

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-021

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FINAL DECISION

AUTHOR: Ulmer, D.

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 application on November 8, 2006, upon receipt of the applicant's complete application for correction of his military record.

This final decision, dated June 13, 2007, 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 record by upgrading his RE-4 (not eligible for reenlistment) reenlistment code "to allow reentry into military service during these war-time conditions."

The applicant was discharged from the Coast Guard with a general discharge under honorable conditions (commonly known as a general discharge) by reason of misconduct (drug abuse). He was assigned an RE-4 reenlistment code and a JKK (drug abuse) separation code.

APPLICANT'S ALLEGATIONS

The applicant alleged that he was erroneously discharged from the Coast Guard and that he should have an opportunity to clear his name and serve his country as originally desired. He stated that the "blemish to his record has not been evidenced in his life after the military in any way, form, or fashion."

SUMMARY OF RECORD

The applicant enlisted in the Coast Guard on May 24, 1994. At that time, he signed an administrative remarks (page 7) entry, which advised him of the following:

I have been advised that the illegal use or possession of drugs constitutes a serious breach of discipline [,] which will not be tolerated. Also, illegal drug use or possession is counter to esprit de corps & mission performance and jeopardizes safety. No member will use, possess, or distribute illegal drugs, drug paraphernalia or hemp oil products. I also understand that upon reporting to recruit training, I will be tested by urinalysis for the presence of illegal drugs. If my urine test detects the presence of illegal drugs I may be subject to discharge and receive a general discharge.

On August 18, 1996, upon reporting to Officer Candidate School (OCS), the applicant participated in a urinalysis screening by providing a urine sample to be tested for the presence of illegal drugs.

On August 29, 1996, the applicant's urine sample was found to contain Cannabinoids as carboxy (THC) (a marijuana metabolite).

On September 4, 1996, the applicant was disenrolled from OCS as a result of his positive drug test.

On September 25, 1996, the applicant's commanding officer (CO) informed the applicant that he had initiated action to discharge the applicant from the Coast Guard with a general discharge under honorable conditions due to drug abuse. The CO advised the applicant that he could object to the discharge and that he could submit a statement in his own behalf.

On September 25, 1996, the applicant acknowledged notification of the proposed discharge, objected to being discharged, and submitted a statement in his own behalf. The applicant's statement objecting to his discharge was dated October 2, 1996. He wrote the following:

1. First and Foremost, I will continue to express my innocence in this situation. I have never in my life experienced or abused drugs of any type. The accusations that have been placed on me are direct questions of my character, integrity, and intelligence. I feel my character has been tested because there has not been a chance for me to give another urinalysis. I understand the U.S, Coast Guard has total confidence in the accuracy of its drug testing process, but like any process conducted by human beings, there is always a margin for human error. As a member of this organization, I am fully aware that one of its missions is to interdict illegal drugs from reaching the country . . . [T]herefore, to declare that I am abusing an illegal substance is a question of my integrity. To think I could actually be dependent on drugs and a complete four years of college, and be fully aware that I would be attending [OCS] insinuates that I am not an intelligent person.

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3. My history of an unblemished drug record should count for something. As a high school and college athlete prior to enlisting in the Coast Guard, I underwent a series of drug testing and have never been tested positive. Also, I was tested to

get into the Coast Guard when I arrived at Boot Camp and prior to arriving to Yorktown. I feel these things should raise some reasonable doubt, however, I understand that does not cancel out the positive result. That is why I volunteered to take another urinalysis or undergo the evaluation urinalysis process.

4. Once again I would like to plead my innocence in this situation. I am not a drug user or abuser and am being victimized beyond my ability to counteract. I urge you not to make a decision based solely on the positive sample. A discharge from the military under dishonorable conditions could have an enormously detrimental effect on the remainder of my life.

On September 26, 1996, the applicant's CO recommended that Commander, Coast Guard Personnel Command (CGPC) discharge the applicant due to wrongful use of illegal drugs discovered in the applicant's urine specimen. The CO informed CGPC that the applicant had refused non judicial punishment and that the CO had dismissed the wrongful use charge to pursue an administrative separation. The results of the drug test and the applicant's statement were attached to the CO's letter, which CGPC stamped as having received on October 15, 1996.

On October 17, 1996, CGPC directed that the applicant be discharged due to misconduct/drug abuse.

On November 8, 1996, the applicant was discharged from the Coast Guard. He had served two years, five months, and fifteen days on active duty.

Discharge Review Board (DRB)

Prior to filing his application with the Board, the applicant applied to the DRB to have his general discharge under honorable conditions upgraded to an honorable discharge. The DRB also considered whether the applicant's reason for discharge, narrative reason for discharge, and reenlistment code should be changed.

The DRB issued its report on November 21, 2005, and did not grant any relief to the applicant. According to the DRB report, the applicant stated the following with respect to his discharge:

My service discharge was inequitable because the failure of the test was a mistake. I have never before or since failed a drug test. I have been employed by the same company for eight years. I successfully passed the employer's pre-employment drug screening and have participated in the random screening program.

In denying relief to the applicant, the DRB discussion and conclusion were as follows:

[DRB] members thoroughly reviewed the applicant's record of service and all available documentation. The Board felt that the discharge was carried out in accordance with Coast Guard policy. The applicant tested positive for THC at 17

ng (the threshold was and is currently 15 ng), although a blood test less than thirty days later showed no drugs in the applicant's system. The applicant strongly maintained his innocence since the positive test that took place eight years ago. However, the applicant presented no evidence that the test was done incorrectly or improperly. Accordingly, the [DRB] found no reason to upgrade the applicant's character of service.

VIEWS OF THE COAST GUARD

On February 28, 2007, the Board received an advisory opinion from the Judge Advocate General (JAG), recommending that the Board deny the applicant's request for relief. The JAG adopted the facts and analysis provided by CGPC, which was attached as enclosure (1) to the advisory opinion.

CGPC stated that under Article 20.C.3.e. of the Personnel Manual a determination of a drug incident can be conclusively made based upon a positive urinalysis test. CGPC stated that while the applicant denies any illegal drug use, the Coast Guard followed well established procedures in the urinalysis and application of policy regarding his discharge. CGPC further stated that one of the purposes of the Coast Guard's Alcohol and Substance Abuse program is to "Detect and separate from the Coast Guard those members who abuse, traffic in or unlawfully possess illegal drugs." CGPC noted that the DRB unanimously ruled that the applicant's discharge should remain unchanged. CGPC further stated as follows:

Allowing members of the Coast Guard to abuse illicit drugs and continue to serve runs counter to the Service's core values and is completely inconsistent with the Coast Guard's maritime law enforcement mission whereby the organization conducts counter-drug operations each and every day of the year. The only authorized reenlistment code for any misconduct discharge is RE-4. [Article 12.B.18.b.4.a. of the Personnel Manual] prescribes a discharge of "no higher than a general discharge" for involvement with drugs. Given the applicant's character of service "under Honorable Conditions" it would be inconsistent to assign a reenlistment code other than RE-4 in conjunction with a general discharge.

APPLICANT'S REPOSENSE TO THE VIEWS OF THE COAST GUARD

On February 28, 2007, a copy of the Coast Guard views was sent to the applicant for any response that he wanted to make. The BCMR did not receive a response from the applicant.

APPLICABLE REGULATIONS

Article 12.B.18.b.4.a. of the Personnel Manual states the following:

Involvement with Drugs. Any member involved in a drug incident or the illegal, wrongful, or improper sale, transfer, manufacture, or introduction onto military installation of any drug . . . will be processed for separation from the Coast Guard with no higher than a general discharge. Commanding Officer, Training Center

Cape May is delegated final discharge authority for members assigned to recruit training under this Article in specific cases of drug use before enlistment (as evidenced by a positive urinalysis shortly after training). New inductees shall sign a CG-3307 entry acknowledging the presence of drugs in their bodies is grounds for a general discharge for misconduct.

Separation Program Designator (SPD) Handbook, section two, authorizes only the assignment of an RE-4 reenlistment code for the JKK separation code. The SPD Handbook states that the JKK separation code is appropriate when there is an "[i]nvoluntary discharge directed by established directive (no board entitlement) when a member is involved in drug abuse."

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction of this case pursuant to section 1552 of title 10 United States Code. The application was timely. An applicant has fifteen years from the date of discharge to apply to the Discharge Review Board (DRB) for an upgrade of his discharge. The applicant was required to exhaust his administrative remedies by applying to the DRB before filing an application with the Board. See 33 CFR § 52.13. According to Ortiz v. Secretary of Defense, 41 F. 3rd. 738 (D.C. Cir. 1994), the BCMR's three year statute of limitations begins to run at the conclusion of DRB proceedings for an applicant who is required to exhaust administrative remedies. The applicant applied to the DRB approximately nine years after his discharge, and the DRB issued a final decision on November 21, 2005. Therefore, the applicant's BCMR application, received by the Board on November 8, 2006, was timely.

2. First, the Board notes the applicant requested only that his reenlistment code be changed to allow him to serve in the armed service. Although the applicant alleged he was erroneously discharged, he did not ask that his general discharge under honorable conditions be upgraded to honorable; nor did he ask that misconduct/drug abuse be removed as the reason for his discharge. Moreover, he presented no evidence, except for his own statement. Therefore, the Board addresses only whether the assignment of the RE-4 reenlistment code was in error or unjust.

3. The applicant has failed to prove by a preponderance of the evidence that the Coast Guard committed an error in assigning him an RE-4 reenlistment code upon his discharge. While in the Coast Guard, the applicant provided a urine specimen that tested positive for illegal drugs. He was subsequently discharged with a general discharge under honorable conditions due to misconduct/drug abuse. Article 12.B.18.b.4.a. of the Personnel Manual states that any member involved in a drug incident or the illegal, wrongful, or improper sale, transfer, manufacture, or introduction onto military installation of any drug . . . will be processed for separation from the Coast Guard with no higher than a general discharge. Moreover, when the applicant enlisted, he signed a page 7 entry warning him that the illegal use of drugs would result in discharge from the Coast Guard. Since the applicant has not shown that his discharge by reason of misconduct due

to drug abuse was in error or unjust, the Board has no basis on which to upgrade the reenlistment code. In this regard, the Board finds that the SPD handbook authorizes only the assignment of only an RE-4 reenlistment code with the JKK (drug use/abuse) separation code.

4. The applicant failed to prove an error or injustice in this case. Accordingly, relief should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Kathryn Sinniger

Dorothy J. Ulmer

Thomas H. Van Horn