

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-064

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LCDR (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 August 16, 2022, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated June 16, 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 former Lieutenant Commander (LCDR) in the Selected Reserve, asked the Board to correct his record to show that he received a Coast Guard Unit Commendation ribbon dated July 31, 2002. He argued that he is eligible for the award because he was assigned to a unit that received the award during the inclusive dates for which the award was given. The applicant also noted that he served at the unit for more than five years after it received the Unit Commendation.

The applicant stated that he was assigned to a new unit on May 9, 2002, and the unit received a Unit Commendation in June 2002 for its service from October 1, 1999, to July 31, 2002. He opined that he was likely left off the list for the award because when the unit received the Commendation, he had only been in the unit for a little less than two months.

The applicant stated that he discovered the error on June 12, 2022, and argued that the Board should find it in the interest of justice to consider his application because he only recently realized that this oversight had occurred when cross-checking the awards manual against his personnel records. Finally, he stated that the primary reason he is making this request is because his past military service is very important to him and he would like his record to be accurate.

SUMMARY OF THE RECORD

The applicant received a commission as an Ensign in the Coast Guard Reserve in September 2000 and he continued serving in the Selected Reserve through July 30, 2017.

On March 12, 2002, a Group Commander signed an award recommendation for members of his Coast Guard Group and forwarded it to the Commandant for approval. The recommendation was that a Unit Commendation be given to unit personnel for exceptionally meritorious service in support of various units from October 1999 to July 2002 and the Group Commander attached a list of the names of the Group members. As the applicant was not then assigned to the Group, his name was not on the list.

On May 9, 2002, the applicant was assigned to the Group to train as a Group Duty Officer for the Selected Reserve. However, his July 31, 2003, Officer Evaluation Report notes that during the rating period from May 9, 2002, to July 31, 2003, he had been recalled to active duty under Title 10 to perform 275 days of active duty at Headquarters and an Integrated Support Command. Therefore, the Group Command entered many marks of “not observed” on the OER. One of those periods of active duty was from June 15, 2002, to September 30, 2002.

On June 11, 2002, a Vice Admiral approved the Unit Commendation that the Group Commander had proposed on March 12, 2002. On June 18, 2002, the Coast Guard Group was notified that the award had been approved.

The applicant’s record shows that he received more than thirty medals, awards, and commendations during his Coast Guard career.

VIEWS OF THE COAST GUARD

On January 10, 2023, 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 application is untimely and argued that the applicant did not introduce evidence that the Commander of his unit intended for him to be included or added to the eligibility roster for the Commendation; nor did he meet the requirement that he be assigned to the unit for 50% of the award period.

APPLICABLE LAW AND REGULATIONS

Chapter 1.E. of the Commandant’s instructions for preparing the DD 214 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 3.A of the Coast Guard Medals and Awards Manual, COMDTINST M1650.25C, provides guidance and details for unit commendations. It states that for Coast Guard unit awards

approved on or after January 31, 1983, all active duty and reservists are eligible for the award if the member was assigned or attached to the cited unit and was present during at least 50 percent of the award period.

Chapter 3.A.1.b.1 of the manual states that the Commanding Officers of units eligible for a Unit Commendation may recommend eligibility for other personnel who did not meet the time criteria but who directly and positively contributed to the unit's outstanding performance. However, the awarding authority will make the final decision in these cases.

Chapter 3.A.2 of the manual states that the recommending authority shall submit a complete listing of all eligible military personnel, civilian personnel, and CG Auxiliary personnel (including member number and current office held), broken down into the following categories:

- (a) Personnel meeting the 50 percent criteria or specifically recommended;
- (b) Personnel not meeting the 50 percent criteria or specifically not recommended in accordance with paragraph 3.A.1.b.(2) above (attach justification). When computing the 50 percent time criteria, all leave, TAD, and "bad time" is deducted. Normal liberty is not deducted except if applicable for extremely short award periods.

Chapter 3.B.2. of the manual states that the Unit Commendation may be awarded to any unit that has distinguished itself by valorous or extremely meritorious service not involving combat but in support of Coast Guard operations which renders the unit outstanding compared to other units performing similar service.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 11, 2023, 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.

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.¹ The applicant alleged that he discovered the error in his record in 2022, but to determine whether his application is timely, the Board must decide what the preponderance of the evidence shows about his discovery of the alleged error.²

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

² *Wielkoszewski v. Harvey*, 398 F.Supp.2d 102, 109 (D.D.C. 2005) ("The Court recognizes that *McFarlane* counsels that the date of discovery should be the actual date, and not the date at which a hypothetical "reasonable person" would have discovered the error or injustice. *McFarlane v. Sec'y of the Air Force*, 867 F.Supp. 405, 412 (E.D.Va.1994). Nevertheless, this does not mean that the actual date of discovery is whenever a plaintiff says it is.").

The record indicates that the applicant was assigned to the Coast Guard Group that received the Unit Commendation on May 9, 2002, and that the unit was awarded the Unit Commendation on June 11, 2002, four days before the applicant left the Group to begin serving on active duty at Headquarters. There is no evidence that he was aware that the unit had received the Commendation a month after his arrival, and he alleged that he did not discover the error until 2022 when he was comparing his records to the awards manual. Although the applicant certainly could have discovered the alleged error within three years of the unit's receipt of the ribbon, the Board finds that the preponderance of the evidence shows that he discovered the alleged error in 2022, as he alleged, and so his application was timely filed.

3. The applicant alleged that the Coast Guard's failure to award him the Unit Commendation constitutes an error and injustice in his record. 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.³ 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."⁴

4. The record shows that the applicant arrived at his new unit, a Group Command, on May 9, 2002, and that the unit received the Unit Commendation in June 2002 for exceptionally meritorious service from October 1999 to July 2002. Although the applicant alleged that he is entitled to the Unit Commendation because he was assigned to the unit during the eligibility period, the Board disagrees. Chapter 3.A.2 of the Medals and Awards Manual states that when a Unit Commendation is authorized, the recommending authority submits a complete listing of all eligible military personnel, including those who meet the 50% criterion and those who do not meet the 50% criteria but who the unit commander nonetheless recommends for the commendation.

Because the applicant reported for duty at the Group on May 9, 2002, he clearly was not at the unit for 50% of the award period. Thus, his name was not included on the list of personnel eligible to receive the commendation. The Medals and Awards Manual states that personnel not meeting the 50% criteria may be recommended for the commendation as long as the recommending authority provides special justification for those personnel to receive the award. There is no evidence showing that the Group Commander provided any such justification for the applicant to receive the award, and there is no apparent reason in the record for the Group Commander to have done so. Accordingly, the applicant has failed to prove by a preponderance of the evidence that his name should have been included on the list of personnel eligible to receive the July 2002 Unit Commendation.

5. Accordingly, the applicant's request for relief should be denied.

³ 33 C.F.R. § 52.24(b).

⁴ *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 LCDR [REDACTED] [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

June 16, 2023

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