

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-195



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 20, 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 June 23, 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, a former fireman machinery technician (FNMK) who served on active duty in the Coast Guard from April 4, 2005, to February 19, 2009, asked the Board to correct his record to show that he received the Humanitarian Service Medal (HSM). He argued that he is eligible for the medal because he served aboard the CGC [REDACTED] during its participation in disaster relief following Hurricane Katrina. In support of his application he submitted a copy of his DD 214 and pages printed from the Coast Guard website with details about the history of the CGC [REDACTED] including its participation in disaster relief following Hurricane Katrina.

The applicant stated that he discovered the alleged error in his record on September 1, 2016, but did not explain why he did not discover the error when he was discharged in 2009. He stated that he needs the correction so he can apply for benefits with the Department of Veterans Affairs.

SUMMARY OF THE RECORD

The applicant served in the Coast Guard from April 4, 2005, until his honorable discharge on February 19, 2009. His assignment history shows that he served aboard the CGC [REDACTED] from June 20, 2005, until July 6, 2007, and his DD 214 indicates that he received the Armed Forces Service Medal, the Coast Guard Pistol Marksman Ribbon, the Coast Guard Presidential Unit Citation with Hurricane Device, a Coast Guard Unit Commendation Award, a Coast Guard

“E” Ribbon, and the National Defense Service Medal.

APPLICABLE LAW AND REGULATIONS

COMDTINST M1900.4D contains the Commandant’s instructions for completing the DD 214, and Chapter 1.D.2. provides that it must be accurate as of the date of separation. Chapter 1.E. of the instruction states that the DD 214 should show “all decorations, medals, badges, commendations, citations, and campaign ribbons awarded or authorized for all periods of service.”

Article 5.A.16.a.(a) of COMDTINST M1650.25E, the Coast Guard Medals and Awards Manual, states that HSM may be awarded to members performing duties subsequent to April 1, 1975, who distinguish themselves as individuals or as members of United States military units or ships by meritorious, direct, non-routine participation in a significant military act or operation of a humanitarian nature. Direct participation is defined as being physically present at the designated location, having directly contributed to and influenced action. The designated location is the immediate site(s) of the humanitarian operations as defined by the Presidential request for assistance in the United States or the Department of State for overseas areas. Specifically excluded from eligibility are service members or elements remaining at geographically separate locations or who were assigned to the location, but did not make a direct contribution to, nor influence the action.

Article 5.A.16.a.(2) states that the types of military acts or operations that may qualify for the medal are specific assistance during national disasters, providing food relief, evacuation of personnel under threat from a hostile force, support or resettlement of refugees or evacuees, etc. Article 5.A.16.a.(3) states that the act or operation being consider must meet all of the following criteria:

- (a) Must be above and beyond normal duties.
- (b) Must have major significance.
- (c) Must have provided immediate relief, relieved human suffering, and should have saved lives or significant property.
- (d) Must have affected the outcome of the situation and failure to act could have caused negative consequences.
- (e) Must have specified dates [within] the period of “immediate relief.”
- (f) Must have evidence that the emergency assistance provided was [requested by the President or by the Department of State for overseas areas.

Article 5.A.16.a.b. of the Medals and Awards Manual states that award recommendations for the HSM must be submitted to CG PSC-PSD-ma via the appropriate chain of command. Acts or operations involving ships, units, and/or detachments must be submitted in letter form with a narrative justification; a written justification fully explaining and attesting to the humanitarian aspects of the assistance rendered by service members in the operation being recommended. The HSM is awarded to individuals, not units, and the award recommendation must include a list of the ships and/or units as well as a list of the members who participated in the act or operation. Table 1-1 in the manual states that the HSM may be awarded by the Secretary or the Commandant.

Enclosure 17 to the manual lists the operations for which the HSM has been authorized. The list of operations includes the Hurricane Katrina Relief Operation during the two-week period August 29, 2005, through September 13, 2005.

VIEWS OF THE COAST GUARD

On March 16, 2017, 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 relief should be denied as untimely because the applicant was discharged in 2009 and he did not provide justification for the extreme untimeliness of his application.

Regarding the merits of the case, PSC argued that the applicant is not eligible to receive the HSM because the CGC [REDACTED] is not listed in Enclosure 17 of the Medals and Awards Manual as an eligible unit to receive the HSM for participation in the Hurricane Katrina Relief Operation from August 29, 2005, to September 13, 2005. Moreover, PSC noted, the Medals and Awards Branch at PSC does not have record of an award recommendation being submitted for the CGC [REDACTED]. Finally, PSC stated that the applicant's name is not on the list of more than 5,000 members who are eligible to receive the HSM. PSC noted that although he is not eligible to receive the HSM, the applicant's service aboard the [REDACTED] from June 20, 2005, to August 6, 2007, makes him eligible for the Coast Guard Presidential Unit Citation w/Hurricane Device, the Armed Forces Service Medal, and the Coast Guard Unit Commendation, all of which are already listed on his DD 214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 31, 2017, the BCMR Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The Chair 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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.¹ The applicant was discharged on February 19, 2009, and his application is untimely.

2. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.² 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

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

² 10 U.S.C. § 1552(b).

the delay and the potential merits of the claim based on a cursory review”³ 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.”⁴

3. The applicant stated that he discovered the alleged error in his record on September 1, 2016, but did not explain why he did not notice the alleged error on his DD 214 when he was discharged in 2009. The Board finds that the applicant failed to show that anything prevented him from seeking correction of the alleged error more promptly.

4. A cursory review of the applicant’s record indicates that there is insufficient evidence to support his claim that he is entitled to the HSM. Article 5.A.16.a.b. of the Coast Guard Medals and Awards Manual states that the medal is issued only to individual members whose names are submitted to CG PSC-PSD-ma via the appropriate chain of command and are subsequently approved for the award. PSC has stated that the applicant’s name is not on the list of more than 5,000 members who have been found eligible for the HSM.⁵ Although the record shows that the applicant was assigned to the CGC [REDACTED] during Hurricane Katrina and the two-week eligibility period for the award, there is no evidence in the record showing that his performance during the period met the numerous criteria for the award in Article 5.A.16. of the manual.

5. In light of the lack of evidence supporting the applicant’s allegation and his failure to justify his 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)

³ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁴ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁵ The Board notes that the cutter’s website at <https://www.uscg.mil/lantarea/cgcDecisive/history.asp> states that after Hurricane Katrina, the [REDACTED] which was [REDACTED] and coordinated the efforts of all Coast Guard units in the area conducting response, recovery and search operations throughout the Gulf Coast. In addition, [REDACTED] crew reached out to the community providing additional law enforcement presence and assisting at food shelters and safe houses during this challenging time.”

ORDER

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

June 23, 2017

