

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-139

[REDACTED]
[REDACTED]

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 case after receiving the applicant's completed application on June 25, 2015, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 29, 2016, 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, a former stewardman (TN/E-3) who served on active duty in the Coast Guard from 1956 to 1961, asked the Board to correct his discharge form DD 214¹ to show that he is entitled to wear these awards and decorations:

1. National Defense Service Medal
2. Coast Guard Good Conduct Medal
3. Sea Service Ribbon
4. Cutterman Insignia

The applicant stated that he did not receive any awards or recognition upon his discharge from the Coast Guard in 1961 and alleged that he is eligible for those listed above. He argued that he is eligible for the National Defense Service Medal (NDSM) because it was authorized in 1961 and he was still on active duty in 1961. He alleged that he is entitled to the Coast Guard Good Conduct Medal (GCM) because he did not receive any non-judicial (NJP) punishment during his enlistment and received an honorable discharge. Finally, the applicant argued that he had more than five years of sea service which makes him eligible for the Sea Service Ribbon and the Cutterman Insignia. He noted that the latter became available after he was discharged.

¹ A DD 214 is prepared to document a member's release or discharge from a period of active duty.

In support of his application, the applicant submitted a copy of his DD 214, which does not indicate that he received any decorations, medals, badges, commendations, citations, or campaign ribbons during his Coast Guard service.

Regarding the delay in submitting his application, the applicant argued that the Board should find it in the interest of justice to consider his application because his son recently retired from the Coast Guard and would like to present him (the applicant) with a shadow box containing all of the awards and medals that he earned during his Coast Guard service.

SUMMARY OF THE RECORD

The applicant, who was born in [REDACTED], enlisted in the Coast Guard on October 11, 1955, and after completing recruit training he served as a steward. On June 30, 1956, he reported to the CGC [REDACTED] a 250-foot lake-class cutter, and served aboard the cutter as a steward for more than five years until his discharge in 1961.

The record shows that the applicant was awarded three days of restriction on July 6, 1956, after he was found guilty at mast of violating Article 128 of the Uniform Code of Military Justice (UCMJ) in that he “disobeyed orders.” The record also shows that he received four hours of extra duty on September 10, 1957, after he was found guilty at mast of violating Article 91 of the UCMJ, in that he “did leave the ship after being told to change into the proper uniform.” There is no record of any subsequent misconduct.

The applicant’s marks sheets show that he never received a proficiency, leadership, or conduct mark below 3.0 (on a 4.0 scale).

The applicant’s DD 214 shows that he served on active duty until September 5, 1961, when he received an honorable discharge at the end of his enlistment. He was recommended for reenlistment. There are no decorations or awards listed in block 26 of his DD 214.

APPLICABLE LAW AND REGULATIONS

Chapter 5.B.10.b.(1). of the Coast Guard Medals and Awards Manual states that the NDSM is awarded to members for honorable active service as a member of the Armed Forces for any period (inclusive) from June 27, 1950, to July 28, 1954; and from January 1, 1961, to August 14, 1974.

Enclosure 8 of Chapter 5.B.1. of the Medals and Awards Manual, COMDTINST M1650.25, states that to receive a GCM from July 1953 through July 1958, a member had to have completed three consecutive years of active duty with no court martial convictions and minimum average marks of 3.5 for proficiency and 3.8 for conduct (on a 4.0 scale). From August 1958 through October 1960, a member had to have completed three consecutive years of active duty with no court martial convictions, no more than one NJP, and no conduct mark below 3.0. From November 1960 through October 1963, a member had to have completed three consecutive years of active duty with no court-martial convictions, no NJP, and no proficiency, leadership, or conduct mark below 3.0. 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 mark lower than 4.0.

Chapter 5.A.2.a(2)(C) of the current Medals and Awards Manual states that when an infraction of discipline results in NJP, a new GCM eligibility period will commence the day following the date NJP is awarded.

Chapter 5.A.5.a.(1). of the Medals and Awards Manual states that the Coast Guard Sea Service Ribbon is awarded to active and inactive duty members of the Coast Guard and Coast Guard Reserve or non-Coast Guard personnel who, under temporary or permanent assignment, satisfactorily complete a minimum of 12 months cumulative sea duty. For the purposes of the award, sea duty is defined as duty performed aboard any commissioned Coast Guard cutter 65 feet or more in length.

Chapter 7, Section E.3.a. of the Cutter Training and Qualification Manual, COMDTINST M3502.4I states that permanent entitlement to wear the Cutterman Insignia requires at least five years of sea service from at least two tours of sea duty. Also, the member must be recommended by the chain of command, receive a favorable determination from the commanding officer or officer-in-charge, and complete all of the requirements of the PQS/JQR watch-stations, both in port and underway, commensurate with the member's assigned billet.

VIEWS OF THE COAST GUARD

On November 13, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC argued that partial relief should be granted because although his request is untimely, his record does contain a few errors which should be corrected.

PSC stated that the applicant is eligible for the NDSM because the Medals and Awards Manual states that the NDSM is awarded to those who have completed honorable active service as a member of the Armed Forces for any period from June 27, 1950, to July 28, 1954; and from January 1, 1961. PSC argued that the applicant is eligible for the medal because he served on active duty from January 1, 1961, until his honorable discharge on September 5, 1961.

PSC stated that the applicant is entitled to receive a GCM because the Medals and Awards Manual states that the CGM is awarded to members who perform three consecutive years of satisfactory service. PSC noted that although the applicant received NJP on July 6, 1956, and again on September 10, 1957, he completed more than three years of satisfactory service with no NJPs between September 11, 1957, and his separation on September 5, 1961.

With regards to the applicant's request that he receive the Sea Service Ribbon, PSC argued that he is eligible for the ribbon because the applicant served aboard the CGC [REDACTED] for more than four years, and the Medals and Awards Manual states that a member becomes

eligible for the Sea Service Ribbon after completing more than 12 months of cumulative sea duty.

Finally, PSC argued that the applicant is currently not eligible to receive the Cutterman Insignia because it was originally promulgated in the mid 1970s and there is no provision in the rules for awarding the insignia retroactively. Moreover, PSC noted that it cannot verify from the applicant's records whether he completed all of the required PQS/JQR for his watch stations or whether he would have been recommended by his chain of command to receive permanent entitlement to the insignia, as required by the rules. However, PSC stated, because the applicant completed more than five years of eligible sea service aboard the CGC [REDACTED] he might be eligible to receive the Honorary Cutterman Certificate when the program is completed later this year by the Coast Guard's Policy and Standards Division.

Therefore, PSC concluded, the applicant's DD 214 should be corrected to show that he was awarded the NDSM, a GCM, and the Sea Service Ribbon, but not the Cutterman Insignia.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 24, 2015, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The Board did not receive a response.

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The applicant was discharged from the Coast Guard in 1961 but did not submit his application to the Board until 2015. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1961, and his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.³ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review"⁴ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted 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

² 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

³ 10 U.S.C. § 1552(b).

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).

4. Regarding the delay of his application, the applicant argued that the Board should consider his application because his son recently retired from the Coast Guard and wants to present him (the applicant) with a shadow box containing all of the medals and ribbons earned during the applicant's Coast Guard service. The Board finds that the applicant's explanation for his delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly. However, because the Coast Guard has identified clear omissions on the applicant's DD 214, which should be corrected, the Board finds that it is in the interest of justice to waive the statute of limitations in this case.

5. The applicant alleged that his DD 214 does not list several medals and awards that he received or should have received. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust. 33 C.F.R. § 52.24(b). Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

6. The Board finds that the applicant is eligible for the NDSM. He served honorably from October 11, 1955, to September 5, 1961, and Article 5.A.5.a.(1). of the Medals and Awards Manual states that the NDSM is awarded to members for honorable active service as a member of the Armed Forces for any period (inclusive) from June 27, 1950, to July 28, 1954; from January 1, 1961, to August 14, 1974; from August 2, 1990, to November 30, 1995; or from September 12, 2001, to a date to be determined by the Secretary of Defense.

7. The Board finds that the applicant is eligible for the GCM. The record shows that although he had an NJP in 1956 and 1957, he had three consecutive years of honorable service from 1958 until his discharge in 1961. Accordingly, he is eligible for the GCM because Enclosure 8 of Chapter 5.B.1. of the Medals and Awards Manual states that from August 1958 through October 1960, a member had to complete three consecutive years of honorable service with no court martial convictions and no misconduct to receive a GCM.

8. The Board finds that the applicant is eligible for the Coast Guard Sea Service Ribbon because his record contains evidence that he completed more than five years of sea duty aboard the CGC [REDACTED] which was a 250-foot cutter. Article 5.A.5.a.(1). of the Medals and Awards Manual states that the Coast Guard Sea Service Ribbon is awarded to active and inactive duty members of the Coast Guard and Coast Guard Reserve or non-Coast Guard personnel who, under temporary or permanent assignment, satisfactorily complete a minimum of 12 months cumulative sea duty. For the purposes of the award, sea duty is defined as duty performed aboard any commissioned Coast Guard cutter 65 feet or more in length.

9. Finally, the Board finds that the applicant is not eligible for the Cutterman Insignia. Section E.3.a. of the Cutter Training and Qualification Manual, COMDTINST M3502.4 (series) provides the eligibility requirements for the Cutterman Insignia, and states that permanent entitlement to wear the Cutterman Insignia requires at least two assignments at sea,

totaling not less than five years of sea service. The applicant's record shows that although he accumulated five years of sea service while aboard the CGC [REDACTED] all of his service was accumulated during that one assignment, and the Manual states that a member must have at least two assignments at sea. Moreover, PSC noted that the Cutterman Insignia was not promulgated until 1970 and that there is no retroactive clause in determining the eligibility of service prior to its creation. PSC stated that the applicant completed more than five years of eligible sea service aboard the CGC [REDACTED] and might be eligible to receive the Honorary Cutterman Certificate when the program is scheduled for completion in 2016 by the Coast Guard's Policy and Standards Division.

10. The applicant has proven by a preponderance of the evidence that his DD 214 does not accurately reflect all of the medals and awards he is eligible for. Accordingly, his DD 214 should be corrected to show that he was awarded the National Defense Service Medal, a Coast Guard Good Conduct Medal, and the Coast Guard Sea Service Ribbon. All other requests should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [REDACTED] USCG, for correction of his military record is granted in part. His DD 214 shall be corrected to show that he received the National Defense Service Medal, a Coast Guard Good Conduct Medal, and the Sea Service Ribbon. All other requests are denied.

April 29, 2016

