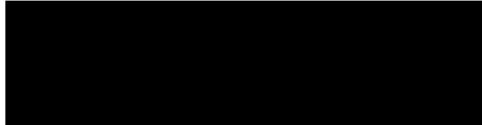


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-166



FINAL DECISION

This proceeding was conducted in accordance with the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case on May 20, 2017, and prepared the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 3, 2018, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, who served on active duty from July 18, 1989, to May 3, 2002, asked the Board to correct his DD 214 to reflect an SFJ separation code, which he claimed denotes retirement due to combat-related disabilities; to adjust his Coast Guard disability rating from 40% to 70% by adding a 30% rating for depression in accordance with the rating he received from the Department of Veterans Affairs (VA); and by adding these medals and awards:

- “Joint War on Terror and 911 Ribbon”
- A second Secretary’s Outstanding Unit Award
- A second National Defense Service Medal

SUMMARY OF THE RECORD

The applicant enlisted on July 18, 1989. A Page 7 in his record states that he was awarded the National Defense Service Medal for his service during the war with Iraq. The same Page 7 states that he was authorized to wear the Coast Guard Meritorious Unit Commendation Ribbon with “O” device for his service aboard the CGC [REDACTED] in severe weather conditions without the loss of a single life.

During his approximately twelve years of service, the applicant injured both knees and had surgeries on each one. His right knee was hit by a sledgehammer in 1994 and subsequently twisted in January 2001 when he was getting off a buoy. On January 30, 2001, a doctor diagnosed the applicant as having an ACL and medial meniscus tear in his right knee. On February 16, 2001, the applicant underwent surgery to the right knee. On July 11, 2001, the applicant was noted to have some pain in his right knee but a full ROM with no joint line tenderness. On July 25, 2001, a physician noted that the applicant still had some instability in the knee; that he was given an ACL brace; and that he was interested in being evaluated by a Medical Board.¹

On July 29, 2001, a Medical Board diagnosed the applicant as suffering from right anterior cruciate ligament instability, status post right knee meniscectomy, and status post left medial meniscectomy. The Medical Board recommended that his case be referred for a disability determination because his medical condition precluded him from continuing in a full duty status.

On February 27, 2002, the Central Physical Evaluation Board (CPEB) reviewed the applicant's case and recommended that he receive a 20% disability rating for moderate "recurrent subluxation [dislocation] or lateral instability" of the right knee under Veterans Administration Schedule for Rating Disabilities (VASRD)² code 5257.³ The CPEB also gave the applicant a 0% disability rating for an impairment of the left knee. The CPEB recommended that the applicant be separated with severance pay.⁴

On March 11, 2002, after consulting counsel, the applicant accepted the CPEB's findings and recommendation and waived his right to a formal hearing before a Formal Physical Evaluation Board (FPEB).

On March 12, 2002, the applicant underwent a pre-separation physical examination. The physician noted that he had a history of chronic right and left knee pain and instability in the right knee requiring him to wear a brace. The physician also noted that the applicant had a histo-

¹ The purpose of a Medical Board is to evaluate and report upon the present state of health of any member who may be referred to the medical board by an authorized convening authority and to provide a recommendation as to whether the member is medically fit for the duties of his or her office, grade, rank, or rating. See Chapter 3.A. of the Physical Disability Evaluation System Manual (COMDTINST M1850.2C).

² The VASRD at 38 C.F.R., part 4, is the VA's schedule for rating disabilities. It is used by the PDES boards to assign codes and percentages of disability for an evaluatee found unfit for duty. See Chapter 2.A.51 of the PDES Manual.

³ VASRD code 5257 is used to rate the impairment of the knee due to recurrent subluxation or lateral instability. A 30% rating is authorized for severe instability, 20% for moderate instability, and 10% for slight instability. See Summary of Applicable Law, below, for the meanings of the VASRD codes.

⁴ Under 10 U.S.C. § 1201, only disabilities ratings of 30% or higher entitle a member to a medical retirement. Ratings of 0, 10, or 20% entitle a member to severance pay. 10 U.S.C. § 1203.

ry of daily low back pain⁵ and chronic headaches requiring medication. A medical note dated March 18, 2002, shows that the applicant was prescribed Zoloft to treat “situational depression.”

On March 22, 2002, the Personnel Command issued orders for the applicant to be discharged due to disability with severance pay pursuant to the recommendation of the CPEB. On May 3, 2002, the applicant was separated with a 20% disability rating for his right knee, a 0% disability rating for his left knee, and severance pay. His DD 214 shows that he was honorably discharged for “Disability, Severance Pay” with the corresponding JFL separation code and RE-3P reentry code. It also lists the following medals and awards:

- Two Coast Guard Achievement Medals
- Three Coast Guard Meritorious Unit Commendations
- One Meritorious Team Commendation Ribbon
- Two Bicentennial Unit Commendations
- Two Commandant’s Letters of Commendation
- Five Humanitarian Service Medals
- One Coast Guard “E” Ribbon
- One National Defense Service Medal
- One Coast Guard Special Operations Service Ribbon
- One Secretary’s Outstanding Unit Ribbon
- Four Good Conduct Medals
- A Sea Service Ribbon
- A Coxswain Pin
- A Permanent Cutterman Pin
- A Rifle Marksman Ribbon
- A Pistol Marksman Ribbon

⁵ A medical note indicates that the applicant first reported low back pain after falling off of a motorcycle in 1994. He was treated with medication and ice and given 72 hours of sick leave. On December 12, 1994, in a follow-up visit, the applicant was feeling much better although still sore. He was continued on medication and prescribed 30 days of light duty. A medical note dated May 25, 2000 indicates that the applicant complained of recurrent low back pain. His diagnosis was lumbosacral strain and he was treated with rest, ice, and referred to orthopedics.

VA Records

Following his discharge, the applicant applied to the VA for benefits. In a decision dated July 22, 2002, the VA awarded the applicant a 30% disability rating for “situational depression”; a 30% rating for his right knee condition; a 10% rating for his left knee condition; a 0% rating for his lower back pain and history of fracture coccyx; and a 0% rating for “septoplasty by history.”

A medical noted dated April 24, 2003, states that the applicant had a medial meniscus tear in his left knee that required surgery and that he was being treated for a major depressive disorder.

On or about October 27, 2003, a VA doctor diagnosed the applicant as suffering from depression related to chronic pain. He rated the applicant’s prognosis as fair if further knee replacement surgery increased the applicant’s ability to ambulate without pain, otherwise he rated the applicant’s prognosis as poor. He stated that the applicant was not able to work due to severe pain and depression. The VA subsequently found the applicant to be “unemployable” and awarded him a 100% disability rating for various service-connected conditions.

BCMR Docket No. 2005-022

In 2004, the applicant applied to the BCMR in Docket No. 2005-022 and asked to be permanently retired with at least a 30% disability rating. He stated that his disability rating should have been higher based on the disability of his left knee, his degenerative disc disease, and severe depression. The Coast Guard recommended denying relief because the applicant had received all due process and accepted the recommendation of the CPEB and because the only evidence he submitted was the VA’s decision, which is not determinative of the same issues as a military disability rating. The Coast Guard explained that

[t]he procedures and presumptions applicable to the VA evaluation process are fundamentally different from, and more favorable to the veteran than those applied under the PDES (Coast Guard’s Physical Disability Evaluation System). The VA is not limited to the time of Applicant’s discharge. If a service-connected condition later becomes disabling, the VA may award compensation on that basis. The VA’s finding that the Applicant was 100% disabled is not relevant to the Coast Guard’s finding that he was 20% disabled *based solely on the conditions that rendered him unfit for continued service at the time of his separation*. The sole standard for a disability determination in the Coast Guard is unfitness to perform duty . . . In any event any long-term diminution in the Applicant’s earning capacity attributable to his military service is properly a matter of the VA, not the Coast Guard or the BCMR.

The BCMR denied relief in 2005-022, finding that the applicant had not proven by a preponderance of the evidence that the Coast Guard had erred by discharging him with a 20%

disability rating for instability of the right knee and a 0% disability rating for other impairment of the left knee under code 5257 of the VASRD. The Board found that these ratings were correct because none of the medical reports described the applicant's right knee instability as severe following his 2001 surgery and before his discharge and because a medical report dated January 30, 2001, described the applicant's left knee as having "no joint line tenderness, no effusion and [full range of motion]." The Board found that the fact that the applicant underwent surgical repair of a meniscus tear in his left knee more than a year after he was discharged did not prove that his left knee condition was disabling before his discharge.

The BCMR also found that the applicant had failed to prove that the CPEB erred by not rating his back condition and depression as unfitting physical disabilities. The Board noted that under Chapter 2.C.3.a.(3)(a), the CPEB rates only "those disabilities which make an evaluatee unfit for military service or which contribute to his or her inability to perform military duty" and that Chapter 9.A.1.c. states that disabilities that are neither unfitting for military service nor contributing to the member's inability to perform military duty may not be rated. The Board found that the last mention of back pain in the applicant's Coast Guard medical record was dated May 25, 2000—about two years before his discharge—and there was nothing in the report that indicated that the condition was unfitting for duty. Likewise the Board found that the medical note dated March 18, 2002, which showed that the applicant was being treated for "situational depression" while his discharge was pending, was not evidence that the condition was unfitting for military duty.

The BCMR also agreed with the Coast Guard that the applicant had received due process under the PDES, accepted the findings of the CPEB, and waived his right to a formal hearing and that under *Lord v. United States*, 2 Cl. Ct. 749, 754 (1983), "[d]isability ratings by the Veterans Administration [now the Department of Veterans Affairs] and by the Armed Forces are made for different purposes. ... Veterans Administration ratings are not determinative of issues involved in military disability retirement cases." Therefore, the Board denied relief.

Decision of the Physical Disability Board of Review (PDBR)

In 2012, the applicant applied to the PDBR for the same relief that he had sought from the BCMR. The DD 294 application form⁶ for the PDBR states the following in bold font in block 10: "I have read the attached instruction for this item and understand that by requesting this review I give up my right under 10 U.S.C. 1552 to petition my Service's Board for Correction of Military/Naval Records to review and correct the rating for the medical condition(s) which made me unfit."⁷ The instructions state the following regarding block 10:

⁶ The applicant's DD 294 is not in the record before the Board.

⁷ 10 U.S.C. § 1554a(c)(4) (requiring the PDBR to inform an applicant in writing that after applying to the PDBR, the applicant "may not seek relief from the Board for Correction of Military Records operated by the Secretary concerned.").

By requesting a PDBR review, you are giving up your right under 10 U.S.C. 1552 to petition your Service's Board for Correction of Military/Naval Records to subsequently review the rating for the medical condition(s) which rendered you unfit. The decision of the Secretary on this issue will be final. You may still ask your Service Board for Correction of Military/Naval Records (BCMR/BCNR) to consider other issues including those related to your disability separation.

The decision of the PDBR is not in the record before the BCMR, but on November 25, 2013, the Coast Guard informed the applicant by letter that it had accepted the PDBR's recommendation that the applicant's disability discharge with a 20% disability rating be corrected to a disability retirement with a 40% disability rating. The letter states that the necessary corrections would be made within 120 days. The letter does state which medical conditions the PDBR rated and based its recommendation on.

Combat-Related Determination

In 2015, the applicant submitted another application to the BCMR and asked the Board to correct his record to show that his disabilities are combat-related, so that he would be eligible for combat-related special compensation (CRSC) in addition to asking for corrections to his DD 214 to reflect the decision of the PDBR. The Chair advised the applicant to exhaust his administrative remedy first by filing a DD 2860 to request the combat-related designation.⁸ In February 2017, Coast Guard informed the applicant that based on his January 2016 DD 2860 application, he had received a combat-related designation for VA-assigned right knee disabilities totaling 40%. In April 2017, the Coast Guard informed the applicant that his 30% disability rating for depression from the VA was also determined to be combat-related because his depression resulted in part on his right knee pain.

On August 22, 2017, while preparing its part of the advisory opinion, the Personnel Service Center informed the Chair that following telephone conversations with the applicant, he was seeking only the addition of the medals and awards to his DD 214 because his remaining concerns had been either answered or resolved by the Personnel Service Center.

VIEWS OF THE COAST GUARD

On October 17, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant partial relief and adopted the findings and analyses provided in a memorandum submitted by the Personnel Service Center (PSC).

⁸ The Chair offered the option of docketing the applicant's request for medals and awards separately, but the applicant opted to file a single application after receiving a decision on his DD 2860 application.

Regarding the applicant's request for medals and awards, PSC stated the following:

- The applicant qualified for the DOT 9-11 Ribbon while assigned to Group Charleston in 2001. PSC submitted an email from a chief warrant officer in its Medals and Awards Branch, who wrote that she found the applicant's name on a roster from the Seventh District showing that he "was awarded the 9/11 Ribbon while assigned to Group Charleston."
- He received his first National Defense Service Medal for the period August 2, 1990, through November 30, 1995, and is entitled to a second National Defense Service Medal for the period beginning September 12, 2001.
- He is also entitled to wear the Global War on Terrorism Service Medal (GWOTSM) based on his service from September 12, 2001, through May 3, 2002.

Regarding the applicant's request for correction of his DD 214, PSC stated that pursuant to the 2013 decision of the PDBR, the applicant's medical discharge with severance pay was corrected to a medical retirement based on a 40% disability rating. On April 25, 2014, PSC issued new separation orders changing the applicant's separation code to SFJ and his narrative reasons for separation to "Disability, Permanent." PSC noted that the SFJ denotes a retirement for physical disability and that there is no separation code specifically for retirements due to combat-related disabilities. This correction was made retroactive to his date of separation.

PSC stated that in 2017 the applicant's 40% VA rating for his right knee conditions and 30% VA rating for depression were designated as combat-related and so he is entitled to CRSC. The applicant's retired pay was adjusted accordingly. PSC also stated that when the VA adjusts his disability percentages for his right knee conditions and depression in the future, his CRSC will be adjusted automatically.

Therefore, PSC stated that the Board should correct the applicant's DD 214 to show that he is entitled to wear the GWOTSM, DOT 9-11 Ribbon, and a second National Defense Service Medal. PSC stated that there is no evidence that the applicant is entitled to a DOT Outstanding Unit Award and so recommended that the Board deny that request.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 21, 2017, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

APPLICABLE LAW & POLICY

Title 10 U.S.C. § 1554a, the PDBR statute, is titled "Review of separation with disability rating of 20 percent disabled or less." Section 1554a(c)(4) states the following:

With respect to any review by the Physical Disability Board of Review of the findings and decisions of the Physical Evaluation Board with respect to a covered individual, whether initiated at the request of the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual or initiated by the Physical Disability Board of Review, the Physical Disability Board of Review shall notify the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual that, as a result of the request or consent, the covered individual or a surviving spouse, next of kin, or legal representative of the covered individual may not seek relief from the Board for Correction of Military Records operated by the Secretary concerned.

Department of Defense Instruction 6040.44 as applicable during the applicant's PDBR stated the following:

The following will be subject to review by the PDBR:

- (a) Medical conditions determined to be specifically unfitting for continued military service, as previously determined by the Military Department PEB.
- (b) Those instances when the covered individual requests the PDBR to review conditions identified but not determined to be unfitting by the PEB of the Military Department concerned.

In addition, the Instruction states that the Secretary of the military departments must obtain written acknowledgement from applicants that "as a result of the request for review by the PDBR, the covered individual...may not seek relief from the Board for Correction of Military Records (BCMR)" and notes that a decision by the PDBR is final.

Chapter 2.C.3.a.(3)(a) of the Physical Disability Evaluation System (PDES) manual in effect in 2002 states that in determining a member's disability rating, a PEB

shall not rate an impairment that does not contribute to the condition of unfitness or cause the evaluatee to be unfit for duty along with another condition that is determined to be disqualifying in arriving at the rated degree of incapacity incident to retirement from military service for disability. In making this professional judgment, board members will only rate those disabilities which make an evaluatee unfit for military service or which contribute to his or her inability to perform military duty.

Chapter 5.A.4. of the Medals and Awards Manual, COMDTINST M1650.25E states that the National Defense Service Medal is awarded to military personnel under these conditions:

Honorable active service as a member of the Armed Forces for any period (inclusive) from 27 June 1950 to 28 July 1954; from 1 January 1961 to 14 August 1974; from 2 August 1990 to 30 November 1995; or from 12 September 2001 to a date

to be determined by the Secretary of Defense. Only one award of the National Defense Service Medal may be authorized for each period of eligibility.

Chapter 5.A.13.b.(1) of the Medals and Awards Manual states that for the period September 11, 2001, through January 30, 2005, the Global War on Terrorism Service Medal was

[a]warded to all Coast Guard active duty and reserve member on active duty during the eligibility period. To qualify, members must have served on active duty for a period of not less than 30 consecutive days or 60 non-consecutive days following initial accession point training. Service while assigned to training duty as a student, cadet, officer candidate, and DUINS, does not count toward eligibility. This includes both training and summer cruises for the Coast Guard Academy and Officer Candidate School.

Chapter 6.A.9. of the Medals and Awards Manual states that the Department of Transportation 9-11 Ribbon was awarded to members who contributed to the recovery from the attacks on September 11, 2001, to force protection following the attacks or to efforts that directly contributed to the increased infrastructure security efforts during the first year after the attacks, including “[a]ll personnel, to include active, reserve, auxiliary, and civilian personnel, that manned or augmented for no less than 14 days, Coast Guard, DOT, FEMA and DoD command centers (including Operations Centers at CG Groups and above COTP ICS, FEMA Regional Operations Centers, and VTS) between 11 September 2001 and 11 September 2002..”

Enclosure (4) to the Medals and Awards Manual shows only two periods during which the Department of Transportation’s Secretary’s Outstanding Unit Award. The first is the period October 1, 1993, through September 30, 1994, when it was awarded to units who engaged in migrant interdiction or environmental disaster recovery for an extended period. The second is the period September 11 to October 22, 2001, when it was awarded to specific units (primarily those in the northeastern United States) that responded directly to the attack on New York City. Group Charleston is not on the list.

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 generally has jurisdiction concerning veterans’ requests to increase Coast Guard disability ratings pursuant to 10 U.S.C. § 1552. But in challenging his disability rating through the PDBR pursuant to 10 U.S.C. § 1554a, the applicant knowingly waived his right to have the BCMR review his Coast Guard disability ratings for all conditions considered by the PDBR. This waiver is shown on the PDBR application form and is required by Congress in 10 U.S.C. § 1554a(c)(4). The PDBR is presumed to have properly considered the medical

conditions presented by the applicant,⁹ and he has not shown that the PDBR failed to consider his depression. Therefore, by statute, the BCMR lacks the authority and jurisdiction¹⁰ to review the applicant's request that the 40% disability rating he received through the PDBR be raised to 70% based on a 30% disability rating for depression.¹¹

2. The Board has jurisdiction over the applicant's remaining complaints regarding his DD 214, specifically his requests for medals and awards and a new separation code.

3. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.¹² The applicant signed his DD 214 with the current list of medals and awards in 2002, and he received the decision of the PDBR in 2013. Therefore, his requests are untimely.

4. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.¹³ 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"¹⁴ 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."¹⁵

5. The record before the Board shows that there is substantial merit in the applicant's claims for certain medals and awards. Moreover, his application requesting CRSC and a separation code reflecting CRSC was originally received in November 2015, within three years of the PDBR's decision, and was not then docketed only because the applicant needed to exhaust his administrative remedy for obtaining CRSC by filing a DD 2860. The applicant filed his DD 2860 in January 2016 and did not receive a final decision until April 2017. Therefore, the Board finds that it is in the interest of justice to waive the statute of limitations and consider the applicant's requests regarding his DD 214 on the merits.

⁹ 33 C.F.R. § 52.24(b).

¹⁰ See *Lawrence v. Office of Personnel Management*, 108 M.S.P.R. 325, ¶ 6, *aff'd*, 318 Fed. Appx. 895 (Fed. Cir. 2008) (finding that an uncoerced waiver of appeal rights divests the Merit Systems Protection Board of jurisdiction over the claim).

¹¹ The Board notes, moreover, that it already considered the request for a disability rating for depression in BCMR Docket No. 2005-022, and the applicant has not submitted any new evidence not previously considered by the Board showing that he was disabled by depression before May 3, 2002, which is required for reconsideration pursuant to 10 U.S.C. § 1552(a)(3)(D).

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

¹³ 10 U.S.C. § 1552(b).

¹⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

¹⁵ *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

6. The applicant alleged that the separation code and list of medals and awards on his DD 214 is erroneous. 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.¹⁶ 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."¹⁷

7. The preponderance of the evidence shows that pursuant to a 2013 decision of the PDBR, the Coast Guard has issued new separation orders correcting the applicant's May 3, 2002, separation from a discharge for "Disability, Severance Pay" with the corresponding separation code JFL to a retirement for "Disability, Permanent" with the corresponding separation code SFJ. As PSC noted, the SFJ is correct because there is no separation code in the SPD Handbook that specifically denotes separation due to combat-related disabilities. However, the military record provided to the Board by the Coast Guard does not show that the applicant's DD 214 has been corrected either by reissuance of the DD 214 or by issuance of a DD 215 (the DD 214 correction form) to reflect these corrections. Therefore, if the Coast Guard has not yet corrected the applicant's DD 214 to reflect the corrections made pursuant to the decision of the PDBR, it should do so. These corrections should include changing the applicant's reentry code to RE-2, which is the reentry code for members retired due to physical disabilities prescribed by the SPD Handbook.

8. The applicant has proven by a preponderance of the evidence that he is entitled to a second National Defense Service Medal. Chapter 5.A.4. of the Medals and Awards Manual provides that members of the Armed Forces who perform honorable active service during certain periods are eligible for the this medal, and the periods include two during which the applicant served on active duty: August 2, 1990, to November 30, 1995, and September 12, 2001, to his separation on May 3, 2002. Because his DD 214 currently reflects only one such medal, it should be corrected to show that he received two.

9. The applicant requested a "Joint War on Terror and 911 Ribbon." There is no such ribbon in the Medals and Awards Manual, but the Board believes that PSC correctly interpreted this as a request for the GWOTSM and a Department of Transportation 9-11 Ribbon. The GWOTSM was authorized on March 12, 2003, in Executive Order 13289 and was awarded to all members who served on active duty for at least 30 consecutive days during the period September 11, 2001, through January 30, 2005.¹⁸ Although the applicant was discharged before this medal was authorized, Executive Order 13289 authorized retroactive awards of this medal by stating that it "shall be awarded to members of the Armed Forces of the United States who serve *or have served* in military operations to combat terrorism, as defined by such regulations, on or after September 11, 2001, and before a terminal date to be prescribed by the Secretary of Defense." (Em-

¹⁶ 33 C.F.R. § 52.24(b).

¹⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

¹⁸ Medals and Awards Manual, COMDTINST M1650.25E, Chapter 5.A.13.

phasis added.) Therefore, the applicant qualified for the GWOTSM and it should be added to his DD 214.

10. The Department of Transportation 9-11 Ribbon was authorized by the Secretary of Transportation on February 11, 2003, and awarded to all individuals within the Department “for an act of service that contributed to recovery from the attacks of 11 September 2001, force protection following the attacks, or efforts that directly contributed to the increased infrastructure security effort between 11 September 2001 and 11 September 2002.”¹⁹ The ribbon was awarded to numerous operational units and all personnel who participated in patrolling harbors and other facilities, boarding and escorting vessels, or manning a command center or Group Operations Center for at least 14 days during that year.²⁰ PSC has found the applicant’s name on a District roster of members who qualified for the ribbon and stated that the applicant qualified for this ribbon while assigned to Group Charleston in 2001. Therefore, the Board finds that the preponderance of the evidence shows that he is entitled to wear this ribbon.

11. The applicant also asked the Board for a second Secretary’s Outstanding Unit Award. Enclosure 4 to the Medal and Awards Manual lists the units that received this award and are entitled to wear the ribbon. It shows that personnel who performed an extended period of migrant interdiction or environmental disaster response between October 1, 1993, and September 30, 1994, qualified for this award. The Secretary’s Outstanding Unit Ribbon listed on the applicant’s DD 214 was presumably received for this period because the applicant’s cutter at the time was involved in migrant interdiction. The only other period for which the Secretary’s Outstanding Unit Award was authorized was September 11 to October 22, 2001, and the units listed as receiving the award for this period in Enclosure 4 are those that responded directly to the attack in New York City—primarily units located in the northeastern United States. Group Charleston, where the applicant was assigned at the time, is not listed. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that he is entitled to a second Secretary’s Outstanding Unit Award.

12. Accordingly, partial relief should be granted by directing the Coast Guard to correct the applicant’s DD 214 to show the following:

- A second National Defense Service Medal, a GWOTSM, and a DOT 9-11 Ribbon, should be added to the list of medals and awards.
- The type of separation in block 23 should be “Retired.”
- The separation code in block 26 should be SFJ.
- The reentry code in block 27 should be RE-2.
- The narrative reason for separation in block 28 should be “Disability, Permanent.”

¹⁹ *Id.* at Chapter 6.A.9.

²⁰ *Id.*

ORDER

The application of [REDACTED], USCG (Retired), for correction of his military record is granted in part. The Coast Guard shall ensure that his DD 214 is corrected as follows:

- A second National Defense Service Medal, a Global War on Terrorism Service Medal, and a Department of Transportation 9-11 Ribbon shall be added to the list of medals and awards.
- The type of separation in block 23 shall be “Retired.”
- The separation code in block 26 shall be SFJ.
- The reentry code in block 27 shall be RE-2.
- The narrative reason for separation in block 28 shall be “Disability, Permanent.”

August 3, 2018

