

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2022-015**

  
DCCS (Retired)

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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the applicant's completed application on June 25, 2021, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision dated December 2, 2022, 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 retired Damage Controlman Senior Chief (DCCS) who served on active duty in the Coast Guard from November 3, 1997, to November 30, 2017, asked the Board to correct his DD 214<sup>1</sup> to show that he earned the Combat Action Ribbon (CAR). In the alternative, he asked that his DD 214 be corrected to show that he is a combat veteran and list the dates and location of his combat service on his DD 214.

The applicant argued that his DD 214 should be corrected because he served in a combat zone with a Tactical Law Enforcement Team (TACLET) from 1999 to 2002. During this time, he received hostile fire/imminent danger pay while assigned to a United States Naval ship. The applicant argued that as a boarding officer of the TACLET, he was involved in a drug war that is not formally recognized as a war by Congress. Nevertheless, he stated that he captured crew and cocaine in high risk boardings in a war zone. In one instance, his team chased an enemy vessel onto foreign shores while naval deck guns were used to stop go-fast boats. Foreign officials completed the mission on land which resulted in the death of enemy combatants. The applicant

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<sup>1</sup> The DD Form 214 provides the member and the service with a concise record of a period of service with the Armed Forces at the time of the member's separation, discharge or change in military status (reserve/active duty). In addition, the form is an authoritative source of information for both governmental agencies and the Armed Forces for purposes of employment, benefit, and reenlistment eligibility, respectively. The DD 214 is issued to members who change their military status among active duty, reserve, or retired components or are separated/discharged from the Coast Guard to a civilian status. COMDTINST M1900.4D.

argued that he should be recognized for the time he spent on the high seas stopping “tons of cocaine.”

In support of his application, the applicant submitted two Coast Guard Leave and Earnings Statements that show that he received imminent danger pay from April 2001 through August 2001. He also submitted a copy of a DoD Military Service Information sheet which indicates that he received combat pay from December 1 - 31, 1999, May 1 - 31, 2001, and August 1 - 31, 2001.

Finally, the applicant addressed the delay in his application. He stated that the alleged errors occurred on March 1, 2001, and that he discovered them in January 2019. He argued that the Board should waive the statute of limitations and consider his application because the CAR was not available at the time of his combat action.

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on November 3, 1997. After completing recruit training, he attended Damage Controlman “A” School.

From August 13, 1999, to June 16, 2002, the applicant was assigned to a Coast Guard Regional TACLET.

On January 24, 2001, the applicant was selected as Sailor of the Quarter while assigned to a Coast Guard Regional TACLET from October 1, 2000, to December 31, 2000. During that time, the applicant served as the assistant boarding officer and linguist for a high profile case on board a go-fast boat while he was deployed with a coastal patrol boat of the United States Navy. A total of 2400 pounds of cocaine, valued over \$12.5 million, was seized. Further, the applicant superbly oversaw the transfer of the contraband and prisoners.

The applicant retired from active duty on November 30, 2017, after serving for twenty years and twenty-seven days. His DD 214 shows that he received more than thirty medals and awards during his career, including the following: three Coast Guard Commendation Medals; three Coast Guard Achievement Medals; three Coast Guard Meritorious Unit Ribbons; three Coast Guard Meritorious Team Commendation Ribbons; a Coast Guard Special Operations Service Ribbon; four Commandant’s Letter of Commendation Ribbons; and six Coast Guard Good Conduct Ribbons.

### **VIEWS OF THE COAST GUARD**

On May 9, 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 first recommended denying relief because the application is untimely. PSC also recommended denying relief because the applicant failed to show that the Coast Guard

committed an error or injustice. PSC stated that according to the Coast Guard Military Medals and Awards Manual, the CAR is “directed towards designated combat operations.” PSC argued that drug operations, like those the applicant participated in, are not considered combat operations/contingencies for the purpose of establishing eligibility for the CAR.

The JAG reiterated that relief should be denied because the application is untimely. The JAG stated that the applicant retired from the Coast Guard and was provided a DD 214 on November 30, 2017, which did not list him as a combat veteran nor indicate that he had been awarded the CAR. The JAG argued that while the applicant should have discovered the alleged error when he departed the TACLET without having received the CAR in 2002, at the very least, he should have discovered the alleged error when he received his DD 214 on November 30, 2017.

Regarding the merits, the JAG argued that the evidence provided by the applicant is insufficient to show that his DD 214 is erroneous or unjust. According to the Coast Guard Medals and Awards Manual, the principal eligibility for the CAR is satisfactory performance under enemy fire while actively participating in a ground or maritime engagement. The JAG argued that the applicant does not provide evidence of coming under enemy fire, nor any evidence of falling under any of the enumerated examples of actions that would qualify. The JAG also noted that the manual states that service in a combat area does not automatically make a service member eligible for the CAR. The JAG argued that this is exactly the justification that the applicant relied on in his application. According to the applicant, he is qualified for the ribbon because he was in an area where he was receiving imminent danger pay. Lastly, Enclosure (2) to the manual lists units and operations eligible for the CAR. The JAG argued that the applicant’s time at the TACLET from 1999-2002 is not listed in the enclosure because Coast Guard Counter-Narcotics operations do not fall within the eligibility for the CAR.

Finally, the JAG argued that the applicant failed to show that there is a combat veteran designation on a DD 214. Even if there were such a designation, the JAG argued that the applicant failed to show that he would be eligible.

### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On May 11, 2022, the BCMR sent the applicant a copy of the Coast Guard’s recommendation and invited her to submit a response. The Board did not receive a response.

### **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.16 of the of the Coast Guard Medals and Awards Manual, COMDTINST M1650.25E, states that the Combat Action Ribbon was authorized by the Commandant on July 16, 2008. It states that the ribbon is awarded to members who have actively participated in ground or maritime combat. The principal eligibility award criterion is satisfactory performance under enemy fire while actively participating in a ground or maritime engagement. Neither service in a combat area nor being awarded the Purple Heart, or a combat award or badge from another Service, automatically makes a service member eligible for the Coast Guard Combat Action Ribbon.

In the amplifying guidance, the manual states that personnel who serve in clandestine or special operations, who by the nature of their mission, are restricted in their ability to return fire, and who are operating in conditions where the risk of enemy fire was great and expected to be encountered, may be eligible for the CAR.

The manual states that the Commandant determines which operations meet the criteria for the CAR, and Enclosure (2) to the manual lists the operations for which the CAR may be awarded. The listing is not all inclusive, as the CAR may be awarded in minor operations, as well as for specific actions. Operations completed by the applicant's TACLET from 1999-2002 are not included in Enclosure (2).

### 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.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.<sup>2</sup> The applicant was retired from active duty and received his DD 214 on November 30, 2017. He submitted his application to the Board on June 24, 2021. Although the CAR did not exist at the time of his alleged "combat action," the Board notes that the ribbon was authorized on July 16, 2008. Therefore the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 2017, and his application is untimely.
3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>3</sup> 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"<sup>4</sup> 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."<sup>5</sup> In accordance with this direction, the Board

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

<sup>3</sup> *Id.*; 33 C.F.R. 52.22.

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

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

has conducted a cursory review of the merits and finds no reason to excuse the untimeliness of the application:

a. The applicant explained that his delay in submitting his application was because he did not discover the alleged error until 2019 because that the CAR did not exist at the time of his “combat action.” However, the CAR was authorized in 2008, before the issuance of his DD 214. Therefore, the Board finds that the applicant failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

b. A cursory review of the merits of this case shows that the applicant’s claim lacks potential merit. He asked the Board to correct his DD 214 to show that he earned the Coast Guard CAR. The applicant’s record shows that he received imminent danger pay for several months in 2001 during which he was involved in high-risk drug seizures at sea as a member of a TACLET. However, the Coast Guard Medal and Awards manual states that eligibility for the CAR requires satisfactory performance under enemy fire while actively participating in a ground or maritime engagement. The applicant’s record contains no documentation to support that the applicant performed under enemy fire while actively participating in a ground or maritime engagement. Further, Enclosure 2 of the manual does not include operations completed by the applicant’s TACLET from 1999-2002 as eligible for the award. The applicant also asked the Board or to show that he is a combat veteran. However, there is no block on the DD 214 in which a member’s receipt of imminent danger pay or dates of those operations would be included. The disputed record is presumptively correct,<sup>6</sup> and the record contains no persuasive evidence that substantiates his allegations of error or injustice in his official military record.

4. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations and his request should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>6</sup> 33 C.F.R. § 52.24(b); *see Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

**ORDER**

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

December 2, 2022

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