

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-018

[REDACTED]

FINAL DECISION

[REDACTED]

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on October 30, 2006, upon receipt of the applicant's completed application and military records.

This final decision, dated June 13, 2007, 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 asked the Board to correct an entry on a medical report in his military record dated June 17, 1945, stating that "One brother is hard of hearing." The applicant stated that he does not now, nor has he ever had a brother. He argued that the entry implies that his "hearing disability is hereditary and this is not the case."

The medical report shows that on June 17, 1945, the applicant was diagnosed with "deafness bilaterally." The medical report further stated, as follows:

PI: For the past 19 months patient was aboard a DE as [REDACTED] and there has been increasing deafness with tightness in his ears becoming worse during the past six months. He would always feel better just before going on watch.

FS: One brother hard of hearing;

COURSE&TREATMENT: . . . Penicillin instilled in Pretz position daily and hearing has returned until whispered voice is 15/15 in each ear. Audiogram is normal.

6-30-45 DIAGNOSIS CHANGED TO: SALPINGITIS, EUSTACHIAN, ACUTE BILATERAL . . .

REASON: Error . . .

7-3-45 Discharged to duty, well.

The applicant also alleged that he did not discover the alleged error until September 2006. His Coast Guard record contains a March 12, 2003, letter to his congressperson seeking help in obtaining the Purple Heart. The applicant wrote that "During the 1970's, the VFW had attempted to procure the medal for me however the medical records could not be found. Apparently they were moved to St. Louis, Missouri, a fire occurred, and the records, subsequently, were destroyed." Earlier in 1991, the Department of Veterans Affairs sought the applicant's medical records to process the applicant's claim for compensation and disability due to a hearing loss. There is no indication in the Coast Guard record whether the applicant personally reviewed his medical record at this time, although NRPC apparently forwarded the medical records to the DVA, as requested.

VIEWS OF THE COAST GUARD

On January 12, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. The JAG attached a memorandum from the Commander, Coast Guard Personnel Command (CGPC) as Enclosure (1) and asked the Board to accept it as part of the advisory opinion.

CGPC stated that the application was untimely and should be denied on that basis. In this regard, CGPC stated that the applicant has not provided any documentation, except for his own statement, that the entry "One brother hard of hearing" is erroneous. CGPC argued that the fact that the applicant's military record makes no mention of a sibling does not verify his claim that he never had a brother.

CGPC noted the applicant's contention that the alleged erroneous entry made it appear that his hearing loss was hereditary. However, CGPC stated that the medical report indicates that the applicant responded to treatment and was discharged from the hospital with normal hearing.

CGPC argued that even if the entry is erroneous, the applicant's medical records should not be changed because the entry was the objective observation of qualified medical personnel at the time of examination. CGPC further stated "given that this entry was made more than 61 years ago and represents an immaterial element, a change is not justified or warranted."

CGPC stated that the applicant's written statement presented to the BCMR along with the BCMR final decision in this case should be made a part of his Coast Guard record to document his disagreement with the entry.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 17, 2007, the BCMR sent the applicant a copy of the views of the Coast Guard to the address of record and invited him to respond. The Board did not receive a response from the applicant.

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code.

2. The Board finds that the application is timely because the applicant did not discover the alleged error until September 2006. To be timely, an application for correction of a military record must be submitted within three years *after the applicant discovered* or should have discovered the alleged error or injustice. See 33 CFR 52.22. Although the application was submitted on October 30, 2006, approximately 58 years beyond the statute of limitations, the Board accepts the applicant's claim that he did not discover the alleged error until September 2006, because there is no evidence in the record to suggest that he ever saw or knew of the contested medical report prior to his discharge on November 24, 1945 or that he was aware of it earlier than September 2006. Military records are the property of the Coast Guard and are maintained by the Coast Guard upon a member's separation. There is no evidence in the record that the applicant was provided with a copy of his medical record upon discharge from which to learn of the alleged erroneous entry.

3. Further, the Board notes in a March 12, 2003, letter to his congressperson for help in obtaining the Purple Heart, the applicant suggested that his records had been destroyed. In this regard, the applicant wrote "During the 1970's, the VFW had attempted to procure the [Purple Heart] for me, however the medical records could not be found. Apparently they were moved to St. Louis, Missouri, a fire occurred, and the records, subsequently, were destroyed." Although, it appears from the record that the Department of Veterans Affairs sought the applicant's medical records in 1991 to process a claim for compensation and disability due to a hearing loss, the Coast Guard record does not establish that the applicant personally reviewed his medical record, at that time or any time thereafter until September 2006. In light of the lack of persuasive evidence to the contrary and his sworn statement under penalty of perjury on his DD 149 application, the Board accepts the applicant's assertion that he did not discover the alleged error until September 2006.

4. With respect to the merits of his claim, the applicant has failed to present any corroborating evidence that he never had a brother. Absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith. *Arens v. United States*, 969 F.2d 1034, 1037 (1992). The applicant has the burden of proving by a preponderance of the evidence that he never had a brother and therefore, the entry is erroneous and/or unjust. Otherwise, the Coast Guard is entitled to the presumption of regularity. Further, the Board presumes that the physician writing the medical entry in 1945 had a basis for stating that the applicant's brother was hard of hearing. The applicant has presented insufficient to prove the contested entry to be in error or unjust.

5. The Board notes that it should not be that difficult for the applicant to submit sufficient evidence to prove that he never had a brother. Affidavits from family and friends who have known the applicant and his family most of their lives should be easily obtainable to corroborate the applicant's claim that he never had a brother.

6. If the applicant presents such evidence as described in Finding 6, above, with a statement explaining how he is prejudiced by the entry, within six months from the date of this decision, the Board would be amenable to a further review of this application.

7. Accordingly, the application should be denied subject to Findings 5. and 6. above.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

