record shows that on July 28, 1961, he was taken to mast after having been charged with failing to obey an order or regulation by “[c]reating a disturbance in the barracks and smoking after taps.” The

Page 7 also shows that at mast, he was awarded four days of extra duty as NJP. He advanced to radioman third class (RM3) upon graduating from radioman school on December 15, 1961, and to RM2 on June 1, 1963.

The applicant received perfect conduct marks of 4.0 on all of his performance evaluations except for the evaluation dated December 15, 1961, when he received a performance mark of 3.9 upon graduating from radioman school. His final average conduct mark upon his release from active duty was 3.98. All of the applicant's marks for proficiency and leadership were 3.1 or higher.

On July 10, 1964, the applicant was released to the Reserve with an "Honorable" character of service. He was recommended for reenlistment. The medals and awards section of his discharge form, DD 214, states "NONE," but he has since been awarded the National Defense Service Medal, as shown on a DD 215 dated June 16, 2003.

The applicant performed some inactive duty drills while a member of the Reserve. On July 11, 1966, he was honorably discharge from the Reserve. He was recommended for reenlistment.

VIEWS OF THE COAST GUARD

On February 6, 2008, the Judge Advocate General of the Coast Guard forwarded a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC) and adopted the findings and analysis therein as his advisory opinion. CGPC recommended that the Board deny the applicant's request for a Good Conduct Medal.

CGPC stated that under Article 5.A.1. of the Medals and Awards Manual, creditable time toward the Good Conduct Award can only be accrued while serving on active duty in the regular Coast Guard or Reserve. CGPC stated that from November 1, 1960, through October 31, 1963 the manual required a three-year period of satisfactory service with no NJP and that from November 1, 1963, through December 31, 1979, the manual required a four-year period with no NJP. CGPC stated that on the day a member is taken to mast, his period of eligibility for the Good Conduct Medal ends and a new period of eligibility commences the next day.

CGPC stated that the application should be denied because it is not timely since the applicant should have known that he had not received a Good Conduct Medal upon his release from active duty in 1964. Regarding the merits of the application, CGPC stated that the applicant's record "does not substantiate his eligibility for the Coast Guard Good Conduct Medal," because he was awarded NJP on July 28, 1961. CGPC stated that the applicant's assertions are not supported in the record, which is presumptively correct. Moreover, because of the applicant's delay in filing his application, "the Coast Guard is unable to further expand upon [the circumstances of the NJP] beyond the documentation contained in the applicant's personnel record."

CGPC stated that because of the NJP on July 28, 1961, the applicant's eligibility period for a Good Conduct Medal reset on July 29, 1961. Therefore, upon his release from active duty on July 10, 1964, he had not served the required period of continuous active duty to earn the

medal. CGPC noted that the Medal and Awards Manual “precludes including the inactive duty (reserve) time accrued subsequent to the applicant’s release from active duty toward his Good Conduct Medal eligibility.” In addition, CGPC noted that the applicant did not qualify for a Reserve Good Conduct Medal.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 29, 2008, the applicant submitted a response to the Coast Guard’s advisory opinion. He argued that he could not have submitted his application any earlier because he did not know that it was possible to do so. The applicant stated that even if the Board does not award him the Good Conduct Medal based on his statement of the facts, he hopes that the board will at least amend the Page 7 to remove the phrase, “Creating a disturbance in the barracks and ...”

APPLICABLE REGULATIONS

Enclosure 11 to the Coast Guard Medal and Awards Manual (COMDTINST M1650.25C) states that from November 1, 1960, to October 31, 1963, to receive a Good Conduct Medal, a member must have accrued three years of continuous active duty in either the regular Coast Guard or the Reserve with no NJP. From November 1, 1963, to December 31, 1979, a member must have accrued four years of continuous active duty with no NJP allowed to receive the award. In addition, during this era the member could not receive a single proficiency, leadership, or conduct mark lower than 3.0. Under Chapter 5.A.1.a.(2)(c) of the manual, when NJP is awarded the eligibility period for the medal is terminated and restarts the next day. Chapter 5.A.1.a.(1)(a) disallows crediting reservists’ inactive duty or short periods of active duty for training but states that if a reservist serves on continuous active duty for at least three months, that period “may be counted.”

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 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error in his record.¹ The applicant alleged that it was error and injustice to deny him a Good Conduct Medal, but he knew or should have known that he had not been awarded a Good Conduct Medal upon his release from active duty in 1964 or upon his discharge from the Reserve in 1966. Therefore, his application was untimely.
3. Pursuant to 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application 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 to determine whether the interest of justice supports a waiver

¹ 10 U.S.C. § 1552(b).

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.”²

4. The applicant alleged that he could not have submitted his application earlier because he did not know about the BCMR. He alleged that he learned about the BCMR only recently when he contacted the Master Chief Petty Officer of the Coast Guard about his desire for a Good Conduct Medal. However, there was nothing to prevent the applicant from making the same inquiry and thereby learning about the BCMR in the 1960s, 1970s, 1980s, or 1990s. Therefore, his explanation for his long delay is not compelling.

5. Regarding the merits of the case, the Board finds that the applicant’s claim has little likelihood of succeeding. The Board begins its review of each case presuming that the applicant’s military record is correct, and the applicant bears the burden of proving that the record is incorrect by a preponderance of the evidence.³ The applicant in this case has submitted no evidence whatsoever to support his allegations of innocence or of his mistreatment by his roommates, the legal officer, and the CO with respect to the charges laid against him and the NJP awarded on July 28, 1961. In addition, the Board is not convinced by the applicant’s argument that his NJP of four days’ extra duty was disproportionate to his offense.

6. Because of his NJP on July 28, 1961, the applicant’s eligibility period for the Good Conduct Medal was terminated and restarted on July 29, 1961.⁴ Therefore, he could not have earned a Good Conduct Medal unless he served satisfactorily on continuous active duty for four years past that date—i.e., until July 28, 1965—since the eligibility period for the medal was extended from three years to four years on November 1, 1963.⁵ The applicant did not serve on active duty through July 28, 1965. Instead, although he was recommended for reenlistment, he elected to be released from active duty about one year earlier, on July 10, 1964. Nor is there any evidence that the applicant served on extended active duty as a reservist prior to his discharge from the Reserve on July 11, 1966.

7. Given the lack of a good reason for the applicant’s long delay in submitting his application and the lack of evidence supporting his allegations of error and injustice, the Board finds that it is not in the interest of justice to waive the statute of limitations. The application should be denied.

[ORDER AND SIGNATURES APPEAR ON FOLLOWING PAGE]

² *Allen v. Card*, 799 F. Supp. 158, 164-5 (D.D.C. 1992). See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

³ 33 C.F.R. § 52.24(b).

⁴ Medals and Awards Manual, COMDTINST M1650.25C, Chapter 5.A.1.a.(2)(c).

⁵ *Id.* at Enclosure 11.

ORDER

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

