

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2011-058

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

FINAL DECISION ON RECONSIDERATION

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 for reconsideration upon receipt of the applicant's completed application on December 20, 2010, and subsequently prepared the final decision as required by 33 CFR § 52.61(c). The application on reconsideration was assigned Docket No. 2011-058.

This final decision, dated August 18, 2011, 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 ALLEGATION

As in the original proceeding, the applicant asked the Board on reconsideration to correct his record to show that he received a Purple Heart Medal for injuries suffered during combat in Vietnam.

ORIGINAL PROCEEDING - BCMR No. 1999-079

In his original application, the applicant stated that he suffered burns to the right side of his body and knee from a machine gun barrel that he operated during combat operations in Vietnam. He stated that he reported the injury to his executive officer. His military record showed that he served for 8 months and 16 days in the Republic of Vietnam. However, his military record did not show that he was injured during combat or that he was treated for a combat related injury. The Coast Guard was unable to locate his medical record.

In the Coast Guard advisory opinion for the original application, the Office of the Chief Counsel of the Coast Guard (currently referred to as the Office of the Judge Advocate General (JAG)) stated that according to Article 2.B.11. of the Medals and Awards Manual, the Commandant may award the Purple Heart to a member who is wounded while serving in the Coast Guard, 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. The Chief Counsel also noted that

the wound for which the award is made must have required medical treatment. The Chief Counsel noted the lack of evidence in the applicant's military record supporting his claim that he was injured during combat in Vietnam and the lack of evidence that he received medical treatment for an injury. Therefore, the Chief Counsel recommended that the Board grant relief on the condition that the applicant provide evidence that he was injured during combat and explain why he did not receive medical treatment for his injury.

On the issue of timeliness, the Chief Counsel stated that despite the fact the statute of limitations has run in the case, it would be an injustice to deny relief if the applicant did, in fact, sustain the combat injuries alleged.

In response to the advisory opinion in Docket No. 1999-079, the applicant submitted a statement from then ex-spouse. She stated that in 1970, prior to their divorce, during a period of rest and recreation the applicant showed her his burns and said they were the result of combat action. She stated that he still had the scars when he returned home. The applicant stated the he did not receive medical treatment because there was no medical officer available to treat his wounds at that time.

On December 9, 1999, the Board issued a final decision denying the applicant's request for the Purple Heart. The Board determined that the application was untimely. In this regard, the applicant was discharged in 1971 and did not file his application with the Board until 1999, thereby exceeding the Board's 3-year statute of limitations. The Board also found that it was not in the interest of justice to excuse the untimeliness because the applicant failed to provide a persuasive reason for not filing his timely application sooner and because he failed to show that he was likely to prevail on the merits of his claim for the Purple Heart because he did not provide evidence that he received medical treatment for his injury. The Board concluded the decision with the following two findings:

5. [Due] to the passage of time, the applicant's less than compelling reasons for the 27 year delay, and the lack of evidence establishing that he meets the requirements for the Purple Heart, the Board finds that it is not in the interest of justice to waive the statute of limitations in this case.
6. Accordingly, the case is denied for untimeliness and for failure to demonstrate any error or injustice.

CURRENT APPLICATION ON RECONSIDERATION BCMR No. 2011-058

Since the denial of his application in 1999, the applicant has submitted several requests for reconsideration of the Purple Heart issue. On November 9, 2010, the Chair informed the applicant that his most request for reconsideration was granted because he had submitted new evidence from his then-commanding officer (CO) verifying that he received injuries during a combat operation in Vietnam and that he received medical treatment from a fellow shipmate under the direction of the executive officer because the cutter did not have a medical officer. The CO wrote the following:

I write in support of the [applicant's] request for the award of the Purple Heart . . . [The applicant] was a member of the crew of the [REDACTED] during the time in which I served as [Grain]'s [CO]. As a unit of Coast Guard Squadron One, Division 13, we patrolled various areas of the Mekong Delta during the fall of 1969 and spring of 1970. During one of these patrols, then [the applicant] serving as a .50 caliber machine gunner, received burns on multiple areas of his body as a result of combat operations. These burns were diagnosed by me and the cutter's executive officer (XO) (who also carried the designation as unit "medical officer") as being moderately severe (first and second degree), but not warranting a medical evacuation. These burns were treated over the course of the remaining patrol period by [the applicant] and the [cutter's] cook, who was trained in first aid and held the General Quarters billet of first aid responder (i.e. medic). Treatment was provided with my knowledge and with the oversight of the [XO]. No other form of medical attention was available to [the applicant].

The applicant also requested to be awarded the Expert Pistol Shot Medal, which the Coast Guard already administratively granted to the applicant. A DD 215 has been issued to the applicant showing that he earned the Expert Pistol Shot Medal. Therefore, the issue with regard to the Expert Pistol Shot Medal is moot and will not be addressed further in this decision.

VIEWS OF THE COAST GUARD

On July 25, 2011, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief in accordance with a memorandum from the Commander, Personnel Service Command (PSC).

PSC stated that it was within the limits of the Medals and Awards Manual to grant the applicant's request for the Purple Heart. PSC based its recommendation upon the letter from the applicant's CO. In this regard, PSC stated the following:

2. This determination [to recommend relief] is made based upon the narrative dated June 28, 2011, provided by the applicant's then [CO] . . . in that the applicant did in fact receive medical care from a medical officer.
3. According to [the Medical Manual], Chapter 9.A.2.b. . . . "In the absence of a permanently attached medical officer, the vessel's [XO] will have direct responsibility for medical matters when no medical officer is attached to the vessel.
4. In the applicant's case, there was no permanently attached medical officer to the cutter. . . . As such, the vessel's [XO] assumes this capacity. As the account provided by the applicant's [CO] states that the vessel's [XO] provided oversight, diagnosis, and care, the question now focuses on a lack of physical documentation of the injury having been entered in the applicant's record.

5. The absence of medical documentation of the injury in question is clearly administrative in nature. The lack of specific medical documentation under extreme combat actions as this applicant faced should not invalidate the injury incurred. Moreover, eye witness accounts in the form of first-hand testimony from the applicant's chain of command are a reasonable attestation that the applicant suffered an injury by hostile enemy action during combat operations. In this particular case, the applicant has met his burden to substantiate a claim for the Purple Heart.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 29, 2011, the Board received the applicant's response to the views of the Coast Guard and he agreed that he should be entitled to relief.

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.

2. Although the Board found that the applicant's original application was untimely and that it was not in the interest of justice to excuse the untimeliness, this Board upon reconsideration modifies that ruling and finds that it is in the interest of justice to excuse the untimeliness and consider the application on the merits. In this regard, the Board notes that the advisory opinion in the original application stated that it would be an injustice not to correct the applicant's record if he in fact sustained combat injuries as alleged. However, in the original case, the applicant did not prove by a preponderance of the evidence that he sustained combat injuries that required treatment by a medical officer, a requirement for the Purple Heart. However, since that decision, the applicant has obtained sufficient evidence that supports his claim for the Purple Heart. In light of this new evidence, the Board agrees with the then-Chief Counsel and finds that it would be a serious injustice to deny the Purple Heart to a service member who was injured in combat. The Board also notes that neither the JAG nor PSC objected to granting relief on reconsideration.

3. With regard to the merits, the Board agrees with the advisory opinion on reconsideration and finds based upon the statement from the applicant's CO, that as a result of combat operations, the applicant received burns on multiple areas of his body while operating a .50 caliber machine gun. The CO also stated that he and the XO diagnosed the applicant's burns as being moderately severe but not warranting a medical evacuation and that the applicant was treated for the burns by the cutter's medic, under the oversight of the XO.

4. PSC stated that because there was no medical officer assigned to the cutter, the XO served in that capacity according to Article to 9.A.2.b of the Medical Manual.

5. The Board finds that the applicant has proved by a preponderance of the evidence that he suffered burns to his body during combat operations in Vietnam for which he received medical treatment. Therefore, he meets the requirements for the Purple Heart.

6. Accordingly the applicant is entitled to relief.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXXXXXXXXXXXX for correction of his military record is granted. His record shall be corrected to show that he is entitled to wear the Purple Heart Medal for injuries sustained in combat operations in Vietnam.

