

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-127

██████████
██████████

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 April 1, 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, an ██████████ who retired from the Coast Guard in 2005, asked the Board to correct his DD 214 to show that he received the following awards:

1. Global War on Terrorism Expeditionary Medal (GWOTEM)
2. Armed Forces Expeditionary Medal (AFEM)¹

In support of his request, the applicant submitted a copy of the roster of personnel assigned to the CGC Spencer from February 28, 2004, to June 15, 2004, and his name is on the list. He stated that he is eligible for the two medals because they were awarded to the crew of the CGC Spencer after he retired. In support of this allegation, he submitted a copy of an email chain from December 8, 2005, through June 3, 2008, in which various Coast Guard personnel discuss the crew of the CGC Spencer's eligibility for the AFEM Medal and the GWOTEM. The emails include one from Petty Officer B who stated that the crew of the CGC Spencer is eligible for the Global War on Terrorism Service Medal (GWOTSM).

The applicant did not indicate when he discovered the alleged errors in his record nor did he explain why he waited more than ten years before submitting his application to the Board.

¹ The applicant actually asked for an Armed Forces Joint Expeditionary Medal, but there is no such medal listed in the Coast Guard Medals and Awards Manual, and so the Board interprets his claim as a request for the Armed Forces Expeditionary Medal. COMDTINST M1650.25D.

SUMMARY OF THE RECORD

The applicant's record contains two DD 214s, and the first one shows that he enlisted in the Coast Guard on January 14, 1985, and was honorably discharged on January 10, 1991, for the purpose of immediate reenlistment. His second DD 214 shows that he enlisted on January 14, 1985, and retired on May 31, 2005, after completing a little more than 20 years on active duty.² His two DD 214s show that he received numerous medals and awards and that his last duty assignment was the CGC Spencer. A roster of personnel assigned to the CGC Spencer shows that he served on the cutter from August 25, 2002, until his retirement on May 31, 2005.

A statement of Creditable Service (SOCS) in the applicant's record also shows that he served aboard the CGC Yacona from 1985 to 1986; the CGC Polar Sea from 1986 to 1987; and the CGC Dallas from 1991 to 1993. The SOCS predates his service aboard the CGC Spencer.

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." The manual provides that reservists are not entitled to a DD 214 unless they are discharged from a period of continuous active duty of at least 90 days or if they are discharged from active duty performed for a contingency operation under Title 10 orders.

Chapter 5.A.7 of COMDTINST M1650.25E, the Coast Guard Medals and Awards Manual states that the AFEM may be awarded to personnel who participate or have participated in an eligible military operation for not less than 30 consecutive days. Enclosure 15 to the manual shows that the CGC Spencer is eligible for the AFEM for its participation in the Secure Tomorrow Operation (Haiti) from February 29, 2004, through June 15, 2004.

Chapter 5.A.12 of the Medals and Awards Manual states that the GWOTEM was established by Executive Order in 2003 and that eligibility for the award began on September 11, 2001. The area of eligibility is limited to those personnel deployed abroad in Operation Enduring Freedom and Iraqi Freedom in specific geographic areas. Enclosure 23 to the manual lists the units eligible for the medal, but does not include any of the cutters on which the applicant served.

Chapter 5.A.13 of the Medals and Awards Manual states that the GWOTSM was established in 2003 and is awarded to all Coast Guard members who were on active duty for a period of not less than 30 consecutive days or 60 non-consecutive days from September 11, 2001, through January 30, 2005.

² The applicant's second DD 214 documenting his service from January 14, 1985, to May 31, 2005, is incorrect, because it does not accurately reflect his prior active service (block 12.d) from January 14, 1985, to January 10, 1991.

VIEWS OF THE COAST GUARD

On August 28, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant alternative relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC argued that alternative relief should be granted because although his request is untimely, his record does contain a few errors which should be corrected.

PSC stated that the applicant has not provided sufficient documentation to warrant the award of the GWOTEM. PSC submitted an email dated August 17, 2017, from an officer who served aboard the CGC Spencer and who stated that the crew was awarded the Global War on Terrorism Medal for its Mediterranean Patrol but “did not meet the time frame or geographic constraints for the Expeditionary Medal outlined in ALCOAST 294/04.”³

PSC stated that the applicant is eligible for the GWOTSM in accordance with Chapter 5.A.13 of the Medals and Awards Manual based on his service from September 11, 2001, through May 31, 2005. PSC stated that the applicant is also eligible for the AFEM and recommended that it be added to his DD 214 because he was a member of the CGC Spencer during the entire period for which the crew was awarded that medal, February 29, 2004, to June 15, 2004.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 31, 2017, 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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.⁴ The applicant received his DD 214 on January 23, 2002, when he was released from active duty. The preponderance of the evidence shows that the applicant knew of the alleged errors in his record in 2002, 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.⁵ 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”⁶ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that “the longer the delay

³ ALCOAST 294/04 was released on June 12, 2004, and provides guidance and eligibility requirements for the GWOTEM. The eligibility requirements for the medal are the same as those in the 2008 and 2016 versions of the Coast Guard Medals and Awards manuals.

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

⁵ 10 U.S.C. § 1552(b).

⁶ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

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.”⁷

3. The applicant did not indicate on his application to the Board when he discovered the alleged errors in his record, nor did he offer any explanation as to why he waited more than ten years to submit his request for correction. However, because the Coast Guard has identified clear omissions on his 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.

4. The applicant alleged that his DD 214 is erroneous and unjust because it does not list two medals that he is eligible to receive. In considering allegations of error and injustice, 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. 33 C.F.R. § 52.24(b). 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.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

5. The applicant argued that his DD 214 should be corrected to show that he earned the GWOTEM. The Board finds that the preponderance of the evidence shows that he is not eligible for this medal because he did not serve aboard an eligible cutter listed in Enclosure 23 to the Medals and Awards Manual. The record shows that he served aboard the cutters Yacona, Polar Sea, Dallas, and Spencer, but none of these cutters are listed in Enclosure 23. Moreover, an officer aboard the CGC Spencer told PSC that the crew was awarded the GWOTSM for its Mediterranean Patrol but that the crew did not meet the time frame or geographic constraints for the GWOTEM.

6. The applicant also argued that his DD 214 should be corrected to show that he received the AFEM. The Board finds that he is eligible for the medal because he served aboard the CGC Spencer from August 25, 2002, through May 31, 2005, and Enclosure 15 to the Medal and Awards Manual shows that the crew of the CGC Spencer is eligible for the AFEM for its participation in the Secure Tomorrow Operation (Haiti) from February 29 through June 15, 2004.

7. After reviewing the applicant’s record, the Coast Guard determined that the applicant is also eligible for the GWOTSM. The Board agrees. He is eligible for this medal because he was on active duty from September 11, 2001, through May 31, 2005, which is within the eligibility period for the medal provided in Chapter 5.A.13 of the Medals and Awards Manual.

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, his DD 214 should be corrected to show that he received the Armed Forces Expeditionary Medal and the Global War on Terrorism Service Medal. All other requests should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

ORDER

The application of [REDACTED] USCG (Retired), for correction of his military record is granted in part. His DD 214 dated January 23, 2002, shall be corrected to show that he is entitled to wear the Armed Forces Expeditionary Medal and the Global War on Terrorism Service Medal. All other requests are denied.

November 9, 2017

