

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-265



FINAL DECISION

This is a proceeding under 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 31, 2017, 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 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, who was discharged from the Coast Guard after serving as a Chief Commissary Steward during World War II, asked the Board to determine if he is eligible to receive a Purple Heart for severe smoke inhalation and subsequent hospitalization for treatment. He stated that he was aboard the Normandie/Lafayette¹ as part of a protective force when it caught fire and sank in New York Harbor. He stated that he suffered severe smoke inhalation and was hospitalized afterwards. In support of his application, he argued that after the fire there was a great deal of speculation as to the cause of the fire, and he stated that many people believe that it had been an act of sabotage.

The applicant stated that he discovered the error on December 15, 2016, and argued that the Board should find it in the interest of justice to consider his application because he "missed recognition of possible Purple Heart injury."

¹ During World War II, the second largest ship in the world, the French cruise liner Normandie, was seized by federal authorities in New York and renamed the U.S.S. Lafayette. On February 9, 1942, the ship caught fire and capsized while being converted to a troopship at Pier 88 on the Hudson River. An investigation by the Navy found that the fire was an accident caused by a spark from an acetylene torch that had ignited kapok life preservers stacked on the deck, rather than sabotage. More than 2,000 people, including hundreds of Coast Guardsmen, were aboard when the fire started, and many were treated for injuries, burns, smoke inhalation, and exposure. After capsizing, the ship was scrapped. <http://www.nydailynews.com/new-york/normandie-catches-fire-capsizes-1942-article-1.2103184> (last visited March 22, 2018).

SUMMARY OF THE APPLICANT'S RECORDS

The applicant enlisted in the Coast Guard on July 8, 1940, and was honorably discharged on June 26, 1946. According to his military record he was assigned to the New York area in 1942 and transferred to a ship on December 31, 1942. His DD 214 shows that he was awarded the American Area Campaign Medal, the American Defense Service Medal, the Asiatic Pacific Area Campaign Medal, the Good Conduct Medal, and the Victory Medal.

The applicant's record shows that he was evaluated for smoke inhalation at the U.S. Naval Hospital in Brooklyn, New York, on February 10, 1942. The entry states that the injury occurred while he was fighting a fire aboard the Lafayette and that he was exposed to smoke for several hours and was drenched with water. It also states that the applicant was taken to another hospital where he was given a "whiskey stimulant" and warm clothing. The entry further states that he had no complaints upon admission and did not suffer from any cuts, injuries, or burns. The applicant was returned to duty on February 14, 1942, without any further treatment.

The applicant was honorably discharged from the Coast Guard on June 26, 1946, and signed his DD 214 at discharge. There is nothing in his record to show that he was eligible for or received the Purple Heart.

APPLICABLE LAW

During World War II, the Coast Guard was a part of the Navy. SECNAVINST 1650.1G states that during World War II, the Purple Heart was awarded to members of the Armed Forces who were wounded or killed in action against an enemy of the United States. The instruction states that "[d]uring World War I, and World War II, and Korea [sic], an individual must have been wounded as a direct result of enemy action. During subsequent conflicts (Vietnam and Operation Desert Storm), the individual must have been wounded as a result of enemy action (direct or indirect)."

VIEWS OF THE COAST GUARD

On February 8, 2018, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard Personnel Service Center (PSC) in a memorandum on the case and recommended that the Board deny the applicant's request.

PSC argued that the application should not be considered by the Board because the applicant was discharged in 1946 and did not provide sufficient justification for the untimeliness of his application for relief. Regarding the merits, PSC argued that relief should be denied because although the record supports the applicant's allegation that he suffered from smoke inhalation while fighting a fire aboard the Lafayette, there is nothing in his record to justify an award of the Purple Heart, which requires that a member be killed or wounded as the result of enemy action or engagement. PSC stated that there is no substantiated report of hostile or enemy action causing the Lafayette to catch fire and sink.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 9, 2018, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. No response was received.

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 submissions, 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 of the day the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). The applicant was discharged in 1946 and alleged that he should have received the Purple Heart Medal after being hospitalized for smoke inhalation. The Board finds that the application is untimely because the applicant knew upon his discharge in 1946 that he had not been awarded a Purple Heart Medal.
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 provided no explanation for his failure to request a Purple Heart more promptly following his discharge, and he has not justified his delay. There is insufficient evidence in the record to support the applicant's claim that he is entitled to a Purple Heart Medal for his service in World War II. The criteria for that medal required that the member be wounded as a direct result of enemy action. SECNAVINST 1650.1G. The applicant's medical records show that he was treated for smoke inhalation after fighting a fire aboard the U.S.S. Lafayette, but there is no evidence supporting his claim that the fire was set by a saboteur, and the Coast Guard denies that such evidence has been found. The applicant's military and medical records, which show that he was not awarded a Purple Heart, are presumptively correct, and he has not overcome the presumption of regularity. 33 CFR § 52.24(b).
5. In light of the lack of evidence supporting the applicant's allegation and his failure to justify his long 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

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

March 23, 2018

