

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-071



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 [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 13, 2017, 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 [REDACTED] from June 26, 1967, to June 25, 1971, asked the Board to correct his military record to show that he was awarded a Purple Heart Medal for injuries that he sustained from grenade fragments while helping the U.S. Army destroy some sampans¹ on a beach in Vietnam. He alleged that he received the Purple Heart in the field from an Army Captain but that his DD 214 does not reflect the medal.

The applicant stated that he discovered the error on November 10, 2015, when someone at the Department of Veterans' Affairs (DVA) told him that documents in his record showed that he had been injured and taken to a hospital ship for care. He argued that the Board should find it in the interest of justice to consider his application because he had tried to resolve the matter before he was discharged but was told that there was nothing in his record to show that he had received the Purple Heart in Vietnam.

SUMMARY OF THE APPLICANT'S RECORDS

The applicant enlisted in the Coast Guard on June 26, 1967, and initially served at Coast Guard Base New Orleans. On a Report of Medical Examination dated March 7, 1968, which

¹ Sampans in Vietnam were small boats propelled by a single scull over the stern with roofing of mats. <http://www.dictionary.com/browse/sampan> (last visited December 14, 2016).

was completed in preparation for his transfer to a unit in Vietnam, the doctor noted that the applicant's only scar was a VSULA (vaccination scar upper left arm).

The applicant served aboard the USCGC [REDACTED] in Vietnam for 11 months and 10 days from June 2, 1969, through May 11, 1969. His medical record shows that he was evaluated for pain in his chest on April 1, 1969, at the 14th General Dispensary in [REDACTED]. The applicant told the doctor that six days earlier, he had been hit in the chest with a hand grenade while helping to destroy sampans. The doctor who performed the examination noted that the applicant complained of chest pain and slight abdominal pain and there was "slight tenderness over abdominal muscles." The doctor diagnosed the applicant with a "muscle strain" and did not note any wound or scar on his chest.

On May 11, 1969, the applicant and an officer signed a CG-3307 ("Page 7") for his record to document his transfer from Vietnam to Coast Guard Base [REDACTED]. The Page 7 states that he had performed 11 months and 10 days of foreign and/or sea duty in Vietnam and that he was authorized to wear the National Defense Service Medal, Vietnam Service Medal with one bronze campaign star, Republic of Vietnam Campaign Medal with Device, and Combat Action Ribbon as a result of his service in Vietnam. The Purple Heart Medal is not mentioned.

The record also shows that the applicant underwent a medical examination on June 25, 1969, upon his return from Vietnam and the Report of Medical Examination indicates that he had a half-inch scar on his right pectoralis major (right chest), as well as the VSULA.

During the applicant's separation physical on May 27, 1971, the doctor noted that the applicant reported "no significant or interval [medical] history."

The applicant was honorably discharged from the Coast Guard on June 25, 1971, and signed his DD 214 upon discharge. His DD 214 lists the following medals in block 24: National Defense Service Medal, Vietnam Service Medal with one bronze star, Republic of Vietnam Campaign Medal with device, Combat Action Ribbon, Navy Achievement Medal with Combat V, Navy Unit Commendation Ribbon, and Vietnam Armed Forces Meritorious Unit Citation (Gallantry Cross). There is no mention of a Purple Heart Medal in his record.

APPLICABLE LAW

The Coast Guard Medals and Awards Manual, COMDTINST M1650.25B in effect in 1971, provides detailed instructions for the administration of the military decorations and awards programs of the Coast Guard. Article 2.B.11. of the manual states that the Commandant is authorized to award the Purple Heart Medal in the name of the President to any member of the Coast Guard who, while serving under competent authority in any capacity with the Coast Guard subsequent to April 5, 1917, has been wounded or killed:

- (1) In any action against an enemy of the United States;
- (2) In any action with an opposing Armed Force of a foreign country in which the Armed Forces of the United States are or have been engaged;

- (3) While serving with friendly foreign forces engaged in an armed conflict against an opposing Armed Force in which the United States is not a belligerent party;
- (4) As the result of an act of any such enemy or opposing Armed Force;
- (5) The result of an act of any hostile foreign force;
- (6) As the indirect result of enemy action (e.g., injuries resulting from parachuting from a plane brought down by enemy or hostile fire);
- (7) As the result of maltreatment inflicted by captors while a prisoner of war.

The manual further states that a "wound" is defined as an injury to the body from an outside force or agent, sustained while in action as described in the eligibility requirements. A physical lesion is not required, provided the concussion or other form of injury received was as a direct result of the action engaged in, and required treatment by a medical officer.

VIEWS OF THE COAST GUARD

On July 20, 2016, 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 argued that the application should not be considered by the Board because the applicant was discharged in 1971 and did not provide sufficient justification for the untimeliness of his application for relief. Moreover, PSC argued that relief should be denied because there is nothing in the applicant's record to justify eligibility for the Purple Heart Medal. PSC noted that although the applicant argued that he was injured by grenade fragments while blowing up sampans in Vietnam, the medical notes for an exam that was performed six days after the incident state that the applicant suffered a muscle strain that was the result of being hit with a hand grenade. Therefore, PSC argued, the evidence of record is insufficient to warrant waiving the three-year statute of limitations and relief should be denied.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 29, 2016, 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 1971 and alleged that he received the Purple Heart Medal “in the field” from an Army officer but did not discover that it was not documented in his record until 2015. However, the Board finds that the application is untimely because the applicant received and signed his DD 214 listing all of his medals, but not a Purple Heart, in 1971. Therefore, the Board finds that the application was filed more than 40 years after the statute of limitations expired and 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, 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 justification for his very long delay in seeking correction of the alleged error in his record. In addition, there is insufficient evidence in the record to support his claim that he is entitled to a Purple Heart in accordance with Article 2.B.11. of the Medals and Awards Manual, which requires that the member be injured or killed in “action against the enemy,” as a “result of an act of any such enemy,” or as an “indirect result of enemy action (e.g., injuries resulting from parachuting from a plane brought down by enemy or hostile fire)” and that the injury require treatment by a medical officer. The record indicates that the applicant was diagnosed and treated for a muscle strain on April 1, 1969, and at the time he told the physician that he had been struck in the chest by a grenade six days earlier. There is no mention of a blast or shrapnel, so it is unclear whether the grenade actually exploded, and the doctor did not mention any wound or scar when he examined the applicant just six days after the alleged incident. Moreover, the applicant signed both a Page 7 on May 11, 1969, listing the medals he had earned in Vietnam, and his DD 214 on June 25, 1971, listing the medals he was entitled to wear, and neither mentions a Purple Heart. The Board finds that there is insufficient medical evidence to overcome the presumption of regularity accorded the Page 7 and the DD 214,² which indicate that the applicant was not awarded a Purple Heart. Nor is there persuasive evidence that he met the criteria for one according to Article 2.B.11. of the Coast Guard Medals and Awards Manual.
5. In light of the insufficient evidence supporting the applicant’s allegation and his failure to justify 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)

² 33 C.F.R. § 52.24(b).

ORDER

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

January 13, 2017

