

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-037

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 December 7, 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 his discharge form, DD 214, to show that he received the Armed Forces Expeditionary Medal for his service during the Cuban Missile Crisis in October 1962. He alleged that in October 1962, he was serving aboard the Coast Guard cutter [REDACTED], which was deployed on an ocean station weather patrol. After arriving at the station, the cutter received orders to go on wartime alert, and the crew remained in that status until late October or early November, when the Cuban Missile Crisis alert ended. The applicant further alleged that he became aware of his possible eligibility for the award on February 12, 2007.

SUMMARY OF THE APPLICANT'S RECORD

On June 28, 1961, the applicant enlisted in the Coast Guard for a term of four years. On November 7, 1961, after completing recruit training, he was transferred to the [REDACTED], where he served until October 7, 1963 (except for a ten-day absence without leave (AWOL) from November 17 to 27, 1961). From October 7, 1963, to July 7, 1965, the applicant was assigned to the Coast Guard's radio station in [REDACTED]. On July 7, 1965, he was released to inactive duty in the Reserve with an honorable character of service.

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 applicant was assigned to the *Rockaway* from November 7, 1961, to October 6, 1963. CGPC stated that under Article 5.B.2. of the Medals and Awards Manual, the determination of which units or operations are entitled to the Armed Forces Expeditionary Medal is made by the Joint Chiefs of Staff, and those units and operations are listed in Enclosure 15 of the manual. For the Cuban Missile Crisis, the Joint Chiefs of Staff authorized the medal only for those servicemembers who served in the area bounded by latitudinal lines 12°N and 28°N and longitudinal lines 66°W and 84°W between October 24, 1962, and December 31, 1962. The list of Coast Guard vessels that served in that area during that period does not include the *Rockaway*. CGPC further stated that a review of the applicant's record does not reveal that he is entitled to the Armed Forces Expeditionary 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 him to respond within 30 days. No response was received.

APPLICABLE LAWS

Commandant Instruction M1650.25D, the Coast Guard's Medals and Awards Manual, contains the rules governing the eligibility of Coast Guard members for various awards and medals. Article 5.A.8.a. of the manual provides the eligibility requirements for the Armed Forces Expeditionary Medal (AFEM), as follows:

The AFEM may be awarded to personnel of the Armed Forces of the United States who:

- (1) Participate, or have participated, as members of United States military units in a United States military operation in which, in the opinion of the Joint Chiefs of Staff, personnel of any military department participate in significant numbers.
- (2) Encounter, incident to such participation, foreign armed opposition, or are otherwise placed, or have been placed, in such position that, in the opinion of the Joint Chiefs of Staff, hostile action by foreign armed forces was imminent even though it did not materialize.

Additional criteria are listed in Article 5.A.8.d. Enclosure (15) to the manual lists the vessels, flight crews, and shore units whose personnel are entitled to the Armed Forces Expeditionary Medal because of their involvement in "Cuban Operations" from October 24 to December 31, 1962. The area of operations is defined as "between 12°N and 28°N latitude and between 66°W and 84°W longitude." The list of vessels whose crews are entitled to the Armed Forces Expeditionary Medal in Enclosure (15) does not include the *Rockaway*.

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. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. Under 10 U.S.C. § 1552(b), an application to the Board must be filed within three years after the applicant discovers the alleged error in his record. The Board's rules at 33 C.F.R. § 52.22 state that an

application for correction of a record must be filed within three years after the applicant discovered or reasonably should have discovered the alleged error or injustice. If an application is untimely, the applicant shall set forth reasons in the application why it is in the interest of justice for the Board to consider the application. An untimely application shall be denied unless the Board finds that sufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file timely.

4. Although the applicant alleged that he did not become aware of his eligibility until February 2007, more than forty years have passed since he was released from active duty, and nothing prevented him from learning of his eligibility for the award at an earlier date. The Board finds that the application was untimely.

5. 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. See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

6. The applicant did not explain his long delay in inquiring about his eligibility for a medal. Moreover, a cursory review of the merits of this case indicates that the crew of the [REDACTED] did not meet the criteria for an Armed Forces Expeditionary Medal during the Cuban Missile Crisis because the [REDACTED] is not listed as one of the qualifying vessels in Enclosure (15) of the Medals and Awards Manuals. In addition, the applicant submitted no evidence to support his claim that the crew of the [REDACTED] met the criteria for the medal listed under Article 5.A.8. of the manual.

7. 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. However, if within 180 days of the date of this decision, the applicant submits substantial evidence to prove that the crew of the [REDACTED] met the criteria for the Armed Forces Expeditionary Medal during the Cuban Missile Crisis, in accordance with Article 5.A.8. of the Medals and Awards Manual, the Chair will docket the case for further consideration.

ORDER

The application of former xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his Coast Guard military record is denied.

