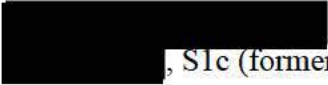



**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-035

, S1c (former)

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 December 31, 2013, and assigned it to staff member  to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 22, 2014, 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 served in the Coast Guard as a seaman (SN) from June 16, 1942, to March 6, 1946, asked the Board to correct his military record to show that he was awarded a Purple Heart for injuries that he sustained when a hatch closed on his hand and when he injured his ear drum after falling 75 feet from his ship's crow's nest.

The applicant did not provide a reason for the lengthy delay in submitting his application.

SUMMARY OF THE APPLICANT'S RECORDS

The applicant enlisted in the Coast Guard on June 16, 1942, and served aboard several different ships and at numerous duty stations. According to his military record he was awarded the American Campaign Ribbon for having served outside of the continental United States; the World War II Victory Ribbon; and a Good Conduct Medal.

The applicant's medical record shows that he was evaluated for a perforated ear drum on July 17, 1944, and that during the exam he stated that he thought the injury occurred when he fell from a crow's nest on December 28, 1942. His record indicates that he was stationed at Coast Guard Station Northport, New York on December 28, 1942. The record also shows that on January 4, 1943, while stationed at Penfield Reef Station in Connecticut, he sustained a fractured leg, lacerations, and abrasions. The records do not state how he sustained these injuries, but show

that he was treated at the U.S. Marine Hospital in Stapleton, New York. There is nothing in the applicant's military record to show that he injured his hand in a hatch or that he was treated for an injury to his hand. On a Medical History Questionnaire dated March 4, 1946, the applicant indicated that he had never been in combat.

On October 8 1986, the applicant sent a letter to the Commandant asking whether he was entitled to medals in addition to his Good Conduct Medal. He did not mention a Purple Heart. He also sought medals from the National Personnel Records Center in 1986 and did not claim entitlement to a Purple Heart.

APPLICABLE LAW

During World War II, the Coast Guard was a part of the Navy. SECNAVINST 1650.1G states that during World War II, the Purple Heart was awarded to members of the Armed Forces who were wounded or killed in action against an enemy of the United States. The instruction states that “[d]uring World War I, and World War II, and Korea [sic], an individual must have been wounded as a direct result of enemy action. During subsequent conflicts (Vietnam and Operation Desert Storm), the individual must have been wounded as a result of enemy action (direct or indirect).”

VIEWS OF THE COAST GUARD

On July 1, 2014, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard Personnel Service Center (PSC) in a memorandum on the case and recommended that the Board deny the applicant's request.

PSC stated that there is evidence in the record that the applicant was treated by medical authorities for a broken leg, lacerations, and abrasions, but that these injuries occurred while he was stationed in Fairfield, Connecticut and were not the result of enemy action. PSC also stated that there is nothing in the applicant's record about an injury to his hand from a hatch or any injuries resulting from a fall from a crow's nest. PSC stated that the applicant has “failed to substantiate any error or injustice” regarding his record.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 2, 2014, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. No response was received.

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 Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.

2. An application to the Board must be filed within three years of the day the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). The applicant was discharged in 1946 and knew that he had not received the Purple Heart at that time. Therefore, the Board finds that the application was filed more than 64 years after the statute of limitations expired and is untimely. The applicant did not explain his delay in submitting his application to the Board.

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

4. The applicant provided no explanation for his failure to request the correction of the alleged error in his record at an earlier date. He has not justified his delay. There is insufficient evidence in the record to support the applicant’s claim that he is entitled to a Purple Heart, which requires that the member be wounded as a direct result of enemy action. SECNAVINST 1650.1G. The record indicates that he sustained some injuries while stationed in Connecticut and was treated by medical personnel, but there is nothing in the record to show that these injuries resulted from enemy action. Also, there is nothing in the record to support the applicant’s claim that he injured his hand in a hatch. Finally, although the record shows that he sustained an injury to his eardrum after a fall from the crow’s nest on a ship, there is no evidence showing he fell as a result of enemy action. Accordingly, the Board finds insufficient evidence that the applicant met the criterion for a Purple Heart during World War II under SECNAVINST 1650.1G to overcome the presumption of regularity. 33 CFR § 52.24(b).

5. In light of the lack of evidence supporting the applicant’s allegation, and his failure to explain his long delay in filing his application, the Board will not excuse its untimeliness or waive the statute of limitations. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former S1c [REDACTED] USCG, for correction of his military record is denied.

August 22, 2014

