

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-125

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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 upon receipt of the applicant's completed application on April 17, 2012, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated February 1, 2013, is 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 served as a watertender second class (WT2c) in the Coast Guard during World War II and died on June 15, 2012, after submitting his application to the Board, asked the Board to correct his record to show that he received a Purple Heart Award for a head injury he received when his ship, the USS MENGES, was torpedoed on May 3, 1944. The applicant stated that he hit his head against the hull of the ship, which cracked his skull and knocked him unconscious. The applicant admitted that he has known of this error in his record for more than three years but argued that it is in the interest of justice for the Board to excuse the untimeliness of his application because he meets the "revised criteria for the award of the Purple Heart."

In support of these allegations, the applicant submitted a copy of a Navy citation, which shows that the applicant was awarded the Navy and Marine Corps Medal for his heroism on May 3, 1944. The citation states that after the ship was torpedoed by a German U-boat, the applicant "with courage and initiative, assisted in removing two badly wounded men from the wreckage in a compartment where the danger from fire or explosion was imminent. In so doing, he voluntarily risked his own safety and probably saved the lives of two men who were two badly injured to save themselves."

The applicant also submitted a copy of a newspaper article which describes how the remains of two torpedoed ships, the USS MENGES and the USS HOLDER, were welded together to create a new ship. The article states that MENGES was "on convoy duty in the Mediterranean" when torpedoes launched by a German U-boat struck the stern. The article

reports that the explosion killed 31 crewmembers and wounded 20 others and that the applicant and one other crewmember received the Navy and Marine Corps Medal for heroism.

SUMMARY OF THE RECORD

The applicant enlisted for three years in the Coast Guard Reserve on July 21, 1942, and immediately began serving on active duty. He underwent training and served at various shore units until he was assigned to the USS MENGES on October 26, 1943. He served aboard the MENGES until he was permanently transferred to Manhattan Beach Station in Brooklyn, New York, on September 8, 1944.

The applicant's military medical records contain no documentation of medical treatment for a head injury incurred in May 1944 but show that on March 27, 1945, he was diagnosed with "reactive depression" at a Naval Hospital on Long Island, New York. A report of this hospital stay notes that the applicant "had been on ship that was torpedoed, lost a buddy, became upset after that. Depressed since May 3, 1944. Gets nervous, flares up at times. Weight was 206, down to 180. Has been at Manhattan Beach since then. Hit over head sufficiently hard to flatten out his helmet (steel), dazed, but unconsciousness was questionable, was just on deck again and a second torpedo hit and threw him up against overhead."

On April 21, 1945, a Medical Board of Survey issued a report stating that the applicant "was first seen 1 March 1945 with complaints of mental depression, insomnia, and startle reaction." The applicant told his doctors that the "[s]ymptoms appeared soon after [the] torpedoing of his ship, the USS MENGES, in May 44." He was "hospitalized at the U.S. Naval Hospital, St. Albans, New York, from 27 March 45 to 17 April 45 for psychiatric rehabilitation." The doctors reported that he remained depressed, was unfit for duty, and should be medically discharged because "treatment under conditions of service will be difficult due to slow development of hostility." They noted that he had "been informed of the Board's findings and does not desire to submit a statement in rebuttal."

On May 9, 1945, the Commander of the 3rd Naval District issued orders for the applicant to be discharged "by reason of physical disability incident to service" pursuant to the report of the Medical Board of Survey. The applicant was honorably discharged on May 17, 1945. His Notice of Separation and other military records show that he was awarded the Navy and Marine Corps Medal for heroism and is also entitled to wear the American Area Campaign Medal and the European-African-Middle Eastern Area Campaign Medal with one star.

VIEWS OF THE COAST GUARD

On September 28, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request for a Purple Heart but instead award him a Combat Action Ribbon.

The JAG stated that the application is untimely. Although the applicant referred to a recent revision of the criteria for a Purple Heart, the JAG alleged that the criteria were last materially altered in 1962.

The JAG noted that the applicant's medical records for March 27, 1945, state that on May 3, 1944, he was hit hard enough on the head to flatten his steel helmet and daze him. However, the JAG stated, one of the criteria for a Purple Heart is that the wound received in combat must have required "treatment by a medical authority," and there are no medical records supporting the applicant's claim that when the ship was torpedoed, he suffered a cracked skull that was treated in a hospital, although there is evidence that the torpedoing of his ship caused the applicant to suffer from "reactive depression."

The JAG argued that the evidence of record is insufficient to warrant waiving the Board's three-year statute of limitations. Moreover, if the Board opts to waive the statute of limitations in this case, the JAG recommended that the applicant's request be denied because, although there is evidence that he hit his head during battle, there is no evidence that he incurred a wound during the torpedoing of the USS MENGES that required medical treatment. In this regard, the JAG noted that in Executive Order 9277, the President authorized the Purple Heart Award for coastguardsmen who were wounded in action against the enemy or as a result of enemy action "provided such wound necessitates treatment by a medical officer."¹ The JAG argued that the applicant has not proved that he met this criterion for a Purple Heart.

However, the JAG stated that the Board should award the applicant a Combat Action Ribbon because he meets the criteria for the ribbon in the Coast Guard Medals and Awards Manual. Although the ribbon was established in 1969, under SECNAVINST 1650.1H, the Secretary of the Navy allows it to be awarded retroactively to December 7, 1941.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the advisory opinion of the Coast Guard, the applicant's son advised the Board that during his father's recent seven-month stay in a veterans' hospital, a representative of the Purple Heart Veterans Service Organization (VSO) told them that the eligibility criteria had been revised two years previously to include veterans who suffered PTSD-like emotional and mental symptoms that were service connected.² The applicant's son also stated that his father told his family many times that he was offered the Purple Heart after his ship was torpedoed but "turned it down as he felt the shipmates who were lost that day and those who sustained more serious physical injuries were more deserving."

APPLICABLE LAW

Purple Heart

On December 3, 1942, the President signed Executive Order 9277, authorizing the Secretary of the Navy "to award the Purple Heart in the name of the President of the United States to

¹ Exec. Order 9277, 7 Fed. Reg. 10125 (Dec. 3, 1942).

² Currently, the Purple Heart may not be awarded for PTSD, but the matter has recently been under consideration by Congress. See David F. Burrelli, *The Purple Heart: Background and Issues for Congress* (Congressional Research Service, Dec. 31, 2012), available at <http://www.fas.org/sgp/crs/natsec/R42704.pdf>.

persons who, while heretofore or hereafter serving in any capacity with the Navy, Marine Corps or Coast Guard of the United States, are wounded in action against an enemy of the United States, or as a result of an act of such enemy, provided such wound necessitates treatment by a medical officer.” In 1944 and 1945, the Coast Guard was operating as part of the Navy pursuant to 14 U.S.C. §§ 1, 3.³

Section 230.9 of SECNAVINST 1650.1H states that the Purple Heart is awarded to members of the Armed Forces who have been wounded in action against an enemy of the United States. Paragraph d of this section states that “the wound for which the award is made must have required treatment by a medical officer at the time of injury,” unless the wound was received while the member was a prisoner of war. It also states that Chapter 8 of the instruction “contains information regarding eligibility determinations for prior service personnel.”

Paragraph a of section 831.1 of SECNAVINST 1650.1H states that to be entitled to a Purple Heart for service “[d]uring World War I, World War II, and the Korean War, an individual must have been wounded as a direct result of enemy action.” Paragraph d states that “[i]f adequate documentation is not available due to the complete or partial loss of an individual’s records, two sworn affidavits from eyewitnesses to the injury, who were present at the time of the injury and have personal knowledge of the circumstances under which the injury occurred, may be submitted for consideration. ...”

Chapter 2.A.11.a. of the current Coast Guard Medals and Awards Manual, COMDTINST M1650.25D, states that the Commandant may award the Purple Heart and “[a] visible injury is not required, provided it was a direct result of any action listed above, and *required treatment by a medical authority* (except in the case of a prisoner of war).” (Emphasis added.)

Combat Action Ribbon

Paragraph b of Section 230.14 of SECNAVINST 1650.1H states that the Combat Action Ribbon may be

(1) Awarded to members of the Navy, Marine Corps, and Coast Guard (when the Coast Guard, or units thereof, operate under the control of the Navy) in the grade of captain/colonel and junior thereto, who have actively participated in ground or surface combat.

(2) The principal eligibility criterion is, regardless of military occupational specialty or rating, the individual must have rendered satisfactory performance under enemy fire while actively participating in a ground or surface engagement.

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(e) Under Public Law 106-65, the CR may be awarded retroactively to 7 December 1941. See Chapter 8 for information regarding retroactive eligibility determinations

Paragraph a of section 831.3 states that “[i]n addition to the criteria in Chapter 2, from 7 December 1941 through 24 May 2006 the following criteria also apply: ... (3) Personnel aboard a ship are eligible when the safety of the ship and the crew was endangered by enemy attack, such as a ship hit by a mine or a ship engaged by shore, surface, air, or sub-surface elements.”

³ The Coast Guard continued to function as part of the Navy until January 1, 1946. Exec. Order No. 9666 (December 28, 1945).

Chapter 2.A.19. of the Coast Guard Medals and Awards Manual provides that the Commandant may award the Combat Action Ribbon to a servicemember “when the U.S. Coast Guard or units thereof operate under the control of the U.S. Navy, in the grade of captain and junior, who have actively participated in ground or surface combat. ... The principal eligibility criteria is that the individual must have participated in a ground or surface combat firefight or action during which the individual was under enemy fire and performance while under fire must have been satisfactory. The Combat Action Ribbon is intended to be restrictive and awarded only in bona fide cases of combat and not as a campaign ribbon.”

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 10 U.S.C. § 1552.
2. 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 in his or her military record. The applicant was discharged without having received a Purple Heart in 1945. Therefore, his application is untimely.
3. 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 (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.”⁴ 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.”⁵
4. Regarding the delay of his application, the applicant explained that he was recently told that he is eligible for a Purple Heart because the criteria for the award have been revised to include PTSD and “PTSD-like emotional and mental symptoms.” However, the applicant is mistaken. The criteria for a Purple Heart have not recently been revised, and awarding the Purple Heart for PTSD and prior equivalent diagnoses has been considered but not authorized by Congress.⁶
5. A cursory review of the merits of the applicant’s request for a Purple Heart shows that his claim cannot prevail. There is no evidence in the applicant’s military and medical records or in his application showing that he sought medical treatment for a wound or injury after his ship was torpedoed on May 3, 1944, but needing medical treatment for a wound or injury was and is one of the criteria for a Purple Heart.⁷ Although there is evidence that the applicant suf-

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁶ *See* David F. Burrelli, *The Purple Heart: Background and Issues for Congress* (Congressional Research Service, Dec. 31, 2012), *available at* <http://www.fas.org/sgp/crs/natsec/R42704.pdf>.

⁷ Exec.Order 9277, 7 Fed. Reg. 10125 (Dec. 3, 1942); SECNAVINST 1650.1H, § 230.9; COMDTINST M1650.25D, Chapt. 2.A.11.a.

ferred from PTSD-like symptoms and was diagnosed with “reactive depression” as a result of the torpedoing of his ship, the Purple Heart is not authorized for these conditions.⁸

6. The Coast Guard, however, has noted that the applicant is entitled to a Combat Action Ribbon, which was established in 1969 but may be awarded retroactively to December 7, 1941. The Board agrees with the Coast Guard that the applicant is clearly entitled to a Combat Action Ribbon because he “rendered satisfactory performance under enemy fire while actively participating in a ground or surface engagement” and he was a member of a crew that “was endangered by enemy attack, such as a ship hit by a mine or a ship engaged by shore, surface, air, or sub-surface elements.”⁹ In fact, the record shows that his performance was so “satisfactory” after his ship was torpedoed on May 3, 1944, that he was awarded the Navy and Marine Corps Medal for heroism.

7. Accordingly, although the applicant’s request for a Purple Heart should be denied because it is untimely and cannot be granted under current law, the Board will waive the statute of limitations for the purpose of granting alternative relief in the form of a Combat Action Ribbon. If the Purple Heart is ever authorized for PTSD, the applicant’s next of kin should promptly apply for reconsideration of his request for that award.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

⁸ See Burrelli, note 6 above.

⁹ SECNAVINST 1650.1H, §§ 230.14 and 831.3; COMDTINST M1650.25D, Chapt. 2.A.19.

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record by the addition of a Purple Heart Award is denied, but the Coast Guard shall correct his record to show that he has been awarded a Combat Action Ribbon because he performed heroically as a crewmember of the USS MENGES when it was torpedoed on May 3, 1944.

