

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

Application for Correction
of the Coast Guard Record of:

BCMR Docket No. 2008-116

XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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 application on May 2, 2008, upon receipt of the applicant's completed application, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated January 22, 2009, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED AND ALLEGATIONS

The applicant asked the Board to correct his record to show that he earned the Good Conduct Medal for his service in the 1940s. His record shows that he enlisted on July 8, 1942, and was discharged on April 30, 1945. The applicant stated that he was approximately two months short of the three years required to be entitled to the Medal when he was discharged due to a physical disability. The applicant did not list the date on which he discovered the alleged error. He stated that it is in the interest of justice to consider his application 60 years after his discharge because of his recent receipt of the Jubilee Liberty Medal.

VIEWS OF THE COAST GUARD

On September 9, 2008, the Board received an advisory opinion from the Judge Advocate General (JAG) of the Coast Guard. The JAG requested that the Board accept the memorandum from Commander, Coast Guard Personnel Command (CGPC) as the advisory opinion.

CGPC recommended that the Board deny relief. In recommending denial of relief, CGPC noted that the application was untimely and that the applicant had failed to provide any justification for delay in bringing his claim. CGPC stated that if the Board decides to waive the three-year statute of limitations and consider the application on the merits, it should still be denied for the following reasons:

A complete review of the applicant's record confirms that the applicant enlisted in the Coast Guard on July 8, 1942 and was discharged on April 3, 1945 . . . The net continuous active service during this period was 2 years, 9 months and 13 days. As specified in the Coast Guard Medals and Awards Manual, the required period of continuous active service is 3 years to be eligible for the award of the Coast Guard Good Conduct Medal. The applicant's record does not support that he completed 3 years of continuous active service. The applicant has not provided any information to support his claim that he is entitled to the Good Conduct Medal. Additionally he acknowledges that he was 2 months short of completing 3 years. The applicant contends that he is entitled to the Good Conduct Award as his enlistment was cut short due to medical conditions. [However this fact] does not overcome the requirement to complete 3 years of continuous active service. Policy does not provide any exception to the required service for medical or other types of discharges.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 12, 2008, the Board sent a copy of the Coast Guard views to the applicant for a response. On September 25, 2008, the Board received a letter from the applicant along with copies of pages from his service record that indicated to the Board that the applicant was amending his application to add additional requests for other medals. After an inquiry by the Board, the applicant telephoned the Board on October 20, 2008, stating that he was only seeking the Good Conduct Medal.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and the Coast Guard, the military record of the applicant, and applicable law.

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application was not timely.
2. To be timely, an application for correction must be filed within three years of the date the alleged error or injustice was, or should have been, discovered. See 10 U.S.C. § 1552, 33 CFR § 52.22. The applicant did not state when he discovered the alleged error or injustice. However, the applicant should have been aware at the time of his discharge from the Coast Guard that he had not received the Good Conduct Medal. Therefore, his application was submitted approximately 60 years past the statute of limitations.
3. 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 instructed 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. See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. The applicant did not provide a persuasive reason why it is the interest of justice to waive the statute of limitation in his case.

5. With respect to the merits, the Board finds that the applicant is not likely to prevail. The applicant did not meet the eligibility requirements for a Good Conduct Medal at the time of his discharge. In this regard, the applicant had served on active duty only for 2 years, 9 months, and 13 days when a period of 3 years of continuous service was required to earn the Good Conduct Medal.

6. The applicant has not submitted any regulation or policy that the Coast Guard makes an exception to the Good Conduct Medal eligibility criteria for those members who failed to satisfy the 3 years of continuous service due to discharge by reason of physical disability. The Board has reviewed the regulation pertaining to the Good Conduct Medal and finds no provision for exception to the eligibility criteria.

7. Accordingly, the applicant's request should be denied because it lacks potential merit and because it is untimely.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXXXXXXXXXXXX, USCGR, for correction of his military record is denied.

Bruce D. Burkley

Patrick B. Kernan

David A. Trissell