


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2025-074


LT/O-3 (retired)

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 March 13, 2025, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated February 27, 2025, 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 LT/O-3, requests correction of his military record in three respects. First, he claims to have received an improper discharge physical that failed to identify a disabling condition in shoulders. He claims that this should increase his overall retirement disability percentage from 40% to 100%. He next claims that the Bronze Star Medal (BSM) he was awarded in 2019 should have included a "V" device. Applicant finally claims that he should have been promoted to LCDR/O-4 under special wartime authority, and asks that he be retroactively promoted and receive back pay for the difference in retired pay between O-3 and O-4.

SUMMARY OF THE RECORD

For the period relevant to this application, the applicant entered active duty on September 15, 1990.¹ He entered and was discharged in the grade of LTJG/O-2. Applicant was separated on May 8, 1991 and remained in the Coast Guard Reserve. During his service, he supported Operations Desert Shield and Desert Storm, referred to colloquially as the “Gulf War.”

The applicant provides a memorandum as part of his application that was prepared on February 2, 1990 wherein his commanding officer recommends him for promotion to LT/O-3 using special wartime authority. This memorandum has neither an official office symbol or letterhead, and is dated prior to the applicant’s call to active duty. It is unclear when this memorandum was prepared.

In 1993, the applicant informed the Coast Guard that he had sustained a serious illness while assigned to the U.S. Navy during the Gulf War. He claimed to have been exposed to unknown toxins, and developed signs of high blood pressure and recurrent back pain. He requested a medical board in accordance with COMDTINST M6000.1. This board met on November 3, 1994 and diagnosed the applicant’s condition as “state after prostatectomy for cancer, state after prostatectomy radiation therapy, urinary incontinence, and essential hypertension.” It also determined that the applicant did not have a full medical examination at the time of his call to active duty, or his discharge, and that such an examination might have identify an “early malignancy in the prostate.”

The Medical Board referred the applicant’s case the Central Physical Evaluation Board (CPEB) for disposition. On May 17, 1995, the CPEB found applicant was not fit for duty due to Malignant Neoplasms of the Genitourinary System (Adenocarcinoma of the Prostate), recommended his temporary retirement with 100% disability, and placement on the Temporary Disability Retired List (TDRL).

The applicant applied to this Board on May 30, 1995 (Docket Number 134-95), requesting that he be retroactively placed onto the TDRL effective the date of his original discharge on May 8, 1991. This request was supported by the Coast Guard, and Board granted relief on October 13, 1995. The applicant was placed on the TDRL effective May 8, 1991.

On May 8, 1996, the applicant was permanently medically retired in the grade of LTJG/O-2, at a rating of 40%. He again applied to this board on November 27, 1995, claiming that he should have been retired in the grade of LT/O-3 to properly reflect his

¹ The applicants DD 214 shows that he had 3 years, 10 months and 26 days of prior active service, and 9 years 6 months of prior inactive service. The record before the Board is unclear as to when this prior service occurred, but the entirety of the events relevant to this application occurred either during or after the period of active service the applicant performed from 1990-1991.

promotion to that grade in February 1992. The Board granted his requested relief on July 9, 1998, and adjusted the date of his placement on the TDRL to February 21, 1992, which was after his promotion. This had the effect of retiring him in the higher grade.

The applicant provides numerous medical records from the period between the second Board decision and his current application. Relevant to his application, these go into further detail concerning the shoulder issues he claims were service disqualifying. The record he presents shows that he received treatment for his shoulder problems soon after his return from the Gulf War, and that evidence of treatment appeared in his medical record at least by June of 1995. He also presents evidence of skin conditions which he claims could have originated during his service in the 1960s.

VIEWS OF THE COAST GUARD

A Judge Advocate (JA) of the Coast Guard on prepared a memorandum dated October 10, 2025 wherein he recommended the board deny relief, in accordance with the recommendation of the Commanding Officer of the Coast Guard Personnel Service Center.

The JA first argued that the applicant's record did not show that he engaged in any "heroic acts while directly participating in conflict or combat with an armed enemy," as required by COMDTINST 1650.25E, which was the policy in effect at the time the award was granted in 2019. The JA claimed that, due to the passage of time, the Coast Guard could not locate the version of the medals and awards manual in effect during the applicant's service. The JA argued that the policy in effect at the time of the award should apply, and even if it does not, the doctrine of laches should be applied to not upset the government's action.

The JA next argued that, while wartime authority for temporary promotions did exist at the time, there is no evidence a wartime promotion board was convened. He argues that the decision not to do so is not evidence of error or injustice toward the applicant.

The JA does not address the applicant's disability-related claims, but the enclosed PSC memorandum does so. The PSC contends that no documentation in the applicant's service record substantiates that the additional medical issues were evaluated and found unfitting during the applicant's service. The PSC points out that the existence of a disability ratable by the VA does not render a member unfit for duty. The PSC also notes that the applicant was counseled at the time of the decision in 1996 and waived his right to a Formal Physical Evaluation Board (FPEB).

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 20, 2025, the Board sent the applicant a copy of the Coast Guard's submission and invited him to submit a response within 30 days. The applicant submitted a response by email on November 20, 2025.

The applicant's response first articulates a new argument that the PEB applicant was referred to in 1993 was improperly convened. Counsel makes a number of arguments concerning procedural deficiencies in the medical board, and argues that it applied a "VA-driven" medical process. He then asks the Board to direct the PSC to produce the convening order and other documents related to the MEB and PDES, and argues that the Coast Guard's inability to do so, the board process from 1993-1996 "must be voided and re-adjudicated." Counsel also alleges that failure to object to the findings in 1996 should not preclude relief.

Applicant's counsel then reiterates, in more detail, why his failure to receive a wartime promotion and "V" device amounted to error and/or injustice. While more detailed arguments are made, no additional requests or relevant evidence are presented.

Applicant finally provides rebuttal to specific aspects of the advisory opinion. He asserts that the application is timely, without evidence or argument in support of that assertion. He next argues that the Coast Guard should not fully enjoy the presumption of regularity. Applicant next claims that VA and DoD standards for disability are different, and that the VA standards were erroneously applied to the applicant and thus warrant reconsideration of his disability rating for retirement. The applicant also argues that alleged procedural irregularities in his 1996 PEB require the Board to confirm panel composition and authority and set aside the defective aspects. Lastly, applicant objects to Coast Guard's claim that denial of "V" device and wartime promotion did not amount to error or injustice.

APPLICABLE LAW AND REGULATIONS

Reconsideration

Reconsideration of an application for correction of a military record must be in accordance with our regulations contained in 33 C.F.R. § 52.67. It may occur in two situations:

- (1) An applicant presents evidence or information that was not previously considered by the Board and that could result in a determination other than that originally made. Such new evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence; or

- (2) An applicant presents evidence or information that the Board, or the Secretary as the case may be, committed legal or factual error in the original determination that could have resulted in a determination other than that originally made.

A request for reconsideration that does not meet the above requirements, “the Chair shall not docket such request.”

Requests for reconsideration must be filed within two years. However, requests based on new evidence or information may be filed at any time pursuant to 10 U.S.C. § 1552(a)(1)(D).

Medals

Coast Guard Military Medals and Awards Manual, COMDTINST M1650.25(series) (August 15, 2016).

Table 1-1 (excerpt): ““V” Valor Device. The bronze letter “V” may be authorized for wear if the award is for performance of a heroic act or acts while directly participating in conflict or combat with an armed enemy. Each case must be judged on its own merits, and the citation must specifically authorize the device. The Commandant retains sole approval authority for all awards for valor; authority will not be delegated further. Awards issued with a “Combat Distinguishing Device “V” before the release date of this Manual remains authorized. New awards of the “V” Valor Device will be for valor only.”

Chapter 9.b The Bronze Star Medal may only be awarded to members of the Armed Forces who are in receipt of Imminent Danger Pay at the time of the actions or service for which they are being recognized. To merit this award, the acts or services must be performed in a manner significantly above that normally expected, and sufficient to distinguish the individual above those performing similar acts or services. The award may be authorized as follows:

- (1) Heroic Achievement or Service. A single act of heroism worthy of special recognition, although not to the degree required for the Silver Star Medal; such award does not preclude receipt of an additional award for a specific act within that period, if warranted.

- (2) Meritorious Achievement or Service in Connection with Combat Operations. A single achievement or a period of service worthy of special recognition, although not to the degree required for the Legion of Merit. An award for meritorious service may cover an extended period of time; such award does not preclude receipt of an additional award for a specific act within that period, if warranted.

Wartime Promotion

Promotion of Coast Guard officers are made pursuant to two statutory authorities: 14 U.S.C. § 2101 for Regular officers, and 14 U.S.C. § 3740 for Reserve officers. Both statutes require approval by the President before an officer may be promoted.

The Coast Guard Personnel Manual, COMDTINST M1000.6A (January 1988) provided a process for wartime promotions that would not require action by the President during the time of the applicant's service. Following a suspension by the President of laws governing selection and promotion of officers, the Coast Guard could approve temporary promotions using special wartime authority. All such promotions to LCDR or above required a recommendation of a board of officers convened for that purpose, and action by the Secretary to approve. All wartime promotions were temporary, and could be effective no later than six months after the war or national emergency ended. At that point, the officer would revert back to his or her former grade.

With respect to the period of the applicant's service, the President issued Executive Order (EO) 12728 on August 22, 1990 that authorized the Secretaries of Defense and Transportation to suspend any provision of law relating to promotion, retirement, or separation for members determined to be essential to national security.

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 over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that he has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. 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

3. An application is untimely if not submitted to the Board within three years after the applicant discovered the alleged error or injustice underlying the application, but the Board may excuse untimeliness if it is in the interests of justice to do so.⁴ In this case, the applicant makes three distinct claims of error that we must analyze independently to determine their timeliness.

4. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so. 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"⁴ 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."⁵

Allegation 1: Disabling Shoulder Conditions Were Not Detected Due to Improper Discharge Physical

5. The applicant first claims that the government failed to give him a proper discharge physical which resulted in the failure to identify a disabling condition in his shoulders. His submission contains a letter from a doctor stating that evidence of the applicant's shoulder condition was present in his medical records by June 27, 1995, and asserts that his separation physical "was not an acceptable evaluation of discharge from the military." The applicant has been on notice of this alleged error since at least 1995, and on its face the application is untimely.

6. However, the analysis of this claim is not that straightforward. The applicant made the same allegations to the Coast Guard prior to his application on May 30, 1995 (Docket Number 134-95). The applicant wrote a letter to the Commandant in December 1993 alleging that his separation physical was improperly conducted upon his discharge in 1991. He further contended that, had a proper physical been conducted, it would have identified high blood pressure and cholesterol levels in addition to his prostate disease. In response to his letter, the Coast Guard conducted a Medical Board that substantially agreed

² 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).

⁴ 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

with the applicant's allegations. His case was referred to a Central Physical Evaluation Board (CPEB) that found the applicant was not fit for duty and recommended temporary retirement with 100% disability. He applied to us in 1995 asking that his placement on the TDRL be retroactive to his 1991 discharge. The Board agreed and granted relief on October 13, 1995. His case was referred to the CPEB, which was completed in May 1996 recommending permanent medical retirement.

7. Given the significant procedural history before this Board and the Coast Guard concerning the applicant's allegations of an improper discharge physical, this current allegation is not new. While not styled as such, his allegation of a defective discharge physical is in substance a request for reconsideration of our decision in Docket Number 134-95. The applicant's allegation before us is that his discharge physical was improper and furthermore that the medical board was also improper. All of this was before us when we considered his application in Docket Number 134-95. Since the applicant does not allege legal error in our previous decision, the application must therefore present "evidence or information that was not previously considered by the Board" that "could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence." Not all aspects of the applicant's claim were previously considered or decided by this Board. However, we consider his new claims coming more than 30 years after his discharge in light of the fact that he has, on two occasions, previously asked us to for corrections related to his medical retirement processing. At no previous point did he assert that his shoulder conditions or skin conditions were service disqualifying.

8. The applicant, by 1993, knew that there were errors in his discharge physical. By June of 1995, his medical record indicated orthopedic issues with his shoulders. One of the medical records he submitted said that his medical records showed treatment immediately following the Gulf War. As a result, applicant was on notice of his alleged shoulder problems no later than June, 1995. Either the applicant chose not to present this information to this Board, the medical board, or the CPEB; or he did so and they were not considered significant. Apparently at no time during this process did the applicant alert the Coast Guard to his allegedly serious and service-disqualifying shoulder condition. He accepted the eventual results of the CPEB and even applied again to this Board a few months later alleging that he was improperly retired as a LTJG at the conclusion of his medical retirement processing. At no time did he allege error in the medical board or CPEB's conclusions, despite clearly being on notice of his allegedly disabling shoulder conditions. We therefore find his current claim untimely.

9. The applicant does not present contemporaneous medical records to show that any additional conditions were in fact service disqualifying at the time of his 1991 discharge, or his 1995 CPEB. It is virtually impossible to determine whether a medical condition being experienced by an applicant who is now in his late seventies was a service disqualifying condition more than 30 years ago. It becomes completely impossible when

the applicant's submissions and the Coast Guard record do not show that the Coast Guard, at the time of his original discharge, failed to properly consider medical evidence of these conditions that was available in his medical record.

10. Therefore, the Board finds that the applicant's request is untimely, and excusal of his untimeliness is not required in the interests of justice. Relief will be denied.

Allegation 2: Bronze Star Awarded in 2019 Should Have "V" Insignia

11. The applicant next alleges that the Bronze Star Medal he was awarded in 2019 should have included a "V" device. His award was approved on September 10, 2019, about three years and two months before he submitted his application to us on November 7, 2022. Considering that we do not know the day this decision was delivered to him, we find that his request for inclusion of the valor device is timely

12. While the Board acknowledges the arguments made by counsel in both the application and response to the AO, relief is not appropriate. First, the applicant misstates the applicable regulatory authority. Specifically, the "V" was authorized as a "combat distinguishing device" during the time period of the applicant's combat service (1990-1991). However, previous Awards Manuals, as the current manual does, made award of the "V" discretionary. It was not erroneous for the applicant to be awarded a BSM without a "V" device under either the rules applicable in 1991 or in 2019. Furthermore, the current awards manual makes clear that "[a]wards issued with a "Combat Distinguishing Device "V" before the release date of this Manual remains authorized. New awards of the "V" Valor Device will be for valor only." As this was a new award, the Awards Manual was clear that the current rules for awarding the "V" device applied.

13. The second reason applicant's claim must be denied is that, even accepting his argument that a "V" device was warranted and consistent with Coast Guard policy, there is no evidence or even an allegation that it was the Commandant's intent to award it. The BSM is a discretionary award and certainly not an entitlement. The Commandant was free to confer upon the applicant a higher or lower award, or disapprove the award altogether. This request by the applicant effectively asks the Board to superimpose its judgement over that of the Commandant in making a purely discretionary determination without any evidence of error. It would strain logic to the point of absurdity to conclude that the purely discretionary award of a significant personal military decoration to the applicant – one that is conferred on relatively few Coast Guardsmen – could form the basis of a claim of injustice. For these reasons, relief on this claim is denied.

Allegation 3: The Coast Guard's failure to promote the applicant to LCDR using wartime promotion authority constituted error or injustice

14. The applicant finally claims that the Coast Guard's failure to promote him to LCDR/O-4 using wartime promotion authority in 1991 constituted error or injustice. As

the applicant was on notice of this potential claim upon his discharge from active duty, this claim is beyond our three-year statute of limitations. However, like his claim related to his alleged improper discharge physical, the analysis is not that straightforward.

15. The applicant has previously applied to this Board requesting an upgrade to his retired military grade. He was originally placed on the Temporary Disability Retired List (TDRL) in the grade of LTJG/O-2. In Docket Number 1997-028, we granted his requested relief and corrected his record to show he was placed on the Temporary Disability Retired List (TDRL) in the grade of LT/O-3. He does not now claim that our previous decision considering his retired grade contained legal or factual error. Nor does he present new evidence or information that could have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence. His current claim that he should have been retired as an LCDR/O-4 is predicated on a conclusion that not only was this Board's decision wrong in 1997-028, but also that the applicant's request was deficient. He presents no explanation concerning why he was unable to present his current claim nearly 30 years ago when he first asked this Board for a retroactive promotion. The applicant's request is both untimely, and an improper request for reconsideration.

16. The sole piece of evidence supporting the applicant's claim that he was recommended for promotion to LCDR does not support this assertion. The applicant provided a two page memorandum purporting to be a recommendation by his then commanding officer (a Navy Captain) for his promotion to the grade of LT/O-3. The record therefore contains no evidence that anyone even recommended him for promotion to LCDR/O-4. Furthermore, the memorandum the applicant purports is a contemporaneous recommendation for his promotion has no office symbol or official letterhead. It was also dated February 2, 1990, before both the events of the Gulf War and the applicant's call to active duty.

17. Even if this was a timely request, the applicant only presents arguments concerning why his promotion to LCDR was justified by his service, performance, or other factors. He provides no evidence that such a promotion actually occurred. Regardless of the justification for such a promotion, this Board does not have the authority to confer an appointment that was never lawfully tendered by the President or the Secretary of Transportation. As the applicant presents no evidence that he was tendered such an appointment, relief is denied as untimely. The interests of justice do not warrant excusal of the applicant's untimeliness.

18. The applicant's requests for relief are denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of retired LT [REDACTED] is denied.

February 27, 2026

