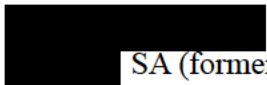



**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-086

 SA (former)

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. After receiving the applicant's completed application, including the military record, the Chair docketed the case on February 7, 2018, 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 15, 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 medically separated in 1951 with about 18 months of active duty, asked the Board to correct his DD 214 to show that he received a Purple Heart and Bronze Star and to ensure that the DD 214 reflects his service in Korea from 1951 to 1954. He also asked the Board to determine if he is eligible to receive any additional medals.

The applicant stated that he discovered the alleged errors in 1951 and argued that the Board should find it in the interest of justice to consider his application because he feels that he is "entitled to a correct DD 214 that will be a historical document in my family history."

SUMMARY OF THE APPLICANT'S RECORDS

The applicant enlisted in the Coast Guard on February 6, 1950, at the age of 18. His record shows that he sustained a slip and fall injury to his left elbow in October 1950 while stationed in San Pedro, California. After repeated attempts to treat the injury, which was diagnosed as Conversion Hysteria,¹ he was evaluated by the Physical Evaluation Board (PEB) on May 9, 1951, and was subsequently recommended for discharge due to a physical disability (0% disa-

¹ People with conversion disorder, also called functional neurological symptom disorder, show psychological stress in physical ways. www.mayoclinic.org/diseases-conditions/conversion-disorder/basics/definition/CON-20029533 (last visited on November 8, 2018).

bling). He was honorably discharged from the Coast Guard on August 3, 1951, and signed his DD 214 upon discharge.

While on active duty, the applicant was assigned first to the CGC Pontchartrain, which was homeported in Long Beach, California, from June 8 to September 4, 1950; then to San Pedro, California, from September 5 to December 14, 1950; and finally to the 8th Coast Guard District from December 15, 1950, until his discharge on August 3, 1951. His record shows that he did not serve in Korea or anywhere overseas or in combat and he was never recommended for a Purple Heart or a Bronze Star.

APPLICABLE LAW

Section 831.1 of SECNAVINST 1650.1H states that for World Wars I and II and the Korean War, the Purple Heart is only awarded to members “wounded as a direct result of enemy action.” (For later conflicts, the wound may be an indirect result of enemy action.) Paragraph d of this section states that if adequate documentation of the cause of the injury is not available “due to the complete or partial loss of an individual’s records, two sworn affidavits from eyewitnesses to the injury who were present at the time of the injury and have personal knowledge of the circumstances under which the injury occurred, may be submitted for consideration. (Statements from witnesses ‘after the fact’ will not be considered.)” During subsequent conflicts (Vietnam and Operation Desert Storm), the individual must have been wounded as a result of enemy action (direct or indirect).” Similar criteria for the Purple Heart Medal appear in the Coast Guard Medals and Awards Manual, COMDTINST 1650.25D.

Article 2.B.10 of COMDTINST M1650.25, the Coast Guard Medals and Awards Manual from 1995, states that the Bronze Star Medal is awarded to members who distinguish themselves by heroic or meritorious achievement or service while engaged in action against an enemy of the United States or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

Chapter 4.A. of COMDTINST M1650.25E, the current Coast Guard Medals and Awards Manual, states that the National Defense Service Medal (NDSM) is awarded to personnel who perform Honorable active service as a member of the Armed Forces for any period (inclusive) from June 27, 1950, to July 28, 1954; from January 1, 1961, to August 14, 1974; from August 2, 1990, to November 30, 1995; or from September 12, 2001, to a date to be determined by the Secretary of Defense.

VIEWS OF THE COAST GUARD

On June 25, 2018, a judge advocate (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 1951 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

there is nothing in the applicant's 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. Likewise, PSC noted that there is nothing in his record to show that he was ever awarded the Bronze Star Medal. PSC noted that although the applicant was a member of the Coast Guard during the Korean War (June 25, 1950 – July 27, 1954), he never performed duties within the territorial limits of the Korean peninsula. Neither PSC nor the JAG attorney addressed the applicant's request to have his record evaluated to determine if he is eligible to receive any additional medals or awards.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 4, 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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The applicant received and signed his DD 214 on August 3, 1951, and his application is untimely because the preponderance of the evidence shows that he knew of the alleged errors—the lack of medals—on his DD 214 in 1951.

2. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.³ 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”⁴ 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.”⁵

3. The applicant indicated on his application to the Board that he discovered the alleged errors in his record in 1951 but did not explain why he waited more than 67 years to submit his request for correction. However, because the Board has identified a clear omission 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 received nor does it show that he was in Korea from 1951 to 1954. 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

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

³ 10 U.S.C. § 1552(b).

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁶ 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.”⁷

5. The applicant argued that his DD 214 should be corrected to reflect the Purple Heart Medal that he received. However, his military records do not support his claim that he served in Korea or that he was injured in combat and awarded the Purple Heart. His record shows that he injured his elbow while stationed in San Pedro, California, as a result of a slip-and-fall accident. Purple Heart Medals are awarded to members wounded as a result of enemy action, and the applicant’s medical records do not show that he was injured as the result of enemy action. Therefore, the Board finds that he is not entitled to a Purple Heart. SECNAVINST 1650.1H, § 230.9; COMDTINST 1650.25D, Chap. 2.A.11.

6. The applicant also stated that he was awarded the Bronze Star Medal and asked the Board to add it to his DD 214. The Bronze Star Medal is awarded to members who distinguish themselves by heroic or meritorious achievement or service while engaged in action (combat) against an enemy of the United States.⁸ After a thorough review of his military records, the Board did not find anything to show that he ever served in Korea or in combat or that he was ever recommended for or awarded a Bronze Star. Therefore, this request should be denied.

7. The applicant alleged that his DD 214 is incorrect because it does not show that he served in Korea from 1951 to 1954. His DD 214 and other military records show that he enlisted on February 6, 1950, and was discharged about 18 months later on August 3, 1951. His record also clearly shows that he was never assigned overseas. He was assigned to the CGC Pontchartrain based in Long Beach, California, from June 8 to September 4, 1950; to San Pedro, California, from September 5 to December 14, 1950; and to the 8th Coast Guard District from December 15, 1950, until his discharge on August 3, 1951. Therefore, the Board finds that the applicant has failed to prove by a preponderance of the evidence that he ever served in Korea, and his request should be denied.

8. Finally, the applicant asked the Board to add to his DD 214 any other medals or awards that he should have received. After a thorough review, the Board finds that he is eligible for the National Defense Service Medal because he served during the period for which the medal is authorized and it should be listed on his DD 214. The record shows that the applicant served honorably from February 6, 1950, to August 3, 1951, and Chapter 4.A. of the Medals and Awards Manual states that the NDSM is awarded to members for honorable active service as a member of the Armed Forces for any period (inclusive) from June 27, 1950, to July 28, 1954.

⁶ 33 C.F.R. § 52.24(b).

⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁸ COMDTINST M1650.25, Article 2.B.10.

9. Accordingly, the applicant's requests to have a Purple Heart and Bronze Star Medal added to his DD 214 and to have his DD214 reflect that he served in Korea should be denied, but the Board will direct the Coast Guard to add the NDSM to his DD 214.

ORDER

The application of former SA [REDACTED], USCG, for correction of his military record is granted in part. The Coast Guard shall correct his DD 214 to show that he is entitled to wear the National Defense Service Medal. All other requests are denied.

November 15, 2018

