

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-205



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 August 13, 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 July 7, 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 [REDACTED] who was honorably discharged from the Coast Guard on February 18, 2003, asked the Board to correct his record to show that he received a Pistol Sharpshooter Ribbon and the Meritorious Unit Commendation Ribbon with "O" Device. He argued that he earned the Pistol Sharpshooter Ribbon during recruit basic training and argued that he is eligible for the Meritorious Unit Commendation Ribbon with "O" Device for his service aboard the USCGC Escanaba from 2001 to 2002. The applicant did not state when he discovered the alleged errors in his record.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 5, 2000, and attended recruit basic training in Cape May, New Jersey. He served aboard the CGC [REDACTED] record shows from October 2000 to February 2003. He was honorably discharged on February 18, 2003, for the convenience of the government after he was diagnosed with a sleepwalking condition that interfered with the performance of his duties. His DD 214 shows that he earned the Coast Guard Meritorious Team Commendation Ribbon, the National Defense Service Medal, the Coast Guard Sea Service Ribbon, the Global War on Terrorism Medal, and the Department of Transportation 9/11 Ribbon.

APPLICABLE LAW

Enclosure (7) of COMDTINST M1650.25, the Coast Guard Medals and Awards Manual, states that the Coast Guard Meritorious Unit Commendation was awarded to the CGC Escanaba for service during the period from September 1, 2001, to September 30, 2002. It does not indicate that the Escanaba is eligible or the "O" Device.

Chapter 5.A.26 of the Awards Manual states that the Expert Pistol Shot Medal is awarded to members who qualify as expert with the service pistol over a prescribed course of fire, and the Pistol Marksmanship Ribbon is authorized for members who qualify as marksman or better with the service pistol on one of the prescribed courses of fire. There is no Pistol Sharpshooter Ribbon listed in the Awards Manual.

VIEWS OF THE COAST GUARD

On March 2, 2017, 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 although the application is untimely, partial relief should be granted because the applicant's record shows that he is eligible to receive the Coast Guard Meritorious Unit Commendation. PSC stated that according to the Coast Guard Medals and Awards Manual, the Coast Guard Meritorious Unit Commendation was awarded to the CGC [REDACTED] for service during the period from September 1, 2001, to September 30, 2002, and that the applicant is eligible for the medal because he served aboard the [REDACTED] during this period of eligibility.

PSC stated that the applicant is not eligible to receive the Coast Guard Pistol Sharpshooter Marksmanship Ribbon because there is no evidence in his record that he qualified for this ribbon.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 31, 2017, the BCMR 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.
2. 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 from the Coast Guard on February 18, 2003, and submitted his application to the Board on July 20, 2016. Therefore, the Board finds that the application is untimely.

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

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 did not explain why he waited so long to submit his application to the Board. However, because the Coast Guard has identified a clear omission 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 he is eligible to receive the Coast Guard Meritorious Unit Commendation for his service aboard the CGC [REDACTED] and the Coast Guard Pistol Sharpshooter Ribbon, the latter of which he alleged he earned during recruit basic training. When considering allegations of error and injustice, the Board begins its analysis 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.² 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.”³

6. The Board finds that the applicant is eligible to receive the Coast Guard Meritorious Unit Commendation. Enclosure (7) of the Coast Guard Medals and Awards Manual shows that the Coast Guard Meritorious Unit Commendation was awarded to the crew of the CGC [REDACTED] for service during the period September 1, 2001, to September 30, 2002, and the record shows that the applicant served aboard the [REDACTED] from October 2000 to February 2003.

7. The applicant alleged that he earned the Coast Guard Pistol Sharpshooter Ribbon during recruit basic training and that it should be included on his DD 214. The Board finds that he is not eligible to receive this ribbon because there is simply no evidence in his record to show that he earned this ribbon, and it is not listed on his DD 214.

8. 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, the DD 214 for his service from September 5, 2000, to February 18, 2003, should be corrected to show that he received the Coast Guard Meritorious Unit Commendation. All other requests should be denied.

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of former [REDACTED] USCG, for correction of his military record is granted in part. His DD 214 dated February 18, 2003, shall be corrected to show that he is entitled to wear the Coast Guard Meritorious Unit Commendation. All other requests are denied.

July 7, 2017

