

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-208



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 September 17, 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 July 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, who served as a [REDACTED] in the Coast Guard, asked the Board to correct his DD 214 to show that he is eligible to wear the Good Conduct Medal (GCM)¹ for his service from June 19, 1972, to June 18, 1976.

The applicant stated that he discovered the error on June 18, 1976, and argued that it is in the interest of justice to consider his application because he was "never in trouble or caused a problem in the four years" that he was on active duty.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 19, 1972, for a term of four years, through June 18, 1976. After completing basic training he graduated from [REDACTED] "A" School on December 15, 1972, and made a lateral change in rating from [REDACTED] to [REDACTED] [REDACTED] on June 16, 1973.

¹ The GCM is awarded for satisfactory service which is defined as proficiency in rating, sobriety, obedience, industry, courage, and neatness throughout the period of service. Chapter 5.A.2.a. of COMDTINST M1650.25D, the Coast Guard Medals and Awards Manual.

According to the CG-3306 record of marks in the applicant's record, he received a low mark of 2.9 (out of 4.0) in the leadership factor on his evaluation for the period ending on June 30, 1974.

The applicant's DD 214 shows that he was honorably discharged on June 18, 1976, upon completing his four-year enlistment. Block 26 of the form indicates that he received the National Defense Service Medal and the Expert Marksman Ribbon (Rifle).

APPLICABLE LAW AND REGULATIONS

Enclosure (11) of the Medals and Awards Manual, COMDTINST M1650.25D, states that from November 1963 through December 1979, to receive a GCM, a member had to receive no mark lower than a 3.0 for proficiency, leadership, and conduct during a continuous four-year period.

VIEWS OF THE COAST GUARD

On January 28, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC).

PSC argued that the application is untimely because the applicant was discharged in 1976 and that he is not eligible for a GCM because he received a mark of 2.9 in leadership during his four-year enlistment. PSC noted that the Medals and Awards Manual states that to earn a GCM a member must complete four consecutive years of satisfactory service with no marks below 3.0 in proficiency, leadership, or conduct.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 1, 2016, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. He responded on February 7, 2016, and disagreed with the Coast Guard's recommendation. The applicant alleged that he received the low mark in leadership because he "refused to back up and help hide the incompetence" of a first class petty officer following a mishap with one of the two diesel engines, and as a result, the petty officer "held a grudge and scored me to hurt my chances for the Good Conduct Medal."

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

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

1976 but did not submit his application to the Board until 2015. The Board finds that the preponderance of the evidence shows that the applicant knew that he was not receiving a GCM no later than his date of discharge in 1976, and so 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

4. The applicant argued that the Board should consider his application because he was never in trouble and did not cause any problems during his enlistment. The Board finds that his explanation is not compelling because he has not shown that anything prevented him from applying for the medal within three years of his discharge.

5. A cursory review of the merits of this case indicates that the applicant’s claim cannot prevail. Enclosure 11 of the Medals and Awards Manual states that to earn a GCM between 1963 and 1979, a member must serve four consecutive years with no individual mark lower than a 3.0 in proficiency, leadership, or conduct. The applicant’s record shows that he received a mark of 2.9 in leadership in 1974. Therefore, he is not eligible for the GCM because he did not meet the requirements for the medal prescribed in the manual. Although the applicant claimed in response to the advisory opinion that the mark of 2.9 was unjust, his performance marks are presumptively correct,⁶ and he has not submitted evidence supporting his claim.

6. The record contains no evidence that substantiates the applicant’s allegations of error or injustice in his official military record, which is presumptively correct. Based on the record before it, the Board finds that the applicant’s claim cannot prevail on the merits. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

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).

⁶ 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

ORDER

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

July 29, 2016

