

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-133

**XXXXXXXXXXXXXX
XXXXXXXXXXXXXX**

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 May 20, 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 February 12, 2009, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct his record to show that he earned the Armed Forces Expeditionary Medal (AFEM) for his participation as a member of the Boarding team aboard USCGC Rush that interdicted and seized 15 tons of cocaine in March/April 2001. He stated that immediately after completion of the operation, he was separated from the Coast Guard and therefore did not received consideration for this award.

The applicant alleged that he did not discover the alleged error until April 1, 2008. He stated that it is in the interest of justice for the Board to consider his application because receipt of the AFEM would enhance his opportunity for an appointment with a law enforcement unit.

The applicant enlisted in the Coast Guard on July 24, 2000, and was honorably discharged on April 12, 2001 by reason of unsuitability due to financial irresponsibility.

VIEWS OF THE COAST GUARD

On October 14, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief, as recommended by the Commander, Coast Guard Personnel Command (CGPC) in a memorandum attached to the views of the Coast Guard.

CGPC noted that the application was not timely. The JAG further stated that according to Article 5.A.8. of COMDTINST 1650.2D (the Medals and Awards Manual) the criteria for an AFEM are:

- (1) Participate or have participated, as members of the 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 joints Chiefs of Staff of staff, hostile action by foreign armed forces was imminent even though it did not materialize.

The JAG stated that Enclosure (15) to the Medal and Awards Manual lists the Coast Guard vessels, units, and special flights that are eligible for the AFEM and the USCG RUSH, to which the applicant was assigned at the time, is not listed.

The JAG stated that contrary to the applicant's allegation that he was part of a boarding team directly involved with a drug interdiction operation, his record does not note any such involvement or any requisite qualifications to be assigned to such a boarding team. The JAG further stated that the events that the applicant described do not meet the standards required for the AFEM.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 13, 2008, the Board sent the applicant a copy of the views of the Coast Guard for a reply. The Board did not receive a reply to the views of the Coast Guard.

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 submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the 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 stated that he discovered the alleged error or injustice on April 1, 2008. However, the applicant should have been aware at the time of his discharge from the Coast Guard, on April 12, 2001, that he had not received the AFEM. Therefore, his application was submitted approximately 4 years past the statute of limitations.
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 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 and consider his application because he was told in April 2008 that he qualified for the AFEM when applying for a position with the Bureau of Land Management and that receipt of the Medal would enhance his employment opportunity. However, the applicant's reason for waiving the statute is not persuasive. Further, the merits of the application suggest that the applicant is not likely to prevail.

5. According to CGPC, pursuant to Enclosure (15) of the Medals and Awards Manual, the USCGC Rush, to which the applicant was assigned at the time, is not listed as a unit authorized to receive the AFEM. Nor, according to CGPC, is there any evidence in the applicant's military record that he participated or was qualified to participate in an interdiction operation. The applicant has not presented a regulation, policy, or evidence to contradict the CGPC in this regard.

6. Accordingly, the application should be denied because it is untimely and because it lacks merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

