

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2010-249**

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**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 September 7, 2010, 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 June 3, 2011, 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 retired from the Coast Guard on October 31, 1992, asked the Board to correct his discharge form, DD 214, to show that in 1974 he received a Gold or Silver Lifesaving Medal, in lieu of a Coast Guard Commendation Medal. The applicant stated that he was eligible for the higher award because he was on liberty when he saved the life of a child who was caught in a rip tide in 6' to 8' surf. The applicant stated that he reached the child, told her to take a deep breath, and dove under the waves with her. In support of his request for a Lifesaving Medal, the applicant submitted several documents from his record, which are included in the summary below. The applicant also provided the current telephone numbers of the child he saved and her father.

The applicant alleged that he discovered the error on August 13, 2010, when he was looking at the Board's on-line reading room and read a case concerning a request for a Gold or Silver Lifesaving Medal.

**SUMMARY OF THE APPLICANT'S RECORD**

The applicant, who enlisted in the Coast Guard on September 25, 1972, was a seaman assigned to a Loran Station in xxxxxxxxxxxxxx, in 1974. On June 12, 1974, a civilian wrote a letter to the applicant's command stating that on June 3<sup>rd</sup>, the applicant had rescued his 10-year-old daughter from heavy surf. The civilian stated that his daughter had gone swimming without his knowledge. When he realized she was missing and went to the beach, he found the applicant

bringing her in. His daughter told him that she had exhausted herself trying to swim to shore and called for help; that she did not believe she would have survived if the applicant had not reached her; and that because the surf was so heavy, the applicant had almost lost hold of her a couple of times. The civilian stated that the surf was heavy that day and that his daughter would have died but for the applicant's alertness. The civilian later signed a sworn statement affirming the facts in his letter to be true.

On June 20, 1974, the Group Commander sent the District Commander a recommendation that the applicant receive a Gold Lifesaving Medal. He sent with this recommendation statements from the child's father and the applicant.

On January 28, 1975, the applicant received a Commendation Medal, the citation for which states the following:

[The applicant] is cited for heroism on the afternoon of 3 June 1974, while serving aboard U.S. Coast Guard Loran Station, xxxxxxxxxxxx. [The applicant] was on liberty, bodysurfing at xxxxxxxx xxxx xxxx, when he saw a little girl's head bobbing in the water and heard her calling for help. [He] quickly studied the situation and began the 80-yard swim to go to the aid of the little girl. Upon arriving on scene, he found the girl very calm and cooperative. Currents around the rocks and underwater valleys interfered with their swim back to safety. However, the waves subsided and the current weakened to enable [the applicant] to assist the little girl to safety. [His] quick response, unselfish actions, and disregard for his own safety undoubtedly averted a possible drowning. [His] immediate response to a crisis saved the life of a young girl and is in keeping with the highest traditions of the United States Coast Guard.

## **VIEWS OF THE COAST GUARD**

On January 5, 2011, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request. The JAG stated that the application is untimely and that the applicant failed to provide "any relevant documentation or rationale to support his position. Based on the information of record, there is no error or injustice."

The JAG also adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC). The PSC stated that the record shows that although the District Commander recommended that the applicant receive a Gold Lifesaving Medal, a Commendation Medal was awarded, instead. The PSC submitted an email exchange in which a PSC employee asked a District X employee if the District had retained the records of the District Awards Board that had reviewed the Group Commander's recommendation. In response, the District X employee stated the following:

I have record of the minutes. On July 22, 1974, the D14 Awards Board reviewed the recommendation for a Gold Lifesaving Medal for [the applicant] for rescuing [the girl], age 10, from heavy surf at xxxxxxxxxxxx in xxxxxxxx. The minutes state that the Board disapproved the award because they felt that a military award was appropriate and therefore recommended the CGC. The minutes were approved by then CAPT [X] who was the secretary of the Awards Board on July 28, 1974.

The PSC stated that although the applicant believes he should have received a Gold or Silver Lifesaving Medal because he was on liberty on June 3, 1974, being on leave or liberty "is

not tantamount to automatic entitlement of a Lifesaving Medal. Rather, being in a leave or liberty status simply allows one to be *recommended* for such an award—which the applicant was. ... Although very heroic and in keeping with the strong humanitarian spirit of the Coast Guard, the Awards Board felt that the applicant’s actions were not to the level of a Lifesaving Medal and thus granted the CG Commendation Medal.”

The PSC noted that under Chapter 1.G.2. of the Medals and Awards Manual, the level of a medal awarded may only be reconsidered upon presentation of new and relevant evidence that was not previously considered by the Awards Board.<sup>1</sup> The PSC stated that because the applicant “has not presented any new, relevant, or compelling material evidence to call into question the validity of the Board’s decision to award a CG Commendation Medal vice a Lifesaving Medal, it is strongly urged that the decision of the Board be preserved.”

### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On January 18, 2011, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. No response was received.

### **APPLICABLE REGULATIONS**

COMDTINST M1650.25D, the Coast Guard’s current Medals and Awards Manual (MAM), contains the rules governing the eligibility of Coast Guard members for various medals and awards. In the order of precedence in Enclosure (22) of the MAM, a Coast Guard Commendation Medal ranks below a Coast Guard Medal, a Meritorious Service Medal, and Gold and Silver Lifesaving Medals, but above a Certificate of Valor, all of which may be awarded for acts of heroism.

Chapter 2.A.14.a. of the MAM states that a Coast Guard Commendation Medal

[m]ay be awarded to a person who, while serving in any capacity with the U.S. Coast Guard, including foreign military personnel, distinguishes him or herself by heroic or meritorious achievement or service. To merit this award, the acts or services must be accomplished or performed in a manner above that normally expected and sufficient to distinguish the individual above others of comparable grade or rating performing similar services, as set forth in the following:

(1) For acts of heroism worthy of special recognition but not to the degree required for the Bronze Star Medal when combat is involved; or the Coast Guard Medal<sup>[2]</sup> or MSM<sup>[3]</sup> when combat is not involved; ...

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<sup>1</sup> Chapter 1.G.2. of the MAM, COMDTINST M1650.25D, states that “[r]ecommendations for awards previously disapproved by an awarding authority may be reconsidered only upon presentation of new and relevant material evidence that was not available at the time of the original recommendation. One-time reconsideration by the awarding authority will be conclusive.”

<sup>2</sup> Chapter 2.A.9. of the MAM states that a Coast Guard Medal “[m]ay be awarded to a person who, while serving in any capacity with the Coast Guard, distinguishes him or herself by heroism not involving actual conflict with an enemy. To justify this decoration, individuals must have performed a voluntary act of heroism in the face of great danger to themselves and such as to stand out distinctly above normal expectations. For acts of lifesaving or attempted lifesaving, the Coast Guard Medal requirements parallel those of the Gold Lifesaving Medal in that one displays extreme and heroic daring at the risk of one’s own life. See Chapter 4 for additional guidance on lifesaving medals.”

Chapter 4 of the MAM provides the eligibility criteria for lifesaving medals. Chapter 4.A.1.a. provides the following eligibility criteria for a Gold or Silver Lifesaving Medal:

The Gold Lifesaving Medal or the Silver Lifesaving Medal may be awarded to any person who rescues or endeavors to rescue any other person from drowning, shipwreck, or other perils of the water. The rescue or attempted rescue must either take place in waters within the U.S. or subject to the jurisdiction thereof, or one or the other of the parties must be a citizen of the U.S. or from a vessel or aircraft owned or operated by citizens of the U.S.

(1) The Gold Lifesaving Medal may be awarded to an individual who performed a rescue or attempted rescue at the risk of his or her own life, and demonstrates extreme and heroic daring.

(2) The Silver Lifesaving Medal may be awarded to an individual who performed a rescue or attempted rescue where the circumstances do not sufficiently distinguish the individual to deserve the medal of gold, but demonstrate such extraordinary effort as to merit recognition.

(3) Military personnel serving on active duty would normally not be recommended for Gold and Silver Lifesaving Medals; however, military personnel may be recommended for a Lifesaving Medal if the act of heroism was performed while the individual was in a leave or liberty status. In all other circumstances, a military award should be considered. For military personnel, a determination of extraordinary heroism will be made in accordance with Chapter 1.B.5.<sup>[4]</sup>

## **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. Although the applicant stated that he discovered the alleged error in his record on August 13, 2010, the Board finds that he knew that he had been awarded a Commendation Medal, instead of one of the higher awards for heroism, when he received the award in January 1975. Therefore, his application is untimely.

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<sup>3</sup> Chapter 2.A.12.a. of the MAM states that a Meritorious Service Medal (MSM) "[m]ay be awarded to persons who have distinguished themselves by outstanding noncombat meritorious achievement or service to the United States. To justify this decoration, the acts or service rendered must have been comparable to that required for the LOM [Legion of Merit] but in a duty of lesser, though considerable, responsibility. This should not be interpreted to preclude the award to any individual regardless of rank or rate, whose outstanding meritorious achievement or service meet the requirements. The MSM is the noncombat counterpart of the Bronze Star Medal and the nonaerial counterpart of the Air Medal. Therefore, acts of heroism of lesser degree than the Coast Guard Medal, and single acts of merit under operational conditions may justify this award. For Coast Guard personnel in a leave or liberty status, if deemed appropriate, the Silver Lifesaving Medal (SLM) is the counterpart in cases of heroic acts involving the saving of life from perils of the water. When the degree of meritorious achievement or service rendered is not sufficient to warrant the award of the MSM, the Coast Guard Commendation Medal (CGCM) should be considered."

<sup>4</sup> Chapter 1.B.5. of the MAM notes that under 14 U.S.C. § 357(i), any enlisted person who retires after 20 years of service who has been cited for extraordinary heroism in the line of duty, as determined by the Secretary, is entitled to an increase of 10 percent in retired pay and that only awards higher than the Coast Guard Commendation Medal, including the Gold and Silver Lifesaving Medals, will receive consideration for this added distinction.

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 did not justify his long delay in seeking a higher award for his act of heroism on June 3, 1974. The fact that he was unaware or had forgotten by August 2010 that Coast Guard members may be recommended for a Gold or Silver Lifesaving Award—instead of a purely military medal, such as a Coast Guard Medal, Meritorious Service Medal, or Coast Guard Commendation Medal—if their acts of heroism are performed while on leave or liberty does not explain why he failed to seek a higher award sooner if he felt his Coast Guard Commendation Medal was insufficient.

5. The Board’s cursory review of the merits indicates that the applicant’s request cannot prevail. While on liberty on June 3, 1974, the applicant was bodysurfing at xxxxxxxx xxxxxx when he heard a child calling for help and swam 80 yards in heavy surf to save her. His Group Commander recommended that he receive a Gold Lifesaving Medal, but the District Awards Board disapproved that recommendation and approved a Coast Guard Commendation Medal, instead. The citation for this medal shows that the Awards Board was aware that the applicant was on liberty when he saved the child’s life but still chose to award him a Commendation Medal instead of a Coast Guard Medal, Meritorious Service Medal, or Gold or Silver Lifesaving Medal. The record contains no evidence that the Awards Board was unaware of the eligibility criteria for a Gold or Silver Lifesaving Medal or that the decision of the Awards Board was based on a mistaken belief that the applicant was on duty when he saved the child’s life. Nor is there any evidence in the record now that was unknown to the Awards Board when it made its decision, and the Awards Board was clearly better placed to know what happened on June 3, 1974, and to assess which medal for heroism was appropriate to award.

6. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

## **ORDER**

The application of xxxxxxxxxxxxxxxxxxxx, USCG (Retired), for correction of his Coast Guard military record is denied.

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Andrew D. Cannady

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Nancy L. Friedman

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Dorothy J. Ulmer