

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-149

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on May 18, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 25, 2010, 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, who was honorably released from active duty in the Coast Guard on March 13, 1970, asked the Board to correct his record to show that he was awarded a Bronze Star or Silver Star for his service in combat with Squadron #13 near Cat Lo, Vietnam, from February to December, 1969.

In support of his allegations, the applicant submitted a copy of his DD 214, which shows that he served on active duty from November 21, 1968, to March 13, 1970; performed 9 months and 14 days of overseas service; and is entitled to wear the National Defense Service Medal, Vietnam Service Medal, Republic of Vietnam Campaign Ribbon, and the Combat Action Ribbon.

The applicant also submitted a copy of a memorandum from the Chief of the Office of Reserve dated November 24, 1969, stating that that office had been advised that "there was to be a ceremony honoring Reservists who have served in South Vietnam" either at the White House or the Pentagon and that the Department of Defense was inviting the Coast Guard to send one Reserve officer and one Reserve enlisted member to be honored along with reservists from the Army, Navy, and Marine Corps. A handwritten note below this memorandum states, "Random Silver Star? Copy to (PE)." In addition, the applicant submitted a message dated November 26, 1969, from the Chief of the Enlisted Personnel Division at the Personnel Command, stating that the applicant should report to Coast Guard Headquarters on December 12, 1969, to participate in a "presidential ceremony honoring reserve officers and enlisted men of the Armed Forces."

The applicant also submitted pages 13 and 14 of an unknown document stating that three armed Navy skimmers and two Coast Guard cutters based at Cat Lo, Vietnam, POINT WHITE and POINT ELLIS, came under attack on October 27 (year unstated) and returned fire, causing "substantial casualties to the enemy vessel," but there were no casualties on the Coast Guard's vessels.

SUMMARY OF THE APPLICANT'S RECORD

The applicant's military record shows that he enlisted in the Reserve for six years on October 4, 1966. On November 21, 1968, he was called to extended active duty. On February 23, 1969, he was assigned to Activities Vietnam aboard the patrol boat POINT CLEAR, which was part of Division Thirteen. An orange Service Record Card in the applicant's record shows that in addition to serving on the POINT CLEAR, the applicant served on the POINT CAUTION from June 12 to 25, 1969; on the POINT PARTRIDGE from June 26 to 30, 1969; and on the POINT JEFFERSON from June 30, 1969, until he returned stateside in December of that year.

On December 4, 1969, the applicant returned stateside from Vietnam. An entry in his record dated December 7, 1969, states that the applicant was being transferred to Coast Guard Headquarters for temporary duty, after which he would be transferred to District 5. It further states that he had served 9 months, 14 days in Division Thirteen in Vietnam and that all but 3 of those days were sea duty. The applicant was authorized "to wear Vietnam Service Medal with one (01) bronze star and Republic of Vietnam Campaign Ribbon with clasp (1960 -) for duty in Vietnam from 24 February 1969 to 7 December 1969, inclusive."

On December 16, 1969, the applicant advanced from seaman to boatswain's mate, third class (BM3), upon an order from Headquarters. On January 17, 1970, he was assigned to duty on the CAPSTAN, a small harbor tug in the port of Alexandria, Virginia, until he was released from active duty on March 13, 1970.

In May 1971, the Navy awarded all of Division Thirteen a Meritorious Unit Commendation for "meritorious service ... as a part of the Coastal Surveillance Force" in Vietnam from July 8 to August 8, 1969. The certificate and copies of correspondence about the award listing the applicant's name as a member of Division Thirteen were entered in his record.

On October 3, 1972, the applicant was honorably discharged from the Reserve upon the expiration of his Reserve enlistment.

VIEWS OF THE COAST GUARD

On July 15, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's requests.

The JAG stated that the applicant knew or should have known what medals he had been awarded upon his discharge from the Coast Guard Reserve in 1972 and so his application was not timely submitted. The JAG stated that the applicant has submitted no excuse for his long delay in seeking the additional medals and no documentation of the medals he claims. The JAG recommended that the applicant's request "be denied for being untimely and lack of merit."

The JAG adopted the findings and analysis provided in a memorandum on the case prepared by the Coast Guard Personnel Service Center (CGPSC). CGPSC stated that a review of the applicant's military record shows that he was authorized to wear a National Defense Service Medal, Vietnam Service Medal, Meritorious Unit Commendation Ribbon, Combat Action Ribbon, and Republic of Vietnam Campaign Ribbon but not a Bronze Star or Silver Star. In addition, CGPSC stated that its review of the applicant's record "revealed that it does not substantiate any performance or acts that would warrant the award of the Bronze Star or the Silver Star by today's standards." Therefore, CGPSC recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 28, 2009, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. No response was received.

APPLICABLE LAWS

Chapter 1.E. of COMDTINST M1900.4D states that when preparing a discharge form, DD 214, the administrative officer should "[e]nter all decorations, medals, badges, commendations, citations, and campaign ribbons awarded or authorized for all periods of service."

COMDTINST M1650.25D, the Coast Guard's Medals and Awards Manual (MAM), contains the rules governing the eligibility of Coast Guard members for various awards and medals. Chapter 2.A.5. provides the following criteria for a Silver Star under 10 U.S.C. § 6244:

a. Eligibility requirements. May be awarded to any person who, while serving in any capacity with the U.S. Navy or U.S. Marine Corps, is cited for gallantry in action but does not justify the award of the Medal of Honor or Navy Cross:

(1) While engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing foreign force; or, while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(2) To warrant this decoration, the act or the execution of duty must be performed in the presence of great danger or at great personal risk. It also must be performed in such a manner as to render the individual highly conspicuous above others of equal grade, rate, experience, or position of responsibility. An accumulation of minor acts of heroism does not justify the award. When recommending the award, bear in mind the high standards demanded.

b. Standard opening phrase for citations: ". . . distinguished himself or herself by gallantry in connection with military operations against (an enemy of the United States)...."

Chapter 2.A.10. of the MAM provides the following criteria for a Bronze Star under Executive Order 11046, issued on August 25, 1962, as amended by Executive Order 11382, issued on November 28, 1967:

a. Eligibility requirements. Awarded to any person who, while serving in any capacity with the Armed Forces of the United States, distinguishes him or herself after 7 December 1941, by heroic or meritorious achievement or service not involving participation in aerial flight.

(1) While engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing foreign force; or, while serving with

friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(2) To warrant this decoration, accomplishment or performance of duty above that normally expected, and sufficient to distinguish the individual among those performing comparable duties, is required, although less than the requirements for the Silver Star or LOM [Legion of Merit].

Enclosure (16) to the MAM states the following regarding the Vietnam Service Medal (VSM) and bronze stars:

The Vietnam Service Medal was awarded to members of the armed forces, who served in Vietnam, its contiguous waters, or airspace, between 15 March 1962 and 28 March 1973. Personnel serving in Thailand, Laos or Cambodia, in direct support of operations in Vietnam, during this period, are also eligible for the medal. To qualify for award of the Vietnam Service Medal an individual must have met one of the following qualifications:

- Be attached to or regularly serve for 1 or more days with an organization participating in or directly supporting or aboard a naval vessel directly supporting military operations.
- Actually participate as a crewmember in one or more aerial flights into airspace above Vietnam and contiguous waters directly supporting military operations.
- Serve on temporary duty for 30 consecutive days or 60 nonconsecutive days, except that the time limit may be waived for personnel participating in actual combat operations.

NOTE Medal and 1 bronze star with first award. Additional bronze stars awarded for each subsequent period of service. A silver star is used in place of five (5) bronze stars.

The list of eligible campaigns for the VSM in the current MAM includes three campaigns that overlap the applicant's service in Vietnam in 1969:

- o X - 23 February 1969 to 8 June 1969 - TET 69/Counteroffensive
- o XI - 09 June 1969 to 31 October 1969 - Vietnam Summer-Fall 1969
- o XII - 01 November 1969 to 30 April 1970 - Vietnam Winter-Spring 1970

Enclosure (16) of COMDTINST M1560.25D also lists the vessels whose crews were eligible for the VSM. The list includes the four patrol boats on which the applicant served according to his Service Record Card: POINT CLEAR, POINT CAUTION, POINT PARTRIDGE, and POINT JEFFERSON.

Chapter 3.B.6. of the MAM states that the Secretary of the Navy may award the Navy Meritorious Unit Commendation to any Coast Guard unit "that has distinguished itself, under combat or non-combat conditions, by either valorous or meritorious achievement, but whose achievement is not sufficient to justify the award of the Navy Unit Commendation. Coast Guard personnel are eligible for this award only if they were serving with a cited unit and meet the eligibility criteria." Enclosure (8) of the manual shows that Division Thirteen was awarded this medal for its performance from July 8 to August 8, 1969, and lists twelve of the patrol boats in that division, including POINT CAUTION, POINT CLEAR, POINT JEFFERSON, and POINT PARTRIDGE.

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 10 U.S.C. § 1552.
2. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. The applicant received his DD 214 in 1970, and he knew or should have known that he had not been awarded a Silver Star or Bronze Star at that time. Therefore, his application is untimely.
3. Pursuant to 10 U.S.C. § 1552(b), 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, 164 (D.D.C. 1992), the court stated that to determine 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 164-65; see *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).
4. The applicant provided no explanation or justification for his long delay in seeking the Silver Star and Bronze Star.
5. The Board's cursory review of the merit of the applicant's request for a Silver Star or Bronze Star medal shows that it lacks merit. An administrative entry dated December 7, 1969, in the applicant's military record shows that while serving in Vietnam on the patrol boats of Division Thirteen, he became entitled to wear the VSM with one bronze star, but this little bronze star is not the same thing as a Bronze Star. A little bronze star attached to a VSM indicates that the VSM has been awarded once. If the VSM is awarded again, another little bronze star is attached to the original medal, in accordance with Enclosure (16) of the MAM. A Bronze Star, on the other hand, is awarded to an individual member who "distinguishes him or herself ... by heroic or meritorious achievement or service." MAM, Chap. 2.A.10. The applicant's military records show that he served honorably. However, there is no evidence in his record that he was ever awarded a Bronze Star or that he ever distinguished himself from his crewmates by such heroic or meritorious performance that his lack of receipt of a Bronze Star should be considered erroneous or unjust.
6. The applicant's record shows that upon his return from Vietnam in December 1969, he was called to participate in a ceremony honoring all Reserve branches of the Armed Forces as a representative of the Coast Guard Reserve. On a memorandum dated November 24, 1969, about the upcoming ceremony, someone made a handwritten note saying "Random Silver Star? Copy to (PE)." This note suggests that someone questioned whether all the Reserve representatives attending the ceremony were going to be issued Silver Stars regardless of whether the medals had been earned. However, there is no evidence in the record that the applicant was actually awarded a Silver Star when he attended this ceremony. And while the record shows that he served his country honorably, there is no evidence that he was ever awarded a Silver Star or

that he ever so distinguished himself from his crewmates by gallantry in operations against the enemy that his lack of receipt of a Silver Star should be considered erroneous or unjust under Chapter 2.A.5. of the MAM.

7. Accordingly, the applicant's request for a Bronze Star or Silver Star should be denied because it is untimely and lacks merit.

8. However, in the Coast Guard's advisory opinion, CGPSC noted that the applicant is entitled to a Navy Meritorious Unit Commendation Ribbon, which was awarded to the crews of twelve cutters of Division Thirteen for their performance from July 8 to August 8, 1969. This award is documented in the applicant's record but is not listed on his DD 214, as required by Chapter 1.E. of COMDTINST M1900.4D. In fact, the award was not issued by the Navy until May 1971, more than a year after the applicant received the DD 214 upon his release from active duty on March 13, 1970. Therefore, the Board finds that in the interest of justice the Coast Guard should correct the applicant's DD 214 by issuing a DD 215 to show that he received a Navy Meritorious Unit Commendation Ribbon during the period of active duty documented by the DD 214.

9. Finally, the Board notes that the applicant was serving on patrol boats in or near the Mekong Delta during three of the periods listed in Enclosure (16) to the MAM, which states that members of the Armed Forces were eligible for an award of the VSM for each of the periods listed as long as they were serving on a vessel supporting military operations in Vietnam for at least one day during the period. Therefore, although the administrative entry in the applicant's record dated December 7, 1969, states that he was entitled to a VSM with one bronze star, denoting one award of the VSM, it appears to the Board that the applicant may be entitled to three awards of the VSM—i.e., a VSM with three bronze stars. The Board further notes that each of the four patrol boats on which the applicant served in 1969 is listed in Enclosure (16). However, the rules regarding the award of the VSM are not entirely clear. Therefore, the Board is not certain that the applicant is actually entitled to three awards of the VSM. Because the Board is ordering the Coast Guard to issue a DD 215 noting the applicant's receipt of a Navy Meritorious Unit Commendation Ribbon, the Board will also order the Coast Guard to review the applicant's entitlement to VSMs under Enclosure (16) of the MAM in light of his service aboard the POINT CLEAR, POINT CAUTION, POINT PARTRIDGE, and POINT JEFFERSON in 1969 and to make any necessary correction regarding his receipt of VSMs (additional bronze stars) on the DD 215.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former BM3 xxxxxxxxxxxxxxxxxx, USCGR, for correction of his Coast Guard military record is denied except that the Coast Guard shall

(a) correct his DD 214 dated March 13, 1970, by issuing a DD 215 to show that he is entitled to wear the Navy Meritorious Unit Commendation Ribbon for his service on Division Thirteen patrol boats in Vietnam from July 8 to August 8, 1969; and

(b) review his record of service aboard patrol boats in Vietnam from February 23, 1969, to December 4, 1969, and Enclosure (16) of the Medals and Awards Manual to determine whether he is entitled to more than one award of the Vietnam Service Medal—i.e., a Vietnam Service Medal with more than one bronze star—and, if so, to note these awards correctly on the DD 215.

Bruce D. Burkley

Francis H. Esposito

Erin McMunigal