

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-014

██████████ ██████████ ██████████
CDR

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 November 23, 2021, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision dated March 3, 2023, 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 Commander (CDR) on active duty in the Coast Guard, asked the Board to correct his record by upgrading a Coast Guard Achievement Medal that he received in 1992 when he was a Second Class Petty Officer to a Coast Guard Medal (CGM). He argued that his medal should be upgraded because his actions on the evening of February 25, 1992, rescuing a swimmer in freezing temperatures were in the true spirit of Coast Guard search and rescue, and his actions more precisely follow the intent of the CGM vice the Achievement Medal. The applicant noted that his actions on that night were a one-time event where he made the decision to voluntarily risk his own life to "rescue a victim clearly in emergent distress."

The applicant noted that the Achievement Medal is awarded to a member who distinguishes himself in professional and leadership achievement in a combat or non-combat situation based on sustained performance or specific achievement of a superlative nature. He argued, however, that his Achievement Medal should be upgraded to the CGM because the latter is awarded to a member who performs a voluntary act of heroism in the face of great danger to themselves, which stands out distinctly above normal expectations.

In support of his request, the applicant submitted the following statement:

I would first like to address the reason for seemingly long delay in making this

request. I am considering a potential retirement from the U.S. Coast Guard, and as such I have commenced a review of my personnel record. I came across this award, and decided to take a closer look. At the time of the award, I was a Second Class Petty Officer, and did not give the level of the award (Achievement Medal) a second thought. I was happy to serve, and went about my career. Now, I have read through the Medals and Awards Manual (COMDTINST M1650.25E), and I believe that my actions that evening warrant the level of The Coast Guard Medal.

While this event took place a long time ago, I can recall the events quite vividly. On the evening of February 25, 1992, I was at Coast Guard Station [redacted] in a liberty status attending an off-campus college course in the Station's training room. The Search and Rescue (SAR) alarm sounded, and the duty Coxswain came through the door and asked me if I would serve as boat engineer and rescue swimmer aboard [a boat] for a reported swimmer in distress off of [the coast]. I immediately reported to the boat and we got underway. We arrived on scene at approximately dusk, and we could see the person in the water (PIW) struggling in the surf in the vicinity of [a pier]. The PIW seemed incoherent, and was not following commands. The duty coxswain and I discussed the situation, and decided the only possible way to rescue this PIW was through the use of a rescue swimmer. It is important to note that the area around the [pier] is well charted to have multiple submerged pilings from old, deteriorated piers that are just below the water's surface. These submerged pilings presented a great risk to [the boat], and prevented the vessel from getting close enough to the PIW to effect an along-side pickup.

I donned the appropriate rescue swimmer's gear, including a chest harness with tending line. After reviewing signals with the crewmember tending the swimmer's harness line, I entered the 35 degree water from the stern of [the boat]. By this time, the PIW had managed to work his way outside (seaward) of the surfline. As I got within a few feet of the PIW, he submerged, and did not re-surface. I immediately dove below the surface where I saw him last, and was able to grab some clothing. As I pulled him to the surface, the undertow pulled us backward into the surf. At that point, I was at the end of the tending line, but could not overcome the forces of the surf, and we began to tumble with the surf. I signaled to the tender to let go of the tending line, which after a repeated signal, he let go.

By now, it was dark. The PIW was incoherent, but was struggling to get away from me. I was able to get the victim in a cross-chest carry, and began swimming for the beach. I could see the flashing lights of rescue vehicles, and swam in that direction. Fortunately, I was able to bring the victim in-shore close enough where Police and first responders could assist us to the beach.

I was treated for exposure at [location] Medical Center that evening, and was discharged from the emergency room later that night. I was glad to learn that the victim, who suffered from a history of mental illness, completely recovered from this incident. I would like to add that I gladly volunteered for this SAR case, with no other intention than to perform Search and Rescue, precisely what the Coast Guard has done throughout history. I am proud in knowing that my actions prevented a tragic loss of life.

The applicant also submitted a letter from a Police Superintendent dated June 22, 1992, thanking the applicant for preventing a tragic loss of life in the icy ocean on February 26, 1992.

The applicant stated that the alleged error in his record occurred on August 26, 1992, and that he discovered it on February 15, 2022, while conducting a review of his record in preparation for his retirement.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 26, 1982. On January 2, 1990, he was transferred to a Coast Guard Station on the East Coast of the United States. On the date of the rescue, he was a Machinery Technician, Second Class (MK2/E-5), and he had trained as a rescue swimmer. On July 1, 2003, after advancing to E-7, the applicant was appointed a Chief Warrant Officer. On May 1, 2007, he accepted a regular commission in the Coast Guard and at the time of his application to the BCMR was a CDR on active duty in the Coast Guard.

On February 25, 1992, the applicant's Coast Guard Station received a report of a victim struggling in the surf. The station launched a rescue boat with the applicant serving as the boat engineer and rescue swimmer. The boat arrived on scene within minutes and the applicant, acting in his rescue swimmer role, entered the very cold water and retrieved the victim after he had sunk below the surface. The victim was delivered safely to medical personnel waiting onshore, and both the victim and the applicant were treated for exposure.

On August 26, 1992, the applicant was awarded the Coast Guard Achievement Medal with Operational Distinguishing Device for his superior performance of duty on February 25, 1992. The citation to the medal states the following:

[The applicant] is cited for superior performance of duty while assigned as Boat Engineer and Rescue Swimmer on [boat number] from Coast Guard Station [redacted] on the evening of 25 February 1992. Upon receiving a report of a man outbound in the surf off downtown [location], The Station [redacted] launched [the boat] which arrived on the scene within minutes. A police officer indicated the man in the water was belligerent, probably intoxicated and refused to leave the water. Recognizing that a Rescue Swimmer would be required, [the applicant] disregarding his own safety voluntarily entered the 35-degree water and swam to the man. As [the applicant] approached, the victim sank below the surface, apparently unconscious and hypothermic after being in the water approximately 25 minutes. Instinctively [the applicant] dove beneath the surface and retrieved the man. He struggled as he swam the semi-conscious man to law enforcement and medical personnel who were waiting on shore. The victim was treated and later fully recovered. [The applicant] was treated for exposure before returning to duty. [The applicant's] diligence, perseverance and devotion to duty are most highly commended and are in keeping with the highest traditions of the United States Coast Guard.

VIEWS OF THE COAST GUARD

On August 11, 2022, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In doing so, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC recommended that relief be denied because the applicant did not introduce new evidence to support that the criterion of "extraordinary heroism" was met. PSC noted the Medals and Awards Manual states that the Coast Guard Medal may be awarded to personnel who performed a voluntary act of heroism in the face of great danger to themselves and such as to stand out distinctly above normal expectations. For acts of lifesaving or attempted lifesaving, the Coast Guard Medal requirements parallel those of the Gold Lifesaving Medal in that one displays extreme and heroic daring at the risk of one's own life.

PSC noted that the applicant's Achievement Medal was awarded by the CG District Commander, who presumably made the decision based on the facts and evidence available at the time, and it does not appear that the awarding authority thought the criteria for a higher level of award was met. PSC argued that the applicant did not provide new evidence supporting that he placed himself in great danger and displayed "extraordinary heroism" during the rescue of a person in the water on February 25, 1992.

The JAG argued that the applicant's request should be denied because he fails to meet the required burden of proving error or injustice. The JAG stated that the applicant does not provide sufficient evidence that the Coast Guard committed an error or injustice when it awarded him the Coast Guard Achievement Medal instead of the CGM.

The JAG also argued that the award a member receives is discretionary and up to the recommender of the award. The JAG stated that in this instance, the applicant's command believed that his actions met the level of a Coast Guard Achievement Medal. The JAG stated that while the applicant may believe his actions met the eligibility for a higher award, even if true, the command still had discretion on which award to present to a member. Further, the JAG stated, while the member believes that he is eligible for the CGM, the eligibility criteria show that because he conducted the actions during the course of normal operations, even though he volunteered for the duty, that does not normally meet the criteria for a lifesaving award/CGM, and that "a military award should be considered." In the applicant's case he was considered for and presented a military award, an Achievement Medal, per policy. Consequently, the JAG argued, the applicant fails to meet the burden of proving error or injustice with the issuance of his award.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 18, 2022, the BCMR sent the applicant a copy of the Coast Guard's recommendation and invited him to submit a response. The Board did not receive a response.

APPLICABLE LAW AND REGULATIONS

Chapter 1.G.1 of the Coast Guard Military Medals and Awards Manual, COMDTINST M1650.25E, states that a commanding officer, officer-in-charge, or any E-7 or above senior to the individual being recommended may initiate a recommendation for the award of a military decoration. The originator, if other than the commanding officer or officer-in-charge of the individual concerned, must forward the recommendation to the appropriate commanding officer for comment and/or endorsement prior to forwarding via the chain of command.

Chapter 1.G.3 of the manual states that all personal award recommendations must include more than three endorsements for the award.

Chapter 1.I. of the manual states that the first flag-level officer in the chain of command will establish an Awards Board which meets to evaluate the recommendations for medals and awards received from subordinate commands and to make recommendations to the awarding authority regarding whether to approve the recommendation, upgrade the proposed award, downgrade the proposed award, return the recommendation for revision, or deny the award.

Chapter 2.A. of the manual provides the eligibility criteria for the following personal medals, which may be awarded for either heroic service or exceptional performance:

- Chapter 2.A.8.a of the manual states that the CGM may be awarded to any person who, while serving in any capacity with the Coast Guard, distinguishes themselves by heroism not involving actual conflict with an 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.
- Chapter 2.A.11.a. states that to receive the Meritorious Service Medal, “the acts or services rendered by an individual, regardless of grade or rate, must be ... of lesser degree than the Coast Guard Medal, and single acts of merit under operational conditions may justify this award. When the degree of meritorious achievement or service rendered is not sufficient to warrant the award of the Meritorious Service Medal, the Coast Guard Commendation Medal, when appropriate, should be considered.”
- Chapter 2.A.13.a. states that a Coast Guard Commendation Medal may be awarded “[f]or acts of heroism worthy of special recognition, but not to the degree required for the Bronze Star Medal when combat is involved; or the Coast Guard Medal or Meritorious Service Medal when combat is not involved.”
- Chapter 2.A.14.a. of the manual states that the Coast Guard Achievement Medal may be awarded to a member who “distinguishes themselves for professional and/or leadership achievement in a combat or non-combat situation based on sustained performance or specific achievement of a superlative nature which must be of such merit as to warrant more tangible recognition than the Commandant’s Letter of Commendation Ribbon, but which does not warrant a Coast Guard Commendation Medal or higher award.”
- Chapter 2.A.15.a. states that a Commandant’s Letter of Commendation “[m]ay be awarded to any member of the Armed Forces of the United States including foreign military personnel serving in any capacity with the Coast Guard for an act or service resulting in unusual and/or outstanding achievement but lesser than that required for the Coast Guard Achievement Medal.”

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. Although the application was not filed within three years of the applicant's discovery of the alleged error or injustice, it is considered timely because he has remained on active duty in the interim.¹
3. The applicant asked the Board to correct his record to show that he received the CGM instead of the Coast Guard Achievement Medal. He alleged that it was an error and injustice for his lifesaving act as a rescue swimmer in 1992 to be recognized with the lesser award. 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.² 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."³
4. The record shows that the applicant rescued a semi-conscious swimmer from frigid ocean waters on the night of February 25, 1992, and was awarded the Coast Guard Achievement Medal with Operational Distinguishing Device by the District Commander on August 26, 1992. The applicant argued, however, that his Achievement Medal should be upgraded to the CGM because his actions while saving the swimmer were in the true spirit of Coast Guard search and rescue and his actions more precisely follow the intent of the CGM and not the Coast Guard Achievement Medal.
5. The JAG argued that relief should be denied because the applicant did not introduce new evidence to support that the criteria of "extraordinary heroism" necessary to justify the CGM. The JAG noted that the applicant's Achievement Medal was awarded by the CG District Commander, who presumably made the decision based on the facts and evidence available at the time, and it does not appear that the awarding authority thought the criteria for a higher level of award were met. PSC argued that the applicant did not provide new evidence supporting his claim that he had placed himself in great danger and displayed "extraordinary heroism" during the rescue of a person in the water on February 25, 1992.
6. Chapter 1.G.1 of the Coast Guard Military Medals and Awards Manual states that a commanding officer, officer-in-charge, or any E-7 or above senior to the individual being recommended may initiate a recommendation for the award of a military decoration. In addition,

¹ *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

² 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)).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

Chapter 1.G.3 of the manual also states that any award recommendation must be accompanied by three endorsements. In this case, someone senior to the applicant must have recommended that he receive a medal for his bravery; the recommendation must have received three endorsements before being forwarded to the District Awards Board for review;⁴ and the District Commander approved the medal for the applicant. The applicant's chain of command presumptively followed these procedures and the result was an Achievement Medal for the applicant's performance as a Coast Guard rescue swimmer on February 25, 1992. Accordingly, although the applicant's brave performance as a rescue swimmer that night was clearly outstanding, the Board finds that he has failed to prove by a preponderance of the evidence that the procedures followed by the Coast Guard in determining which award he should receive resulted in an erroneous or unjust outcome.

7. The applicant has failed to prove by a preponderance of the evidence that the Coast Guard erred when it awarded him the Coast Guard Achievement Medal in lieu of the CGM for his performance as a rescue swimmer on the night of February 25, 1992, and his request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ Medals and Awards Manual, Chap. 1.I.

ORDER

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

March 3, 2023

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