

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

Application for Correction
of the Coast Guard Record of:

BCMR Docket No. 2009-136

**XXXXXXXXXXXXXX
XXXXXXXXXXXXXX**

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 upon receipt of the applicant's completed application on May 4, 2009, and subsequently prepared the final decision as required by 33 CFR § 52.61(c).

This final decision, dated January 14, 2010, 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 that ended on December 31, 1975. His record shows that he enlisted on November 16, 1972, and was discharged on December 31, 1975. The applicant stated that he believed his service record supported a Good Conduct Medal. He also stated that he discovered the alleged error or injustice on March 23, 2009, while reviewing the criteria for Coast Guard awards.

VIEWS OF THE COAST GUARD

On July 28, 2009, 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, Personnel Service Command (PSC) as the advisory opinion.

PSC recommended that the Board deny relief. PSC stated that the application should be denied because it was untimely. PSC further stated that the applicant did not meet the minimum active duty time required to earn the Good Conduct Medal. "During the period of the applicant's active duty, 4-years of continuous active duty was required to receive the Good Conduct Medal."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September July 29, 2009, a copy of the Coast Guard's views was sent to the applicant for a response. No reply was received from the applicant.

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. 33 CFR § 52.22. The applicant stated that he discovered the alleged error or injustice March 23, 2009, approximately 35 years after his discharge from the Coast Guard. However, the applicant was aware or should have been aware that he had not received the Good Conduct Medal at the time of his discharge from the Coast Guard in 1975. Therefore, his application was submitted approximately 32 years past the statute of limitations and he did not provide a reason why it is in the interest of justice to waive the untimeliness.

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. With respect to the merits, the Board finds that the applicant is not likely to prevail because he 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 3 years, 1 month, and 15 days when a period of 4 years of continuous active duty service was required to earn the Good Conduct Medal. COMDTINST M1650.25D (Medals and Awards Manual), Enclosure (11).

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Donna M. Bivona

Evan R. Franke

James E. McLeod