

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2016-072**



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**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 March 22, 2016, 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 27, 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 retired from the Coast Guard in 2007, asked the Board to correct his record by reassigning to him the Coast Guard Medal<sup>1</sup> that was awarded to another member for actions completed during a search and rescue while they were assigned to the USCGC [REDACTED] in [REDACTED]. The applicant stated that three members of the crew received an award for their actions during a dangerous search and rescue mission and that he should have received the award that was given to [REDACTED] because he (the applicant) was the coxswain and [REDACTED] simply navigated the cutter. Moreover, he alleged, [REDACTED] was later found lying on the floor due to seasickness. He alleged that after the award ceremony, where the other members of the crew received their medals, he asked his supervisor why [REDACTED] had received the medal instead of him (the applicant), and was told to be quiet or else the Master Chief would not "sign your paperwork so you can strike and make BM3."

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<sup>1</sup> The Coast Guard Medal is awarded to members who distinguish themselves by heroism not involving actual conflict with any enemy. To justify this decoration, individuals must have performed a voluntary act of heroism in the face of great danger to themselves and such as to stand out distinctly above normal expectations. For acts of lifesaving, or attempted lifesaving, the Coast Guard Medal requirements parallel those of the Gold Lifesaving Medal in that one displays extreme and heroic daring at the risk of one's own life (see article 4.B.3.). For members of the Coast Guard participating in an operation and performing outstanding heroic acts in saving or attempting to save a life, the Coast Guard Medal is clearly the more appropriate decoration. Chapter 2.B.8 of COMDTINST M1650.25B.8A, the Coast Guard Medals and Awards manual.



The applicant stated that he discovered the error on February 15, 2016, and argued that it is in the interest of justice to consider his application because he was afraid that if he brought it up while he was still on active duty then he would have been at risk for reprisal.

### SUMMARY OF THE RECORD

On March 4, 1985, the applicant enlisted for four years. After recruit training, he was assigned to the CGC [REDACTED] and advanced to seaman (SN/E-3).

According to award citations submitted by the Coast Guard, on [REDACTED], while the applicant was a crewmember, the CGC [REDACTED] responded to a distress signal from a sailing vessel with a broken rudder. Under extremely hazardous weather conditions and 15' to 20' swells, the ship's crew successfully rescued everyone from the sailing vessel, including three children, before the vessel sank to the bottom of the sea. As a result of the harrowing rescue, three members of the [REDACTED] were awarded the Coast Guard Medal on August 5, 1987. These members were the Officer in Charge (Master Chief [REDACTED]), Executive Petty Officer [REDACTED] and a Petty Officer [REDACTED]. The applicant did not receive an award for participating in the rescue.

The applicant advanced to BM3/E-4 on July 1, 1987; was appointed a chief warrant officer (CWO) on [REDACTED]; and retired on [REDACTED].

### VIEWS OF THE COAST GUARD

On August 12, 2016, the Judge Advocate General 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 relief should be denied because the application is untimely and because the applicant was not recommended for the Coast Guard Medal for his role in the search and rescue mission for which three other crewmembers received the medal. PSC provided copies of the award citations for the Coast Guard Medals that were awarded to three members of the [REDACTED], and while the citation speaks of great heroism on the part of these three crewmembers, the citations do not mention the other crewmembers of the [REDACTED]. PSC noted that there is nothing in the application beyond the applicant's own statement to support his allegation that he should have received the medal instead of [REDACTED]. PSC noted, however, that if the applicant provides further support of the alleged injustice then the Board should reconsider his request.

### APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 27, 2016, 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.<sup>2</sup> Although the statute of limitations is tolled while a member serves on active duty,<sup>3</sup> the applicant was retired from the Coast Guard on December 30, 2007, and so should have filed his application by December 30, 2010, at the latest. Moreover, the Board finds that the preponderance of the evidence shows that the applicant knew that he did not receive a medal for his role in the rescue in 1987 when the other members of the crew received theirs. Therefore, 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.<sup>4</sup> 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”<sup>5</sup> 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.”<sup>6</sup>
4. The applicant argued that the Board should consider his application because he feared reprisal if he had raised the issue when the other members of the crew received their medals. The Board finds that his explanation is not compelling because he has not shown that anything prevented him from applying for the medal following his transfer from the cutter or within three years of his discharge.
5. A cursory review of the merits of this case indicates that the applicant's claim cannot prevail. Chapter 2.B.8 of COMDTINST M1650.25B.8A, the Coast Guard Medals and Awards Manual, states that the Coast Guard Medal is awarded to members who distinguish themselves by heroism not involving actual conflict with any enemy. It also states that justification for the medal requires that the member must have performed a voluntary act of heroism in the face of great danger to themselves and such as to stand out distinctly above normal expectations. The record shows that the applicant was assigned to the CGC [REDACTED] in [REDACTED] and that three member of the crew received the Coast Guard Medal, but there is nothing in the record to support his claim that he should have received the Coast Guard Medal

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

<sup>3</sup> *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

<sup>4</sup> 10 U.S.C. § 1552(b).

<sup>5</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>6</sup> *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

for his role in the rescue. The applicant has provided no evidence to overcome the presumption that his military record is correct as is, without the medal.<sup>7</sup>

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.<sup>8</sup> 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 and the applicant's request should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>7</sup> 33 C.F.R. § 52.24(b).

<sup>8</sup> 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], USCG, for correction of his military record is denied.

January 27, 2017

