

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

Application for Correction
of the Coast Guard Record of:

BCMR Docket No. 2008-104

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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 application on April 18, 2008, upon receipt of the applicant's completed application, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated December 17, 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 the Board to correct his record to show that he earned the Good Conduct Medal during his period of service from August 27, 1943 to February 12, 1946. The applicant believes that he was not awarded the Good Conduct Medal because of a captain's mast he received during "A" school. The applicant's military record shows that he was punished at captain's mast on June 30, 1945 and that he received 3.5 in conduct as a result of the captain's mast.

The applicant stated that he is 82 years old and regrets not receiving this award. He asserted that he has led an exemplary life since his discharge and that he had spent 41 years in banking and retired in that field as a regional vice president.

The applicant did not list the date on which he discovered the alleged error but asked that his delay in bringing this application be excused for the reasons stated above.

VIEWS OF THE COAST GUARD

On September 9, 2008, the Board received an advisory opinion from the Judge Advocate General (JAG) of the Coast Guard. The JAG requested that the Board accept the memorandum from Commander, Coast Guard Personnel Command as the advisory opinion.

CGPC recommended that the Board deny relief. In recommending denial of relief, CGPC noted that the application was untimely and that the applicant had failed to provide any justification for delay in bringing his claim. CGPC stated that if the Board decides to waive the three-year statute of limitations and consider the application on the merits, it should still be denied for the following reasons:

A complete review of the applicant's record confirms that the applicant enlisted in the Coast Guard on August 27, 1943 . . . and was discharged 2 years, 5 month and 16 days later on February 12, 1946 . . . Regardless of the applicant's conduct or non-judicial punishment he does not meet the minimum 3 year continuous active duty requirements specified in the Medal and Awards Manual¹ . . . for the award of the Good Conduct Medal.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 12, 2008, the Board sent a copy of the Coast Guard views to the applicant for a response. The Board did not receive a response from the applicant.

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. The application was not timely.

2. To be timely, an application for correction must be filed within three years of the date the alleged error or injustice was, or should have been, discovered. See 10 U.S.C. § 1552, 33 CFR § 52.22. The applicant did not state the date on which he discovered the alleged error or injustice. Therefore, his application is untimely by approximately 59 years past the statute of limitations.

3. However, 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 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 stated that it is in the interest of justice to waive the statute of limitation in his case due to his age, the fact that he has been an upstanding citizen for more than 41 years,

¹ Enclosure (11) to Article 5.A.1. of the Medal and Awards Manual states that during the period from July 1, 1934 through and including June 30, 1947, three years of continuous active duty is required to be entitled to the award of the Coast Guard Good Conduct Medal, as well as a 4.0 in conduct.

and his regret for committing the misconduct that he believes led to his not receiving the award. However, none of the reasons given by the applicant explains why he could not have acted sooner. The applicant has not provided the Board with a persuasive reason to excuse his untimeliness.

5. However, the Board must still perform a cursory review of the merits in deciding whether it is in the interest of justice to waive the statute of limitations. With respect to the merits, the Board finds that the applicant is not likely to prevail. The applicant did not meet the eligibility requirements for a good conduct award at the time of his discharge. In this regard, at the time of his discharge, the applicant had served on active duty only for 2 years, 5 months, and 16 days when 3 years of continuous service was required to earn the Good Conduct. In addition, he did not have the required 4.0 average in conduct due to the 3.5 mark he received after being punished at captain's mast. See Enclosure (11) to Article 5.A.1. of the Medals and Awards Manual. Accordingly, the applicant has put forth no evidence that the Coast Guard committed an error and/or injustice by not awarding the Good Conduct Medal to him.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former RM3c xxxxxxxxxxxx, xxxxxxxxxxxx, USCGR, for correction of his military record is denied.

