

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-030

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 November 30, 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 August 14, 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 asked the Board to correct her discharge form, DD 214, to show that she is entitled to a Purple Heart Medal for injuries she sustained while serving on active duty in the Coast Guard in 1973 and 1974. She stated that she underwent surgery for these injuries in Petaluma, California. The applicant provided no explanation for her delay in seeking the medal.

SUMMARY OF THE APPLICANT'S RECORD

On August 4, 1973, the applicant enlisted in the Coast Guard. Upon completing recruit training, she advanced to seaman apprentice (SA; pay grade E-2) and was sent to [REDACTED] "A" School in Petaluma, California. While attending "A" School, the applicant sought treatment for stomach pain, which began after she lifted a 45-pound pot in the school's galley. She was diagnosed with and underwent surgery to repair an inguinal hernia.

The applicant was disenrolled from "A" School due to a "lack of petty officer potential" and assigned to the [REDACTED]. From May through August 1974, she committed a variety of offenses for which she was taken to mast and awarded nonjudicial punishment (NJP) five times: being absent without leave, wearing unauthorized ribbons, using disrespectful language, possessing marijuana, failing to report for duty, and willfully damaging government property.

On September 4, 1974, the Executive Officer of the [REDACTED] counseled the applicant about deficiencies in her conduct and performance of duties and advised her that, unless her conduct and performance improved, she would be “recommended for a discharge by reason of unfitness.”

On September 6, 1974, the Commanding Officer (CO) of the [REDACTED] recommended to the Commandant that the applicant be discharged for unfitness “due to frequent involvement of a discreditable nature with civil and military authorities.” The CO listed the applicant’s NJPs and noted various other offenses, such as selling a vehicle to which she did not have title; not paying her long-distance telephone charges; and refusing to purchase a uniform even though she had been advanced pay and two days of liberty to do so. The CO noted that the applicant “has stated [her] intention to remove [her]self from the Coast Guard by any means. [She] has been counseled regarding discharge for unfitness and [she] is agreeable to such action. ... It is this command’s opinion that [she] is untrustworthy and lacks potential for adequate service in the Coast Guard. [She] lacks motivation and initiative to remedy [her] problems or carry out assigned duties.”

On September 11, 1974, the applicant was notified of the proposed “General Discharge by reason of unfitness ... [due to] frequent involvement of a discreditable nature with civil and military authorities.” The applicant signed an acknowledgement of the notification and stated that she was “in substantial agreement with the recommendation.”

On September 12, 1974, the applicant underwent a physical examination pursuant to her pending discharge. The doctor noted her hernia operation but found that she was medically qualified for separation.

On October 2, 1974, the Commandant ordered the CO of the [REDACTED] to discharge the applicant for unfitness under Article 12-B-12 of the Personnel Manual. On October 4, 1974, the applicant received a General Discharge Under Honorable Conditions “due to unfitness.” Her DD 214 shows that she is entitled to wear the National Defense Service Medal.

VIEWS OF THE COAST GUARD

On March 18, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant’s request based on the findings and analysis of the case provided in a memorandum prepared by the Coast Guard Personnel Command (CGPC).

CGPC noted that the application is untimely. Regarding the merits of the case, CGPC stated that the record does not substantiate the applicant’s claim of eligibility for a Purple Heart Medal. CGPC stated that the precipitating factor for her inguinal hernia was lifting a heavy pot in the training center’s galley. Moreover, she never served in a combat zone or in any such operation wherein she could have become eligible for the medal.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 19, 2008, the BCMR sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. No response was received.

APPLICABLE LAW

Article 2.A.11.a. of Commandant Instruction M1650.25D, the Coast Guard's Medals and Awards Manual, states that a Purple Heart Medal

[m]ay be awarded ... to any member of the U.S. Coast Guard ... who ... has been or may hereafter be wounded or killed in any action against an enemy of the United States; 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; 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; as a result of an act of any hostile foreign force; as the indirect result of enemy action ... ; or as the result of maltreatment inflicted by captors while a prisoner of war. ...

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 after the applicant discovers the alleged error in her record. 10 U.S.C. § 1552(b). The applicant knew or should have known that she had not been awarded a Purple Heart Medal upon her discharge in 1974. Therefore, her application is 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 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.
4. The applicant failed to explain or justify her long delay in seeking the Purple Heart Medal. Moreover, a cursory review of the record indicates that there is no merit in her claim. Although she suffered an inguinal hernia while lifting a cooking pot during training and underwent corrective surgery, her injury did not meet any of the criteria for a Purple Heart Medal under Article 2.A.11.a. of the Medals and Awards Manual. She never served in a combat zone or faced an enemy force. She was medically qualified for separation and discharged because of her "frequent involvement of a discreditable nature with civil and military authorities."
5. Accordingly, it is not in the interest of justice to waive the statute of limitations in this case, and the applicant's request should be denied.

ORDER

The application of former SA xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is denied.

