

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2011-230**

**XXXXXXXXXXXX**

EN3 (former)

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**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 after receiving the applicant's completed application on August 26, 2011, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c), with the assistance of D. Hale.

This final decision, dated May 17, 2012, 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, who was honorably discharged on November 2, 1973, asked the Board to correct his record to show that he is entitled to the awards and medals that were authorized for his unit after his discharge from the Coast Guard. He also specifically requested the Good Conduct Medal (GCM), Sea Service Deployment Ribbon, and weapons qualification medals.

The Coast Guard has already corrected the applicant's record to show that he earned the Sea Service Ribbon, the Expert Rifle Medal and the following awards:

- Navy Unit Commendation Ribbon
- Navy Combat Action Ribbon
- Republic of Vietnam Meritorious Unit Commendation with Gallantry Cross
- Republic of Vietnam Meritorious Unit Commendation Civil Action Ribbon
- Vietnam Service Medal with 2 Bronze Stars
- Republic of Vietnam Campaign Medal
- Overseas Service Ribbon

Therefore, issues are now moot with regard to applicant's entitlement to the awards already granted by the Coast Guard. However, the issue with regard to the GCM is still before the Board because the Coast Guard stated in the advisory opinion that the applicant was not entitled to the GCM.

The applicant stated that he discovered the alleged errors on November 2, 1973, and July 29, 2011. He argued that if more than three years have passed since the alleged error or injustice was discovered, it is in the interest of justice to consider his application because he did his “duty stateside as well as Vietnam and could have been injured or killed.”

## **VIEWS OF THE COAST GUARD AND APPLICANT’S RESPONSES**

On November 29, 2011, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the application be administratively closed because the Coast Guard had corrected the record through the issuance of a DD 215 to show that the applicant is entitled to the awards mentioned above. However, the GCM was not listed on the DD 215.

On January 3, 2012, the Chair sent a copy of the Coast Guard’s views to the applicant. On January 23, 2012, the Board received the applicant’s response to the advisory opinion. In his response, he argued that he is entitled to the GCM “because he never received any disciplinary action or any adverse counseling.” He stated that he is entitled to the Expert Pistol Medal because he qualified with the pistol at Otis Air Force Base at the same time he qualified with the rifle. The applicant also submitted an illegible copy of a newspaper article which allegedly shows that he was a Ceremonial Honor Guard.

On January 27, 2012, the Chair sent the applicant’s response to the advisory opinion to the Coast Guard for a supplemental advisory opinion to specifically address the issues related to the GCM, Ceremonial Honor Guard award, and the Expert Pistol Medal.

On January 27, 2012, the Coast Guard submitted a supplemental advisory opinion, in which it stated that the applicant was not entitled to the GCM because under Chapter 5.A.2.a. of the Coast Guard Medals and Awards Manual (MAM), the GCM is awarded to members who have satisfactorily completed three years of creditable service,<sup>1</sup> and that the requisite period of service is broken when a member is awarded NJP. The advisory opinion stated that because the applicant received non-judicial punishment on August 10, 1970, less than three years after enlisting, his entitlement to the GCM was terminated. With regard to the Expert Pistol Medal, the advisory opinion stated that the applicant’s record does not support entitlement to the medal. The advisory opinion also noted that there is no medal or award for a member’s participation in the Ceremonial Honor Guard.

On April 10, 2012, the applicant responded to the supplemental advisory opinion and again stated that he qualified for the Expert Pistol Medal at Otis Air Force base in October 1973.

## **APPLICABLE REGULATIONS**

Enclosure (11) to the Medals and Awards Manual, COMDTINST M1650.25D, states that from November 1963 through December 1979, to receive a GCM, a member had to complete four consecutive years of service with no court-martial, no NJP, no misconduct, and no civil

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<sup>1</sup> The Board notes that 3 consecutive years with no misconduct is the current standard for the GCM, but from November 1963 through December 1979, 4 consecutive years with no misconduct were required. COMDTINST M1650.25D, Enc. (11).

conviction for an offense involving moral turpitude, as well as minimum average marks of 3.0 for proficiency, leadership, and conduct.

Since 1980, a GCM has required three consecutive years with no court-martial or equivalent civil conviction, no NJP, no misconduct, a performance factor average in each marking period of not less than 3.0 in any factor, and no conduct characteristic mark less than 4.0.

## **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 issue before the Board is whether the applicant's record should be corrected to show that he is entitled to the GCM, Expert Pistol Medal, and a Ceremonial Honor Guard award.

2. The Board has jurisdiction concerning this matter pursuant to 10 USC § 1552.

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 or injustice. The applicant stated that he discovered the error on November 2, 1973 and on July 29, 2011. However, he failed to explain how the discovery occurred on two different dates approximately 38 years apart. The applicant was aware (or should have been) at the time of his discharge in 1973 that he had not received the a GCM, the Expert Pistol Medal, or a Ceremonial Honor Guard award because neither is listed in the "decorations, medals, etc." block the DD Form 214 that he received at the time of discharge and that he acknowledged with his signature. Therefore, his application is untimely by approximately 38 years.

4. 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. The applicant argued that the Board should excuse his untimeliness because he served in Vietnam and "could have been injured or killed." However, this explanation does not explain why he could not have filed his application within three years of his discharge. Therefore, the applicant's argument in favor of excusing his untimeliness is not persuasive.

5. Although the application is untimely, the Board must still perform a cursory review of the merits to determine whether it is the interest of justice to waive the statute of limitations. 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 164-65; see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

6. The Board has conducted a cursory review of the merits in this case and finds that the applicant cannot prevail because he did not meet the regulatory requirements for the GCM. In this regard, Enclosure (11) to the Medals and Awards Manual required that members perform four consecutive years of active duty between November 1, 1963 and December 31, 1979 without misconduct or NJP to be eligible for the GCM. The applicant served on active duty for

approximately four years from November 3, 1969 to November 2, 1973 but received an NJP on August 10, 1970. Therefore, he was not eligible for the GCM during his period of service because he did not serve for four consecutive years without an NJP.

7. In addition, the applicant's military record does not support the applicant's claim that he is entitled to the Expert Pistol Medal and he has not presented sufficient evidence to prove otherwise. Nor is the applicant entitled to an award for serving as a Ceremonial Honor Guard because no such award exists.

8. Accordingly, the applicant's request should be denied because it is untimely and because it is not in the interest of justice to excuse the untimeliness.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

The application of former EN3 XXXXXXXXXX, xxx xxx, USCG, for correction of his Coast Guard military record is denied.

