

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-010

████████████████████
██████████ BM3 (former)

FINAL DECISION

This is a proceeding under 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 October 16, 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 December 6, 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 Boatswain's Mate third class (BM3) who was discharged from the Coast Guard on May 21, 2013, after serving six years on active duty, asked the Board to correct his DD 214 to show that he received the following medals and awards:

- a Commandant's Letter of Commendation (LOC),
- the Humanitarian Service Medal (HSM), and
- the Global War on Terrorism Service Medal (GWOTSM).

The applicant argued that his DD 214 should be corrected to show that he received a Commandant's LOC because he received the letter on September 20, 2013, but it was not included on his DD 214 because he had been discharged from the Coast Guard on May 21, 2013.

The applicant argued that he is eligible to have the HSM added to his DD 214 because he served at Station ██████████ from October 29, 2012, through November 25, 2012, in support of Hurricane Sandy recovery operations and the medal is authorized by COMDTINST M1650.25E¹ for members who served in those operations.

The applicant argued that the GWOTSM should be added to his DD 214 because he meets the eligibility requirements set forth in Chapter 5, Section 13.b.3 of COMDTINST M1650.25E. He

¹ COMDTINST M1650.25E is the 2016 version of the Coast Guard Medals and Awards Manual.

maintained that he meets those eligibility requirements because he served as a qualified tactical boat crew member (BCM) engaged in anti-terrorism operations for more than 60 days in support of Operation Noble Eagle² engaged in security patrols of ports, waterways, and coastal areas.

In support of his requests, the applicant submitted a copy of the Commandant's LOC which states that he participated in the Hurricane Sandy response, a copy of his DD 214, a copy of his Direct Access Personal Information Sheet showing that he was assigned as a coxswain/tactical boat crew member while serving at Station [REDACTED], and a copy of the relevant sections of COMDTINST M1650.25E, the Coast Guard Medals and Awards manual.

The applicant stated that he discovered these alleged errors in his record on September 26, 2018, and wants to have these corrections made to his DD 214 so he can be considered for future promotions in his current job as a civilian firefighter with the Navy.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 22, 2007, and was honorably discharged on May 21, 2013. According to his military record, he served aboard the CGC [REDACTED] from July 2007 to May 2009; attended BM "A" School from May to August 2009; and served at Station [REDACTED] which is part of Sector New York, from August 2009 until his discharge from active duty on May 21, 2013. While assigned to Station [REDACTED] he repeatedly qualified as a tactical boat crew member. His DD 214 shows that he received the following medals, badges, citations, and campaign ribbons during his service:

- CG Good Conduct Medal
- CG Pistol Marksman Ribbon
- CG Rifle Marksman Ribbon
- CG Sea Service Ribbon
- CG Special Operations Service Ribbon w/one bronze star (denoting a second award)³
- CG Unit Commendation Ribbon w/one gold star (denoting a second award)
- National Defense Service Medal

VIEWS OF THE COAST GUARD

On April 23, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC argued that alternative relief should be granted because although the applicant's request is untimely, his record does contain two errors, which should be corrected.

² Operation Noble Eagle is the United States and Canadian military operation related to homeland security and support to federal, state, and local agencies in response to the September 11, 2001, attacks. https://en.wikipedia.org/wiki/Operation_Noble_Eagle (last visited on November 26, 2019).

³ The two Special Operations Service ribbons were earned in support of the 64th United Nations General Assembly on May 21, 2010, and from September 18 through 20, 2010.

PSC argued that the applicant is eligible to receive the HSM because the applicant's September 20, 2013, Commandant's LOC documents his involvement in the Hurricane Sandy response efforts and noted that the Medals and Awards Manual states that members involved in the Hurricane Sandy response efforts are eligible to receive the HSM. PSC stated that the LOC should also be entered in his record even though it was issued to him after his discharge because it was issued for his performance before his discharge.

The JAG argued that the applicant's request to have the GWOTSM added to his DD 214 should be denied because he did not qualify for the medal; nor was he recommended for it. PSC noted that there is no evidence in his record that he participated in any of the operations for which the medal is authorized. Moreover, PSC provided the Board with an email from a yeoman assigned to serve as an Administrative Supervisor for the Coast Guard Atlantic Area Command (CG LANTAREA). The yeoman stated that, according to the Atlantic Area's records, the GWOTSM was not awarded to any members of Station [REDACTED] for service from August 2009 through May 2013.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 1, 2019, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. He responded on May 6, 2019, resubmitted his Member Information Sheet, and argued that it shows that he was a coxswain/tactical boat crew member for CG Station [REDACTED] in Sector New York.⁴ He argued that this proves he meets the criteria for the GWOTSM because the primary mission of Operations Noble Shield, Liberty Shield, Neptune Shield, and Port Shield were tactical PWSC patrols, all of which were conducted in New York City during his time there. Moreover, he noted, his two CG Special Operations ribbons on his DD 214 prove that he was involved in those New York City operations.

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."

Chapter 2.A.18 of COMDTINST M1650.25D, the Coast Guard Medals and Awards Manual in effect in 2013, states that the Commandant's Letter of Commendation was authorized by the Commandant on March 17, 1979, and may be awarded to members serving in any capacity with the Coast Guard for an act or service resulting in unusual and/or outstanding achievement but lesser than required for the Coast Guard Achievement Medal.

Chapter 5.A.17 of the Medals and Awards Manual states that the HSM may be awarded to members who distinguish themselves as individuals or as members of units or ships by meritorious, direct, non-routine participation in a significant military operation of a humanitarian nature. Enclosure 17 lists the operations for which the HSM is awarded, but the manual in effect at the time of the applicant's discharge in 2013 does not include any operations after 2005. However, Enclosure

⁴ The applicant's record shows that he repeatedly qualified as a tactical boat crew member and qualified as a Boarding Team Member in December 2012.

17 to the version of the Manual that went into effect in 2016 states that the HSM was awarded to members who participated in the Hurricane Sandy Response from October 29, 2012, to November 25, 2012.

Chapter 5.A.13 of the Medals and Awards Manual that went into effect in 2016 states that the GWOTSM was established by Executive Order in 2003 and that there are two eligibility periods: September 11, 2001, through January 30, 2005, and from January 30, 2005, to a future date to be determined. During the first period, a member had to have served on active duty for at least 30 consecutive or 60 non-consecutive days to be eligible for the medal.

As of January 30, 2005, Chapter 5.A.13.a. states, “The Commandant has delegated approval authority to DCMS, DCO, and Area Commanders for the second eligibility period, after 30 January 2005 to a future date to be determined.” The eligibility requirements for service after January 31, 2005, are as follows:

(2) 31 January 2005 to a date to be determined. Eligible service members must be or have been assigned, attached, or mobilized to a unit participating in or serving in direct support of specified Global War on Terrorism operations (e.g., NOBLE EAGLE, LIBERTY SHIELD, NEPTUNE SHIELD, PORT SHIELD, ENDURING FREEDOM, IRAQI FREEDOM, INHERENT RESOLVE, FREEDOM’s SENTINAL, or DCO Area Commander-designated GWOT operations) for 30 consecutive or 60 cumulative days, or meet one of the following criteria:

- (a) Be engaged in actual combat regardless of time served in the operation; or
- (b) While participating in the operation, regardless of time, be killed, wounded, or injured requiring medical evacuation.

Chapter 5.A.20 of COMDTINST M1650.25D, the Coast Guard Medals and Awards Manual in effect in 2013, states that the Coast Guard Special Operations Service Ribbon may be awarded to members who, after July 1, 1987, participated in significant numbers in a major Coast Guard operation of a special nature, not involving combat. The member must not have been recognized by another service award, such as the Humanitarian Service Medal, for the same operation during the same period of service. A 3/16-inch bronze star is authorized for subsequent awards of the SOS Ribbon.

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.⁵ The applicant submitted his application to the Board on September 27, 2018, but he received and signed his DD 214 listing his medals and awards on May 21, 2013, when he was discharged from active duty. Therefore, his application is untimely. 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.

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

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁶

3. The applicant alleged that his DD 214 is erroneous and unjust because it does not include his Commandant's LOC and it should be corrected to show that he received the GWOTSM and the HSM. 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 the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁷ 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."⁸

4. After reviewing the applicant's record, the Coast Guard determined that the Commandant's LOC that he received on September 20, 2013, should be added to his DD 214. The Board agrees. The LOC is a personal award listed in the Medals and Awards Manual and so authorized to be listed on a member's DD 214. It should be added to his DD 214 because his record shows that approximately four months after he was discharged, he received it for his service on active duty.

5. PSC recommended that the applicant's DD 214 be corrected to show that he earned the HSM, arguing that he is eligible for the medal because he participated in the Hurricane Sandy response efforts. The Board agrees. The Commandant's LOC that he received in 2013 states that he participated in the Hurricane Sandy response efforts from October 26 to December 7, 2012, and Enclosure 17 of the 2016 Medals and Awards Manual states that the HSM was awarded to members who participated in the Hurricane Sandy Response from October 29, 2012, to November 25, 2012, when the applicant was assigned to Station [REDACTED]

6. The applicant asked the Board to add the GWOTSM to his DD 214, arguing that he participated in Operation Noble Eagle as a coxswain/tactical boat crew member while assigned to Station [REDACTED]. He noted that he had received two SOS Ribbons for his role in numerous tactical PWCS patrols around New York City. The JAG argued that he is not eligible for the medal because there is nothing in the record to show that he or his unit participated in any of the medal's qualifying operations from 2009 to 2013, when the applicant was assigned to Station [REDACTED]. Chapter 5.A.13. of the Medals and Awards Manual provides that as of January 30, 2005, the Commandant has delegated the authority to award this medal to Area Commanders, among others, and to be eligible, a member must have participated in one of eight listed Global War on Terrorism Operations or DCO/Area Commander-designated GWOT operations for 30 consecutive days or 60 cumulative days. The listed operations do not include the Hurricane Sandy response efforts.

7. The Board notes that Station [REDACTED] is on the coast of New Jersey and Lower New York Bay just south of New York City and New York Harbor. Therefore, the applicant must have participated in the protection of New York City and New York Harbor as part of his regular

⁶ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

⁷ 33 C.F.R. § 52.24(b).

⁸ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

duties as a tactical boat crew member from 2009 to 2013. As he noted, he has received operational awards during that period of service. But there is nothing in the record to show that the Area Commander ever authorized the GWOTSM for the applicant, for the crew of Station [REDACTED] as a whole, or for all the members of a parent command, such as Sector New York, during that period, and it was within his discretion to do so—or not. Presumably, the Area Commander determined that the regular performance of duties by boat crews from 2009 to 2013 did not warrant an award of the GWOTSM even if those duties were performed in protection of New York City and New York Harbor. Moreover, a yeoman assigned to CG LANTAREA has reported that the Area Command's records show that the GWOTSM was not awarded to any members of Station [REDACTED] from August 2009 through May 2013. Therefore, while the preponderance of the evidence shows that the applicant served as a tactical boat crew member helping to protect New York City and New York Harbor from August 2009 to May 2013, the preponderance of the evidence does not show that he is entitled to wear the GWOTSM because the Area Commander did not award it.

8. The applicant has proven by a preponderance of the evidence that his DD 214 is erroneous. It should be corrected to show that he received a Commandant's LOC and the HSM, but his request to have the GWOTSM added to his DD 214 should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former BM3 [REDACTED], USCG, for correction of his military record is granted as follows: His DD 214 dated May 21, 2013, shall be corrected to show that he received a Commandant's Letter of Commendation and the Humanitarian Service Medal. All other requests are denied.

December 6, 2019

