

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-224

XXXXXXX

XXXXXXXXX, Slc(former)

FINAL DECISION

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 September 28, 2007, upon receipt of the completed application. On November 7, 2007, the Chair permitted the applicant to amend his application to request additional relief. The Chair prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 14, 2008, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct his military record to show that he was advanced to petty officer during his Coast Guard service from April 17, 1943 to March 19, 1946. In subsequent correspondence the applicant stated that he wanted his record corrected to show that he was discharged as a boatswain's mate second class (BM2). He also asked the Board to award him the Silver Star or the Silver Lifesaving Medal rather than the Coast Guard Commendation Medal that was awarded to him in 2004 for his heroic service in rescuing Army personnel on March 6, 1945.

The applicant noted on his application that he was aware of the alleged error with regard to his promotion in 1946. However he stated that it should never be too late to correct a mistake.

APPLICANT'S ALLEGATIONS

The applicant alleged that he was overlooked for promotion to petty officer while in the Coast Guard. He argued that he should have been promoted to petty officer because he served for over 10 months as second in command at a Coast Guard unit and that he performed the duties

of a petty officer but was never promoted. His notice of separation states in section 20: "Qualified for general duties of Slc. Performed duties of Cox[swain] for 20 months."¹

With regard to his request for a higher award, the applicant submitted a March 2004 letter from the National Secretary/Treasurer of the Coast Guard Combat Veterans Association to the applicant that stated the following in pertinent part: "you should have been awarded at least a Silver Lifesaving Medal for the saving of U. S. Army [Private's] live while risking your own and requiring your hospitalization.

An entry in the applicant's military record confirms that he assisted in the rescue of an Army private that had fallen overboard: The entry stated the following in pertinent part:

At about 2200, 6 March [1945], cries for help were heard off the small ship's dock in Tacloban. [The applicant and several crewmembers] proceeded to the scene immediately. A small boat with Army personnel had been swamped and sunk. Life preservers were thrown to those able to swim, and when it was seen that two men were in serious difficulty, [the applicant and another crewmember] unhesitatingly went overboard to their assistance. [The crewmember] got hold of one man with head injuries and towed him to an Army personnel craft. [The applicant] brought the other man . . . to the launch, where he was hauled aboard unconscious. [A crewmember began resuscitation] while the [applicant] took the boat into the dock. Resuscitation was continued until the arrival of the ambulance . . .

On September 7, 2004, the Commandant of the Coast Guard awarded the Coast Guard Commendation Medal to the applicant for superior performance of duty on March 6, 1945. The applicant believes that he should have been awarded a Silver Star or the Silver Lifesaving Medal for his heroic act.

VIEWS OF THE COAST GUARD

On March 4, 2008, the Board received the views of the Coast Guard from the Judge Advocate General (JAG). The JAG stated that the Coast Guard adopted the analysis provided by the Commander, Coast Guard Personnel Command (CGPC) as the advisory opinion. CGPC recommended that the Board deny relief to the applicant. In this regard, CGPC stated the following:

The application is not timely in regard to the alleged error relative to the rank [the applicant] held at the time of discharge . . .

A complete review of the applicant's record reveals that Seaman I/c was the highest grade [to which] the applicant was advanced . . . While he contends that he performed duties of a petty officer while on active duty, this does not affirm that he actually was advanced to the higher pay grade. The applicant has not

¹ A coxswain is a person in charge of a boat, particularly its navigation and steering. Any member of the Coast Guard may become a coxswain upon proper certification. See <http://en.wikipedia.org/wiki/Coxswain>.

demonstrated that he was advanced to a higher pay grade or that he was recommended for or completed the requisite requirements for such advancement.

The applicant further contends that he is entitled to the award of the Silver Star for his actions on March 6, 1945. The record supports that the applicant was involved in a rescue on March 1945 which directly contributed to preventing to the loss of life . . . The applicant bases his request partially on the opinion of [Secretary of the Coast Guard Combat Veterans Association] that the applicant should be entitled to at least the Coast Guard Silver Lifesaving Medal . . . The Silver Lifesaving Medal is not an applicable medal for such action performed by an individual as part of their military service . . . In 2004, the applicant's petition for recognition regarding the events of March 6, 1945 along with the applicant's record were reviewed by [the] Commandant . . . and it was determined that the applicant's action merited the . . . Coast Guard Commendation Medal. The applicant has not presented any new information regarding the rescue to substantiate a higher level of award. The . . . Silver Star is not consistent with the actions present in the applicant's record and fall within the purview of the Department of Defense . . .

The Coast Guard finds no error or injustice in the applicant's rank as presented in his official records. There is also no error or injustice in the final processing of the applicant's award of the Coast Guard Commendation Medal for his actions on March 6, 1945. The Coast Guard award authority has reviewed the applicant's record and determined that based upon the merits of the case that his noteworthy actions are sufficient to merit the Coast Guard Commendation Medal. The awarding authority of the Coast Guard did not find the merits of the case substantiate a higher Coast Guard award let alone merit forwarding it to the DOD for consideration of the Silver Star.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The Board sent the applicant a copy of the views of the Coast Guard and provided him an opportunity to respond to them. Thereafter, the Board received several letters from the applicant and each one basically restated his allegations that he believes he should have been promoted to petty officer grade and that he should have received a higher award for his March 6, 1945 heroic act.

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. Pursuant to 33 C.F.R. § 52.22, the Board has a three-year statute of limitations from the time an error was or should have been discovered. That portion of this application requesting a Silver Star or Coast Guard Lifesaving Medal instead of the Coast Guard Commendation will be treated as timely. The Coast Guard acted in 2004 after over fifty years to administratively correct the record and recognize the applicant's heroic acts of March 6, 1945. Therefore, with respect to that correction the statute began as of September 7, 2004. The Board received the applicant's DD 149 on September 19, 2007, barely a week after the expiration of the Board's three year statute of limitations. It is in the interest of justice to excuse the applicant's slight delay in bringing this claim with respect to request for a higher medal.

3. Even though timely, the applicant has not shown that the Coast Guard committed an error by not awarding him the Silver Star or the Coast Guard Lifesaving Medal instead of the Coast Guard Commendation Medal for his heroic act of March 1945. The Silver Star is awarded by the Department of Defense to any person serving with the Navy for gallantry while engaged in an action against an enemy of the United States, or while in engaged in military operations involving conflict against an enemy of the United States; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force. See Chapter 1.B.3. of the Medals and Awards Manual. While the applicant served during WWII when the Coast Guard operated as part of the Navy, there is no evidence that his rescue of a drowning Army private occurred in an action against an enemy or during military operations involving a conflict. The military record indicates that an Army boat with personnel aboard had swamped and sunk. The applicant and another crewmember heard their cries for help and rescued them. Therefore, as this rescue did not occur in an action against an enemy of the United States or while engaged in military operations involving a conflict against an enemy, the applicant did not meet the criteria for the Silver Star. Even if the applicant could prove that he met the requirements for the Silver Star, it was within the Commandant's discretion to decide whether the Silver Star was warranted under the circumstances. After due consideration, the Commandant approved the Coast Guard Commendation Medal and the applicant has not proved that the Commandant abused his authority in doing so.

4. Nor has the applicant shown that the Commandant committed an error or injustice by not awarding the Coast Guard Silver Lifesaving Medal to the applicant. Chapter 4.A.1.b.. of the Medals and Awards Manual states, "Military personnel serving on active duty normally should not be recommended for the Gold or Silver Lifesaving Medals. However, personnel may be recommended for a Lifesaving Medal if the act of heroism was performed while the member was in a leave or liberty status. Otherwise a military award should be considered." Since the applicant was on active duty and performing military duties at the time of the rescue, it was appropriate for the Commandant to award the Coast Guard Commendation Medal rather than the Silver Lifesaving Medal. Moreover, Coast Guard Commendation Medal recognizes and honors the applicant for his heroic act in March 1945. The fact that the applicant believes he deserves a higher award does not prove that the Coast Guard committed an error or injustice by awarding the Commendation in this instance.

5. That portion of the applicant's request for advancement to petty officer is not timely. 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. The applicant stated that he discovered the error in 1946, but he waited almost 58 years before filing an application with this Board. He did not provide the Board with a persuasive reason for not filing his application sooner.

6. However, the Board may still consider the application on the merits, if it finds it is in the interest of justice to do so. In Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing whether the interest of justice supports a waiver of the statute of limitations, the Board "should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review." The court further stated 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." Id. at 164, 165.

7. Having performed a cursory review with respect to the merits of the applicant's request for advancement, the Board finds that the applicant has submitted insufficient evidence to prove error or injustice, and therefore he is not likely to prevail. In this regard, there is no evidence in the military record that the applicant was ever advanced to petty officer grade. Nor has he presented any evidence of the requirements for advancement to petty officer third or second class and that he met those requirements. He argued that he performed some tasks usually assigned to petty officers. However, even if he did perform some tasks of a petty officer, such does not prove that he was entitled to advancement to a petty officer in the boatswains mate rate.

8. Accordingly, the applicant's request for a Silver Star or Lifesaving Medal should be denied because he failed to show that the Coast Guard committed any error or injustice in awarding the Coast Guard Commendation Medal for his heroic act in March 1945. In addition, his request for advancement to petty officer should be denied because it is untimely and lacks merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXXXXXX, xxxxx, USCG, for correction of his military record is denied.

George J. Jordan

Patrick B. Kernan

Vicki J. Ray