

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-119

██████████
██████████ (former)

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 10, 2017, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 9, 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 ██████████ who served on active duty in the Coast Guard from November 1994 to August 1999, asked the Board to correct his discharge form DD 214¹ to show that he received the Secretary of Transportation [DOT] Outstanding Unit Award, the Sea Service Ribbon with one bronze star, and the "O" device on his Commandant's Letter of Commendation.

Regarding the Secretary of Transportation Outstanding Unit Award, the applicant argued that he is eligible for the award because he enlisted in the Coast Guard on November 1, 1994, and the award was issued to all members on November 3, 1994.

The applicant argued that he is eligible for the Sea Service Ribbon with one bronze star, because he served on two separate Coast Guard cutters for a total of four years and fifteen days of sea time.

Finally, the applicant argued that his DD 214 should be corrected by adding the "O" device to his Commandant's Letter of Commendation Ribbon (CLOC) because he received the ribbon, with "O" device, when he was discharged from active duty after serving on the CGC Aquidneck.

¹ A DD 214 is prepared to document a member's release or discharge from a period of active duty.

The applicant stated that he discovered the alleged errors in his record on June 23, 2016, and argued that the Board should find it in the interest of justice to consider his application and award him the medals because he would like to create a shadow box of his Coast Guard service awards and wants to ensure that the display includes all that he is eligible to receive.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 1, 1994. After completing recruit training, he was assigned to the 82' CGC Point Highland from January 1995 to May 1996.² A Page 7 in his record dated January 8, 1996, states that he was highly commended for his outstanding personal and professional contributions to the cutter's successful AMIO (alien migrant interdiction operations), search-and-rescue, and drug interdiction operations during a 43-day deployment to Puerto Rico for Operation Able Response and Check-Mate 7 in the autumn of 1995. The Page 7 notes that the cutter "was the first 82 footer to attempt this challenging mission ... and was the 'test platform' for the class, to see if it could be done. The mighty crew ... was up to the task and your outstanding contributions paved the way and set the standards for other to follow."

In the summer of 1996, the applicant attended ten weeks of "A" School to earn the GM rating. He graduated and advanced to GM3 in August 1996. On August 16, 1996, he was assigned to the Naval Engineering Support Unit in Portsmouth, Virginia. On January 13, 1997, the applicant was assigned to the 110' CGC Aquidneck, which was homeported in Portsmouth. He served for thirty months and five days, from January 13, 1997, through June 17, 1999. While aboard the Aquidneck, he advanced to GM2 on January 1, 1998.

The applicant's DD 214 shows that he was honorably discharged on August 31, 1999. It also credits him with a total of four years and fifteen days of sea service and shows that he received the following awards and medals during his enlistment:

1. Commandant's Letter of Commendation Ribbon
2. Meritorious Team Commendation Ribbon
3. Good Conduct Medal
4. National Defense Service Medal
5. Expert Rifleman Medal
6. Expert Pistol Shot 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 block 13 of a DD 214 should show "all decorations, medals, badges, commendations, citations, and campaign ribbons awarded or authorized for all periods of service."

² The exact dates are not clear in the record before the Board.

Enclosure (4) to COMDTINST M1650.25D, the Coast Guard Medals and Awards Manual, states that the DOT Outstanding Unit Award was awarded to members on active duty who served for extended periods for migrant interdiction and environmental disasters from October 1, 1993, to September 30, 1994. The award was also awarded to numerous units for their service from September 11 to October 22, 2001.

Chapter 5.A.21. of the Medals and Awards Manual, states that the Coast Guard Sea Service Ribbon is awarded to active and inactive duty members of the Coast Guard who “satisfactorily complete a minimum of 12 months cumulative sea duty (first award).” For the purposes of the award, sea duty is defined as duty performed aboard any commissioned Coast Guard cutter 65’ or more in length. “A 3/16-inch bronze star is authorized for each additional three-year period of eligible sea duty.”

Chapter 2.A.18. of the Coast Guard Medals and Awards Manual states that the CLOC was authorized on March 17, 1979, but there is no mention of an “O” device. However, Table 1 in the manual shows that the “O” Operational Distinguishing Device is authorized for the CLOC. The legend for the table states the following:

“O” Operational Distinguishing Device. For use on personal and unit awards. Each case must be carefully judged on its own merits, and the citation must specifically authorize the device. To qualify for this device on a personal award, both the person’s work and unit must be operational in nature. For example, an individual in a non-operational rating, specialty, or position assigned to an operational unit is not inherently or automatically eligible for the Operational Distinguishing Device on a personal award, though the member is not prohibited from receiving the Operational Distinguishing Device if the award is for operational achievements. Similarly, an individual in an operational rating, specialty, or position is not eligible for the device for duties performed at a nonoperational unit (e.g., headquarters or district staff), or whenever the personal award only acknowledges administrative achievements. Personal awards earned while in a leave or liberty status for heroism may be considered eligible for the Operational Distinguishing Device. Eligibility criteria are based on a member’s or unit’s:

- direct participation in missions of an operational “hands on” nature (e.g., SAR, fire fighting, maritime law enforcement, disaster relief, pollution response, aids to navigation maintenance and operations); and/or
- extended periods of service (not for a specific incident) only if the majority of the citation used to justify the award is operational and not administrative, and the individual/unit participated “hands on” in the operational achievements.

VIEWS OF THE COAST GUARD

On August 4, 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 recommended that partial relief be granted because although the applicant's request is untimely, he is eligible for the Sea Service Ribbon. PSC stated that the applicant is eligible for the Sea Service Ribbon because his record shows that he served aboard the CGC Aquidneck from January 13, 1997, through June 17, 1999 (2 years, 5 months, and 5 days), and this qualifies him for the ribbon under COMDTINST M1650.25D. PSC argued that the applicant is not eligible for a bronze star on his Sea Service Ribbon, however, because although he served on the CGC Point Highland, a subsequent award of the ribbon requires a three-year period of sea duty. PSC argued that the applicant "couldn't have fulfilled the required three-year timeframe aboard another vessel to qualify."

PSC argued that the applicant is not eligible for the DOT Outstanding Unit award because he did not enlist in the Coast Guard until November 1, 1994, and the award is available only to members who served between October 1, 1993, and September 30, 1994.

Finally, PSC stated that the applicant is not eligible for a second CLOC because a search of his entire record revealed no other awards to substantiate that he had received a second CLOC. PSC did not address the applicant's request for the "O" device on his CLOC.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 14, 2017, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. He responded on August 26, 2017, and stated that he disagreed with the JAG's recommendations. The applicant argued that he is eligible for a second Sea Service Ribbon because his DD 214 clearly shows that he completed four years and fifteen days of sea service. He stated that he served aboard the Point Highland from early January 1995 to late May 1996, and he submitted a photograph of a commemorative plaque he received when he was transferred from the Point Highland, which shows that he was then a fireman/E-3 and served aboard that cutter from "JAN 95 – MAY 96." The applicant also alleged that he served aboard the Aquidneck from mid-January 1997 to mid-June 1999. With regards to the CLOC, he stated that when the award was presented to him it included the "O" Device and he wants to make sure that his DD 214 reflects this.

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.³ The applicant was discharged on August 31, 1999, 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.⁴ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the

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

⁴ 10 U.S.C. § 1552(b).

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”⁵ 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.”⁶

3. Regarding the delay of his application, the applicant argued that the Board should consider his application and request for the awards because he wants to ensure that the correct medals and ribbons are included in his shadow box. The Board finds that his explanation for his delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly. However, because the Coast Guard has identified a medal that is missing from the applicant’s DD 214, the Board finds that it is in the interest of justice to waive the statute of limitations in this case.

4. The applicant alleged that his DD 214 is erroneous because it does not show that he is entitled to wear the (DOT) Outstanding Unit Award, a Sea Service Ribbon with one bronze star, and an “O” Device on his Commandant’s Letter of Commendation Ribbon. The Board begins its analysis in every case 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.⁷ 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.”⁸

5. The Board finds that the applicant has not proven by a preponderance of the evidence that he is eligible for the DOT Outstanding Unit Award. Enclosure (4) of the Medals and Awards Manual states that this award was authorized for members who served for extended periods from October 1, 1993, to September 30, 1994, and later for many units involved in the response to the terrorist attacks on September 11, 2001. The applicant was not in the Coast Guard during these periods because he enlisted in the Coast Guard on November 1, 1994, and was discharged on August 31, 1999.

6. The Board finds that the applicant is eligible for one Sea Service Ribbon but not for a second award of this ribbon. Chapter 5.A.21. of the Medals and Awards Manual states that the Sea Service Ribbon is awarded to members who satisfactorily complete a minimum of 12 months cumulative sea duty, and a bronze star is authorized for each additional three-year period of eligible sea duty. Although the applicant’s DD 214 states that he served on sea duty for a total of 4 years and 15 days, the summary of his assignment history in his record shows that he served aboard the Aquidneck for 30 months and 5 days from January 13, 1997, through June 17, 1999, as he alleged, and the photograph of the plaque the applicant submitted shows that he served for 16 to 17 months aboard the Point Highland from January 1995 to May 1996. The exact dates of

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

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

⁷ 33 C.F.R. § 52.24(b).

⁸ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

his service aboard the Point Highland are not in the record before the Board. But even assuming that the applicant served a full 17 months aboard that cutter from January 1, 1995, through May 31, 1996, his total sea service in the Coast Guard would be 47 months and 5 days—17 months aboard the Point Highland plus 30 months and 5 days aboard the Aquidneck. This cumulative sea service is less than 48 months (4 full years), and the record does not show that the applicant served aboard any other cutter. Nor did he allege that he served aboard another cutter. Therefore, even though the applicant's DD 214 reflects 4 years and 15 days of cumulative sea service, the preponderance of the evidence shows that he did not accumulate the 4 full years of sea service that would entitle him to a second award of the Sea Service Ribbon. If the applicant submits documentation showing additional sea service, the Board will reconsider this request.

7. The preponderance of the evidence shows that the applicant is entitled to wear the "O" Operational Distinguishing Device on his Commandant's Letter of Commendation Ribbon. The citation for the CLOC, which would explain why and for what period it was awarded, is missing from his record, and his DD 214 does not mention the "O" Device. However, the applicant served in an operational rating (GM) and the vast majority of his service was aboard cutters. After completing recruit training, his only duty ashore was at GM "A" School from June to August 1996, followed by a few months at the Naval Engineering Support Unit in Portsmouth before reporting for duty aboard the Aquidneck, which was based in Portsmouth, on January 13, 1997. Therefore, it is highly unlikely that the applicant received his CLOC for anything but his operational duties aboard an operational unit—either the CGC Point Highland or the CGC Aquidneck. The Board notes in this regard that the applicant's record contains a Page 7 signed by the Officer in Charge of the CGC Point Highland, who strongly praised the applicant and the entire crew for "outstanding personal and professional performance" during a 43-day deployment in 1995, which was the first such deployment for an 82' cutter. The Board also notes that the Coast Guard did not address this request in the advisory opinion and instead stated that the applicant is not entitled to a second CLOC, even though he did not ask for a second CLOC.

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 received or is eligible to receive. Accordingly, the Board will waive the statute of limitations and direct the Coast Guard to correct the applicant's DD 214 to show that he was awarded a Coast Guard Sea Service Ribbon and that his Commandant's Letter of Commendation came with an "O" Operational Distinguishing Device. All other requests should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [REDACTED] USCG, for correction of his military record is granted in part. His DD 214 shall be corrected to show that he received the Coast Guard Sea Service Ribbon and that he is entitled to wear an "O" Operational Distinguishing Device on the Commandant's Letter of Commendation that is already listed on his DD 214. All other requests are denied.

November 9, 2017

