


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-179

 SN (Former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the applicant's completed application on July 20, 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 April 19, 2019, 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 seaman who was honorably discharged from the Coast Guard on August 27, 1974, asked the Board to correct his DD 214¹ to show that he received a Good Conduct Medal (GCM) and the Republic of Vietnam Campaign Medal with a "60 Device".² In support of his request, he submitted a copy of his DD 214 documenting his active service from August 28, 1970, to August 27, 1974.

The applicant stated that he discovered the alleged errors in his record on June 21, 2018, and argued that the Board should find it in the interest of justice to consider his application because it "would be nice" if his military records included all of his earned awards and medals.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on August 28, 1970, and was honorably discharged from active duty exactly four years later on August 27, 1974.

On May 6, 1972, an Administrative Remarks entry ("Page 7") was placed in the applicant's record to document that he had been "authorized to wear but not issued the Republic of

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

² The Board is unable to locate any reference to a "60" Device in the Medals and Awards Manual.

Vietnam Campaign Medal with Device for service in the Republic of Vietnam during the periods October 16, 1971, to December 11, 1971, March 23, 1972, to April 6, 1972, and April 23, 1972, to May 6, 1972, in accordance with Commandant Instruction 1650.22.”

The applicant’s record shows that on August 23, 1973, he was taken to mast and received non-judicial punishment (NJP)³ for refusing to carry a bag of pillow cases to the car and for refusing to get a haircut. He was restricted to the limits of the station and assigned 14 days of extra duty. He was also ordered to forfeit \$85 pay for one month and received a reduction in pay grade suspended for 6 months.

The applicant’s DD 214 shows that he had served 1 year, 7 months, and 27 days of foreign and/or sea service during his enlistment. Block 26 shows that he was entitled to wear the Republic of Vietnam Service Medal with one Bronze Star for service in the Republic of Vietnam and the National Defense Service Medal (NDSM).

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.”

Enclosure 11 to COMDTINST M1650.25E. the Coast Guard Medals and Awards Manual, states that to receive a GCM from November 1, 1963, through December 31, 1979, a member had to have completed four consecutive years of active duty with no NJP, misconduct, no civil conviction for offense involving moral turpitude, and minimum marks of 3.0 for proficiency, leadership, and conduct (on a 4.0 scale).

Article 6.A.2. of the manual states that the Republic of Vietnam Campaign Medal with Device was awarded to recognize service performed in Vietnam from March 1, 1961, to March 28, 1973. Enclosure 16 of the manual states that eligibility requires that the member be wounded or injured in hostile action; be captured by the opposing forces during actions or in the line of duty, but later rescued or released; be killed in action or in the line of duty; have served 6 months in South Vietnam; have served 6 months outside the geographical limits of South Vietnam but contributing direct combat support to the Republic of Vietnam Armed Forces during such period; or be assigned in Vietnam on January 28, 1973, and have served either a minimum of 60 days in Vietnam as of that date, or completed a minimum of 60 days service in Vietnam during the period from January 29, 1973, to March 28, 1973, inclusive.

VIEWS OF THE COAST GUARD

On December 18, 2018, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion and adopted the findings and analysis in a memorandum submitted by the Command-

³ Article 15 of the Uniform Code of Military Justice (UCMJ) authorizes NJP as a disciplinary measure for minor offenses under the UCMJ.

er, Personnel Service Center (PSC), who recommended that partial relief be granted. PSC recommended that the applicant's request for a GCM should be denied because the applicant received NJP on August 23, 1973. PSC noted that according to the Military Medals and Awards Manual, CGM requirements from November 1, 1963, to December 31, 1979, state that a member cannot have received any NJP.

Regarding the applicant's request for the Republic of Vietnam Campaign Medal, PSC recommended that his record be corrected to show that he received this medal because there is an administrative remarks form in his record which states that he was awarded the medal on May 6, 1972.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 21, 2018, the BCMR sent the applicant a copy of the Coast Guard's recommendation and asked him to respond within 30 days. The BCMR 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 August 27, 1974, and so 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 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 explain why he waited so long to seek these corrections and the Board finds that nothing prevented him from seeking correction of the alleged errors or injustices more promptly. However, because the Coast Guard and the Board have 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 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).

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

4. The applicant stated that a Good Conduct Medal and the Republic of Vietnam Campaign Medal with Device should be included on his DD 214. 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.⁸ 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."⁹

5. The Board finds that the applicant is not eligible for the GCM because he received NJP on August 23, 1973, and the Medals and Awards Manual states that NJP will terminate a member's eligibility for the medal. In this case, the applicant's eligibility to receive a GCM was terminated with his NJP in 1973, and he was discharged in 1974 so he did not have another opportunity to earn the medal by serving for another four or more consecutive years of active duty. Enclosure 11 to COMDTINST M1650.25E, the Coast Guard Medals and Awards Manual.

6. The applicant asked the Board to correct his DD 214 to show that he received the Republic of Vietnam Campaign Medal with Device. His record contains a Page 7 dated May 6, 1972, stating that he was awarded this medal for his service in Vietnam during the periods October 16, 1971, to December 11, 1971, March 23, 1972, to April 6, 1972, and April 23, 1972, to May 6, 1972. Accordingly, his DD 214 should be corrected to show that he received the Republic of Vietnam Campaign Medal with Device because he served in Vietnam in 1971 and 1972, and Article 6.A.2. of the Medals and Awards Manual states that the medal is awarded to recognize service performed in Vietnam from March 1, 1961, to March 28, 1973.

7. The Board finds that the applicant's request for a Good Conduct Medal should be denied. However, his DD 214 should be corrected to show that he received and is entitled to wear the Republic of Vietnam Campaign Medal with Device.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁸ 33 C.F.R. § 52.24(b).

⁹ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of former SN [REDACTED] USCG, for correction of his military record is granted in part as follows:

The Coast Guard shall issue a DD 215 to correct his DD 214 to show that he received the Republic of Vietnam Campaign Medal with Device.

All other requests are denied.

April 19, 2019

