

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-201



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on June 16, 2017, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 23, 2018, 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 active duty Chief [REDACTED] asked the Board to correct his record by changing the opening sentence on the citation for his Meritorious Service Medal (MSM) from stating "heroic service" to "extraordinary heroism." He claimed that he was cited by then-Secretary Chertoff for "Extraordinary Heroism" for his rescue of two women from a burning building on May 23, 2007, in a personnel letter. He argued that the language in the Secretary's letter meets the requirement of the Pay Manual for members to receive an extra ten-percent pay increase in their retirement for heroism.

The applicant explained that 14 U.S.C. § 357(i) states that an active duty enlisted member who retires after 20 years of service and was cited for extraordinary heroism by the Secretary concerned may have his retired pay increased by ten percent. The applicant stated that in accordance with the Coast Guard Medals and Awards Manual, Article 1.B.5., the award must be higher than a Coast Guard Commendation Medal and the citation must specifically state "extraordinary heroism." The member should also receive a memorandum from the Commandant regarding his eligibility for the ten-percent increase in retired pay. The applicant therefore requested that his award be corrected to cite "extraordinary heroism" in line with the Secretary's letter so that he can receive his proper retirement pay when he retires. With his application, the applicant provided several documents, including evidence of his receipt of the Secretary's Award for Valor, which are described below in the Summary of the Record.

SUMMARY OF THE RECORD

On May 23, 2007, the applicant received a letter from then-Secretary Chertoff, which states the following:

I want to commend you for the extraordinary heroism you demonstrated on May 8, 2007 while rescuing a woman and her daughter who were trapped in a smoke filled stairwell of a burning building in ... Without regard for your own well being, you courageously entered an extremely dangerous space and inhaled smoke in order to bring the two individuals to safety.

Your strength, courage, and devotion to duty exemplify the Coast Guard's core values, steadfast commitment to the American people, and tradition of remaining *semper paratus* to help those in need.

On August 2, 2007, the applicant received a Meritorious Service Medal from the Commandant for "Exceptionally Meritorious Achievement and Superior Performance of Duties" during the period from May to August 2007.¹ The citation accompanying this medal states the following:

[The applicant] is cited for heroic service in the performance of duty while stationed at Coast Guard Station... on the afternoon of 8 May 2007. While in a liberty status, [the applicant] was driving down a main street in ... with a fellow Coast Guardsman when he saw smoke billowing out the front door and flames exiting the rear of the ... Bar. Stopped to render assistance, [the applicant] observed several people hurriedly exiting the building shouting that two people were still inside. Without regard for his personal safety, he ran into the burning building. Upon entering the doorway on the ground floor, [the applicant] experienced zero visibility caused by heavy, acrid smoke. Despite the choking environment, intense heat and no familiarity with the building, he located a stairwell several feet inside the entrance and proceeded up the stairs on his hands and knees. Three-quarters of the way up the stairs, he located the first victim, a 71 year old woman who was dependent on bottled oxygen and nearly unconscious. A second victim, who had succumbed while trying to rescue the first victim, was located further up the stairs in a disoriented state, but able to walk. Both victims were only minutes from certain asphyxiation. [The applicant] assisted the second victim to safety and immediately ran back inside to assist his fellow Coast Guardsman, who was tending to the elderly woman. Working under tremendous duress, [the applicant] maintained a clam state of mind and mustered the strength to carry the elderly woman out of the burning building, while local fire fighters and emergency medical services were still enroute. [The applicant's] courage and devotion to duty are in keeping with the highest traditions of the United States Coast Guard.

The applicant provided an email dated November 26, 2007, showing that he had received the Secretary's Award for Valor. The 2007 list of honorees for the Third Annual Secretary's Awards for the Secretary's Award for Valor, held in December 2007, states that this "award is the Department's highest recognition for extraordinary acts of courage or heroism." The applicant and his crewmate are listed as receiving the award for "extraordinary heroism rescuing two women from a burning building on May 8, 2007."

¹ The use of the period May to August 2007 is not explained in the record, and the citation for the medal discusses only the applicant's conduct on May 8, 2007.

VIEWS OF THE COAST GUARD

On November 16, 2017, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum on the case submitted by the Coast Guard Personnel Service Center (PSC), who recommended that the Board deny relief.

PSC stated that the May 23, 2007, letter from Secretary Chertoff is a personal thank-you letter and not a Coast Guard award or citation. On August 2, 2007, the applicant received his MSM from the Coast Guard for “heroic service” and not for “extraordinary heroism.” PSC noted that Article 2.A.11.b. of the current version of the Medals and Awards Manual, COMDTINST M1650.25E, issued in 2016, states that the standard opening phrase for the MSM citation is “... is cited for meritorious (heroic) service in the performance of duty” PSC argued that the applicant’s citation was written in accordance with policy and with the standard verbiage for opening phrases of this award. PSC also noted Article 1.B.11. of the current manual states that only Coast Guard Medals and above may be considered for extraordinary heroism. “The Commandant of the Coast Guard ... retains approval for all cases of extraordinary heroism and all recommendations for extraordinary heroism must be forwarded through the chain of command ... for consideration by the Coast Guard Military Board of Awards.” PSC claimed that none of these criteria were met and the applicant therefore does not qualify for the additional ten percent retired pay.

With its analysis, PSC also provided emails regarding the applicant’s case. The Personnel Services Division (PSD) of the Coast Guard was asked about the applicant’s claim that he should be entitled to the ten-percent retired pay increase. PSD stated that the Secretary’s letter was created just after the incident and before the MSM was and it did not state that the applicant was eligible for the ten-percent extraordinary heroism retired pay increase. PSD further stated that “heroic service” or “heroic action” is used in awards when the member’s actions were heroic, and “extraordinary heroism” is only used in awards when the ten-percent retired pay increase has been approved. PSD further stated that they were unable to find any award board minutes authorizing an extraordinary heroism retired pay increase for the applicant or the other member involved in the rescue. The email also noted a change in the Medals and Awards Manual since the time the applicant received the medal in question. The new manual states that only the Coast Guard Medal, Gold Lifesaving Medal, or higher awards are authorized for review for the extraordinary heroism retired pay increase in order to bring the Coast Guard more in line with the Department of Defense’s policies. For awards in noncombat situations, it is possible to receive the extraordinary heroism increase for the Coast Guard Medal, Gold Lifesaving Medal, or Distinguished Flying Cross, PSD stated, and the Coast Guard would look at the risk to life and whether the rescue was such that an extraordinary action award should be approved. PSD argued that MSMs “should not equate to such heroism.” PSC therefore concluded that the applicant failed to provide evidence that the award verbiage on the citation for his MSM was in error or that he is eligible for a ten percent increase in his retired pay and recommended that the Board deny relief.

Neither PSC nor the JAG addressed the applicant’s receipt of the Secretary’s Award for Valor.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 21, 2017, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited a response within 30 days. The applicant responded on December 13, 2017, and disagreed with the advisory opinion. The applicant stated that the Coast Guard Pay Manual states that in order to receive the ten percent retired pay increase, the award must be higher than the Coast Guard Commendation Medal, which the MSM is.² He stated that this was in line with the Medals and Awards Manual in effect in 2007. The applicant stated that he felt that, according to the Pay Manual and the provisions of 14 U.S.C. § 357(i), by definition he was cited by the "Secretary concerned" for "extraordinary heroism." He also argued that the current versions of the manuals should not be considered by the Board; the Board should instead consider the manuals that were in effect when he received the letter and award. He therefore asked that the Board correct his MSM citation so that he may receive his ten percent pay increase upon retirement.

With his response, the applicant provided several emails. The first email, dated February 10, 2015, is from a Yeoman who stated she had "bad news" for the applicant. She stated that the Coast Guard strictly follows the Pay Manual, Chapter 16, which notes that the written citation for the medal must specifically state "extraordinary heroism."

The applicant provided another chain of emails in which he had also been discussing the ten percent retired pay increase with various Coast Guard employees. The same Yeoman told another employee that the applicant's command had told her that the applicant was entitled to the pay increase so she had been researching it. She was told that despite the fact that the letter from the Secretary states "extraordinary heroism," the medal citation must state "extraordinary heroism" (in accordance with current policy) in order for the applicant to be entitled to the retired pay increase.

APPLICABLE LAW AND POLICIES

Extraordinary Heroism

In 2007, 14 U.S.C. § 357 stated the following:

- (a) Enlisted Personnel Boards shall be convened as the Commandant may prescribe to review the records of enlisted members who have twenty or more years of active military service.
- (b) Enlisted members who have twenty or more years of active military service may be considered by the Commandant for involuntary retirement and may be retired on recommendation of a Board—
 - (1) because the member's performance is below the standards the Commandant prescribes; or
 - (2) because of professional dereliction.
- (c) An enlisted member under review by the Board shall be—
 - (1) notified in writing of the reasons the member is being considered for involuntary retirement;
 - (2) allowed sixty days from the date on which counsel is provided under paragraph (3) to submit any matters in rebuttal;

² The version of the manual PSC cited is in effect today. The version of the manual the applicant cited was in effect in 2007 when he received his medal.

- (3) provided counsel, certified under section 827(b) of title 10, to help prepare the rebuttal submitted under paragraph (2) and to represent the member before the Board under paragraph (5);
 - (4) allowed full access to and be furnished with copies of records relevant to the consideration for involuntary retirement prior to submission of the rebuttal submitted under paragraph (2); and
 - (5) allowed to appear before the Board and present witnesses or other documentation related to the review.
- (d) A Board convened under this section shall consist of at least three commissioned officers, at least one of whom shall be of the grade of commander or above.
- (e) A Board convened under this section shall recommend to the Commandant enlisted members who—
- (1) have twenty or more years of active service;
 - (2) have been considered for involuntary retirement; and
 - (3) it determines should be involuntarily retired.
- (f) After the Board makes its determination, each enlisted member the Commandant considers for involuntary retirement shall be—
- (1) notified by certified mail of the reasons the member is being considered for involuntary retirement;
 - (2) allowed sixty days from the date counsel is provided under paragraph (3) to submit any matters in rebuttal;
 - (3) provided counsel, certified under section 827(b) of title 10, to help prepare the rebuttal submitted under paragraph (2); and
 - (4) allowed full access to and be furnished with copies of records relevant to the consideration for involuntary retirement prior to submission of the rebuttal submitted under paragraph (2).
- (g) If the Commandant approves the Board's recommendation, the enlisted member shall be notified of the Commandant's decision and shall be retired from the service within ninety days of the notification.
- (h) An enlisted member, who has completed twenty years of service and who the Commandant has involuntarily retired under this section, shall receive retired pay.
- (i) An enlisted member voluntarily or involuntarily retired after twenty years of service who was cited for extraordinary heroism in the line of duty shall be entitled to an increase in retired pay. The retired pay shall be increased by 10 percent of—
- (1) the active-duty pay and permanent additions thereto of the grade or rating with which retired when the member's retired pay is computed under section 423(a) of this title; or
 - (2) the member's retired pay base under section 1407 of title 10, when a member's retired pay is computed under section 423(b) of this title.
- (j) When the Secretary orders a reduction in force, enlisted personnel may be involuntarily separated from the service without the Board's action.

The Coast Guard Pay Manual, COMDTINST M7220.29A, Article 16.A.5., titled "Ten Percent for Heroism," states that in accordance with 14 U.S.C. § 357, "any enlisted member who retires after 20 years of service, whether voluntarily or involuntarily, and was previously cited for extraordinary heroism while on active duty by the Secretary concerned, may have his retired pay increased by 10 percent. In accordance with the Coast Guard Awards Manual, COMDTINST M1650.25 (series) article 1.B.5, the award must be higher than a Coast Guard Commendation Medal and the citation must specifically state 'extraordinary heroism.' Additionally, the member

will receive a memorandum from Commandant (CG1221) notifying them of their eligibility for a 10 percent increase.”

The Coast Guard Medals and Awards Manual, COMDTINST M1650.25C, issued in October 2002, was still in effect in 2007. It does not mention the Secretary’s Award for Valor although two medals awarded by the Secretary are listed as “military decorations” that may be worn on a member’s uniform pursuant to Article 2. Article 1.B.4. of the manual states the following:

Benefits for Extraordinary Heroism. 14 USC 357(i) provides that any enlisted person who retires by reason of 20 years service, whether voluntarily or involuntarily, who has been cited for extraordinary heroism in the line of duty, as determined by the Secretary, is entitled to an increase of 10 percent in retired pay (see article 12-C-16 of the Personnel Manual, COMDTINST M1000.6 (series)). Only awards senior to the Coast Guard Commendation medal, including the Gold and Silver Lifesaving Medal, will receive consideration for this added distinction, which must be documented in accordance with paragraph 1.E.3.b. (Statement of Heroic Acts or Meritorious Achievement), where the awarding authority is convinced the act, compared with other acts of heroism, stands alone in comparison. Specifics that awards boards and awarding authorities shall also consider for “extraordinary heroism” include:

- a. Was the heroic act performed necessary and worthwhile?
- b. Did the individual performing the act know the potential danger and risks involved?
- c. Was the act performed voluntarily (should not be penalized for carrying out orders beyond that ordinarily expected under a given set of circumstances)?
- d. Did the individual choose not to seek cover or safety, or leave a place of comparative safety, to perform the act without direct orders, or without being forced into a more dangerous situation by uncontrolled circumstances?
- e. If the act were not performed, would there be reason for censure or blame?

This language also appears in the Coast Guard reissued the Medals and Awards Manual in 2008 as COMDTINST M1650.25D. It was not amended to specify a military medal at the level of the Coast Guard Medal or higher until 2016, when the Coast Guard issued COMDTINST M1650.25E.

Award Precedence and Criteria

In Table 1 of the COMDTINST M1650.25C, two awards issued by the Secretary (then the Secretary of Transportation because the manual was issued in 2002) are listed as military awards that may be worn on a member’s uniform, but the Secretary’s Award of Valor is not included. The Commandant is listed as the approving authority for the Coast Guard Medal, Meritorious Service Medal, and the Gold and Silver Lifesaving Medals, and the order of precedence for the medals awarded for heroism that the applicant might have received is as follows: 1. Coast Guard Medal, 2. Gold Lifesaving Medal, 3. Meritorious Service Medal, 4. Silver Lifesaving Medal, 5. Coast Guard Commendation Medal.

According to Article 2.A.5., the Coast Guard Medal is awarded to persons who, while serving in the Coast Guard, “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.” Subsection (b) states that the opening phrase for Coast Guard Medal citations is, “Is cited for (extraordinary) heroism on...”

According to Article 2.A.7, the Meritorious Service Medal is awarded to persons who “have distinguished themselves by outstanding noncombat meritorious achievement or service to the United States... [A]cts of heroism of a lesser degree than the Coast Guard Medal, and single acts of merit under operational conditions may justify this award.” Subsection (b) states that the opening phrase for MSM citations is, “Is cited for meritorious (heroic) service in the performance of duty as...”

The Coast Guard Civilian Awards Manual in effect in 2007, COMDTINST M12451.B, has no provision concerning the ten-percent increase in retired pay. Chapter 3.4. provides the following regarding the Secretary’s Award for Valor:

- a. Award Summary. Highest Departmental award for acts of heroism or courage involving great personal risk under unusual circumstances.
- b. Criteria. Civilians are eligible for actions on or off duty which demonstrated outstanding courage and voluntary risk of personal safety in the face of danger in an emergency.

Chapter 2.A. of the Recognition Programs Manual, COMDTINST M1650.26, states, that while military personnel may accept the honorary Departmental awards authorized in the Coast Guard Civilian Awards Manual, COMDTINST M12451.B, the awards may not be worn on a Coast Guard uniform. Chapter 2.A.8 states that the Secretary’s Award for Valor is “the highest recognition for extraordinary acts of valor occurring either on or off duty. The award is only to be given in extraordinary circumstances. The employee must have demonstrated extraordinary courage in a highly dangerous, life-threatening situation or emergency under extreme stress and involving a specific act of valor, such as saving another person’s life or property.”

Citation Preparation and Processing

Article 1.E.3. of the Medals and Awards Manual, COMDTINST M1650.25C, in effect in 2007, governs the preparation of a citation for a proposed medal. Article 1.E.3.a. requires the opening sentence of the citation to include the “standard opening phrase (specific to the award)” as well as the member’s duty assignment and the date or period for which the medal is being awarded. Article 1.E.3.b. requires a description of the member’s heroic acts or meritorious achievement, and states at paragraph (1), “A determination of extraordinary heroism should be made (see Benefits for Extraordinary Heroism in paragraph 1.B.4.) and cited in the citation.” Article 1.E.3.c. requires the citation to end with the “standard closing sentence, specific to the level of the award recommended.”

Article 1.G.2.a. of this manual states that Flag Officers with Approval Authorities must establish Awards Boards in order to more effectively exercise responsibility to recognize heroic and meritorious performance. Paragraph (1) states that the Flag Level approval authority responsibilities include reviewing, evaluating, and screening “all recommendations referred and provide comments to the awarding authority so that he/she can more effectively consider recommendations for decorations and awards; to include instances where extraordinary heroism is indicated in accordance with paragraph 1.B.4.” Paragraph (3) states that after the Awards Boards carefully considers each case, it may recommend approval as recommended, upgrade to a higher award, downgrade to a lower award, return for clarification, or no award.

Article 1.G.2.b. states that the Awarding Authority may agree or disagree with the Awards Board's recommendation. When "‘extraordinary heroism’ is indicated, and in accordance with paragraph 1.B.4., the awards authority may approve that stipulation on behalf of the Secretary for those awards where delegated approval is authorized." Otherwise, the recommendation is forwarded to the Coast Guard Board of Awards at Coast Guard Headquarters.

Article 1.G.3. states that the Coast Guard Board of Awards is responsible for "considering, reviewing, and making recommendations to the Commandant" concerning awards, "extraordinary heroism" determinations, and decorations that require referral to the Secretary. Article 1.G.3.d. states that the Board of Awards will make recommendations regarding extraordinary heroism "within the Commandant's awarding authority," which includes the MSM, and if approval is recommended, the board will forward the case to the Commandant for approval.

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. The application was timely.

2. The applicant alleged that he is entitled to a ten-percent increase in his retired pay and that the lack of a citation for "extraordinary heroism" for his 2007 Meritorious Service Medal is erroneous and unjust. 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.³ 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."⁴

3. The record shows that on May 8, 2007, the applicant and a fellow Coast Guardsman ran into a burning building while on liberty after learning that two people were trapped inside. According to the MSM citation, the applicant entered the building "[w]ithout regard for his personal safety" and continued into the building despite "zero visibility...the choking environment, intense heat and no familiarity with the building." He had to crawl up the stairs because of the smoke, and according to the citation, both individuals inside were "only minutes from certain asphyxiation." After assisting the first woman out of the building, the applicant went back inside and "mustered the strength to carry the elderly woman out of the burning building."

³ 33 C.F.R. § 52.24(b); see Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

4. Based on the applicant's heroism of May 8, 2007, the Secretary of the Department at the time sent the applicant a personal letter dated May 23, 2007, and commended him "for the extraordinary heroism" he had demonstrated. On August 2, 2007, the applicant received the Meritorious Service Medal (MSM) from the Commandant and the citation includes the prescribed opening phrase for the MSM,⁵ stating that he was cited for "heroic service in the performance of duty," rather than extraordinary heroism. Then in December 2007, the Secretary awarded the applicant the "Secretary's Award for Valor" for his "extraordinary heroism rescuing two women from a burning building on May 8, 2007," according to the list of honorees for the ceremony. Under Article 1.B.4. of the Medals and Awards Manual and Article 16.A.5. of the Pay Manual, members may receive a ten-percent increase in their retired pay if they have been "cited for extraordinary heroism in the line of duty." The questions before the Board, then, are whether the applicant was "cited for extraordinary heroism in the line of duty" within the meaning of 10 U.S.C. § 357(i) and Article 1.B.4. of the Medals and Awards Manual as in effect in 2007 and, if not, whether the Coast Guard erred in awarding the applicant the MSM with a citation without the term "extraordinary heroism" in light of the applicant's actions on May 8, 2007.

5. The Board finds that neither the Secretary's personal letter to the applicant dated May 23, 2007, nor the list of honorees for the December 2007 award ceremony in which the Secretary praised his "extraordinary heroism" constitutes being "cited" for extraordinary heroism within the meaning of 14 U.S.C. § 357(i) or the Medals and Awards Manual in effect in 2007. Title 14 U.S.C. § 357 expressly authorized the Commandant, not the Secretary, to retire members, and paragraph (i) shows that this decision-making about retirement included the determination of which retirees should receive a ten-percent increase in their retired pay for "extraordinary heroism." The Commandant placed the policies and procedures for that determination in the Medals and Awards Manual, under which medals are authorized with specific criteria and are entered in members' records with written "citations" commending the members and describing the performance for which the medals were awarded. Being "cited" for extraordinary heroism in this context must logically be associated with a medal or award, and so either the criteria for the award or medal must require "extraordinary heroism" or the accompanying citation must use the term "extraordinary heroism." Article 1.B.4. of the Medals and Awards Manual in effect in 2007 provides the factors that must be considered in awarding the ten-percent increase and states that the determination must be documented in the member's record pursuant to Article 1.E.3.b., which governs a unit's preparation of a recommended citation for a proposed medal. Article 1.E.3.b.(1) also states that in preparing the citation, "[a] determination of extraordinary heroism should be made (see Benefits for Extraordinary Heroism in paragraph 1.B.4.) and cited in the citation." Article 1.I. authorizes the citations for the medals and awards authorized in that manual to be entered in a member's military record, whereas the Civilian Awards Manual has no similar provision. The Board is not persuaded that either the Secretary's personal letter or the list of honorees constitutes a citation for "extraordinary heroism" under 14 U.S.C. § 357(i) or the 2007 Medals and Awards Manual.

6. The Commandant awarded the applicant an MSM in August 2007 for his heroism on May 8, 2007. The Coast Guard argued that because the opening sentence on the applicant's MSM citation does not include the term "extraordinary heroism," and instead states "heroic service," the applicant is not eligible for the ten-percent retired pay increase. This argument is

⁵ COMDTINST M1650.25C, Article 2.A.7.(b) (prescribing the opening sentence for an MSM citation).

unsound for two reasons. First, Article 1.E.3.b. of the 2007 Medals and Awards Manual requires the determination and documentation of “extraordinary heroism” to appear somewhere in the body of the citation, not the opening sentence. Second, Article 2.A.7. did not permit the use of the term “extraordinary heroism” in the opening sentence for an MSM citation, and yet recipients of the MSM were clearly eligible for consideration for the ten-percent increase: Article 1.B.4. states that awards “senior to the Coast Guard Commendation Medal, including the Gold and Silver Lifesaving Medal, will receive consideration for the added ten percent,” and Table 1 shows that the MSM is senior to the Coast Guard Commendation Medal. Because the manual provided that recipients of the MSM could be eligible for the ten-percent increase for “extraordinary heroism” but did not permit that term to be used in the opening sentence on an MSM citation, the lack of the term “extraordinary heroism” in the opening sentence on the applicant’s MSM citation is not dispositive of whether he is entitled to the ten-percent increase. Nevertheless, the criteria for the MSM in Article 2.A.7. of the manual do not require “extraordinary heroism,” and the term does not appear anywhere in the citation for the applicant’s MSM. Therefore, the MSM citation that the applicant received shows that the multiple layers of review provided under the 2007 Medals and Awards Manual ended in a determination by the Commandant that his performance on May 23, 2007, did not merit the ten-percent increase in retired pay authorized under 14 U.S.C. § 357(i) for enlisted members who are “cited for extraordinary heroism in the line of duty.”⁶

7. The Coast Guard also argued that the Board should retroactively apply the regulations in the current manual, COMDTINST 1650.25E, which was issued in 2016, to the applicant’s 2007 acts. Under Article 1.B.11. of the current manual, “[o]nly military awards, the Coast Guard Medal or above, to include the Coast Guard Gold Lifesaving Medal, may be considered for extraordinary heroism.” Therefore, had the applicant performed his acts in 2018 *and* had he been awarded the MSM and the Secretary’s Medal of Valor in 2018, he would clearly not be eligible for the ten-percent increase because the MSM is a lower award than the Coast Guard Medal, and the Secretary’s Medal of Valor is not a military award. Instead, it is (and was in 2007) a civilian Departmental award that military members could receive but were not authorized to wear on their uniforms pursuant to Chapter 3.4. of the Civilian Awards Manual, COMDTINST M12451.B, and Chapter 2.A. of the Recognition Programs Manual, COMDTINST M1650.26. The Board, however, will not apply the new policies in the current Military Medals and Awards Manual, issued in 2016, to acts of heroism and awards for heroism in 2007.

8. The Board finds that the applicant’s receipt of the Secretary’s Award for Valor in December 2007 for the rescues he performed on May 8, 2007, also does not entitle the applicant to the ten-percent increase in retired pay pursuant to 14 U.S.C. § 357(i). Although the list of honorees for the award ceremony states that he received this award for his “extraordinary heroism rescuing two women from a burning building on May 8, 2007,” this award was not authorized by the 2007 Medals and Awards Manual, which contained the rules for determining “extraordinary heroism” under 14 U.S.C. § 357(i). Instead, the Secretary’s Award for Valor appears in the Coast Guard’s Civilian Awards Manual, which does not mention “extraordinary heroism” or address 14 U.S.C. § 357(i). And Chapter 2.A.8. of the Recognition Programs Manual uses the phrase

⁶ The Board notes that Article 2.A.5. of the 2007 Medals and Awards Manual provides that the citation for a Coast Guard Medal, which is even higher than an MSM, must include a standard opening sentence with either “heroism” or “extraordinary heroism,” which shows that even a Coast Guard Medal could be awarded without entitling the member to the ten-percent increase in retired pay.

“extraordinary acts of valor,” rather than “extraordinary heroism,” for this award and allows Coast Guard members to receive it but not to wear it on their uniforms. Article 16.A.5. of the Pay Manual states that the determination must have been made by “the Secretary concerned”—presumably to include determinations made by the Army, Navy, and Air Force when awarding medals to Coast Guard members—but Article 16.A.5. also refers the reader to the rules in the Coast Guard Medals and Awards Manual.

9. The Board finds that the Commandant held the authority to make “extraordinary heroism” determinations in 2007 because 14 U.S.C. § 357 authorized the Commandant—rather than the Secretary—to retire enlisted members, and paragraph (i) of § 357 provided that they could be retired with a ten-percent increase in retired pay if they had been cited for “extraordinary heroism in the line of duty.” Although paragraph (i) did not expressly mention either the Commandant or the Secretary, its location in § 357 shows that the Commandant was authorized to make this determination regarding a member’s retired pay pursuant to his authority to retire enlisted members under the other paragraphs in § 357. Even assuming *arguendo* that the Secretary could have legally wielded the authority in § 357(i) in 2007, the applicant submitted no evidence showing that the Secretary intentionally exercised that authority to overrule the Commandant when making the decision to award him the Secretary’s Award for Valor in 2007. The rules that implemented § 357(i) in the 2007 Medals and Awards Manual required multiple levels and boards of review and a detailed citation with an express, positive determination of “extraordinary heroism” for a member to be entitled to the ten-percent increase in retired pay. As noted above in finding 6, the lack of this term on the applicant’s MSM citation shows that pursuant to these procedures, the Commandant determined *not* to cite the applicant for “extraordinary heroism” when awarding him the MSM in August 2007 for the rescues on May 8, 2007.

10. The Board of Awards and the Commandant likely also recommended the applicant for the Secretary’s Award for Valor pursuant to Article 1.G. of the Medals and Awards Manual and the criteria in Chapter 3.4. of the Civilian Awards Manual. But the Board finds that the applicant’s receipt of this Departmental award does not show that the Commandant changed his determination about “extraordinary heroism” pursuant to 14 U.S.C. § 357(i) or Article 1.B.4. of the Medals and Awards Manual between August and December 2007. If the Commandant had changed his determination or if the Secretary had intentionally overridden that determination, the applicant’s entitlement under § 357(i) would presumably have been documented in his military record, but it was not. The Board concludes that the preponderance of the evidence does not show that either the Commandant or the Secretary determined that the applicant’s heroism should entitle him to the ten-percent retired pay increase provided in 14 U.S.C. § 357(i) for “extraordinary heroism in the line of duty.”

11. The applicant’s heroism on May 8, 2007, is evidenced by the citation for the MSM. This Board cannot conclude based on the evidence of record that the Commandant abused his discretion or otherwise committed an error or injustice by awarding the applicant an MSM with no mention of “extraordinary heroism” in the citation. Nor has the applicant shown that his military record should be corrected to show that the Secretary cited him for “extraordinary heroism” pursuant to 14 U.S.C. § 357(i) in 2007 based on his receipt of the Secretary’s letter or the Secretary’s Award for Valor. Therefore, the applicant’s request should be denied.

ORDER

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

March 23, 2018

