

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-232

██████████, SR (former)

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 case after receiving the completed application on August 11, 2017, and assigned it to ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 27, 2018, 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 discharged from the Coast Guard on November 19, 1971, asked the Board to upgrade the character of service on his DD 214¹ from general under honorable conditions to honorable.² He stated that he wants his record to reflect that he received an honorable discharge but does not contend that his record is in error or unjust. The applicant noted that he recently retired from his job with the Post Office after 30 years, has already received veterans' benefits stemming from his military service, and is not seeking any other military benefits. He did not explain the long delay in submitting his application to the Board.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard as an E-1 on June 15, 1970, for a term of four years, and completed recruit training on August 14, 1970. He reported to his first assignment aboard the CGC ██████████ on August 27, 1970, but in December 1970, before the cutter deployed to Vietnam, he was transferred to Base ██████████ for medical treatment. On December 12, 1970, he was found fit for full duty but not sea duty. On December 18, 1970, he was returned to the USPHS hospital in ██████████ for psychiatric evaluation, diagnosed with anxiety, and declared fit for full

¹ A DD 214 is prepared to document a member's release or discharge from a period of active duty.

² In 1971, the five authorized types of discharge were Honorable, General Under Honorable Conditions, Undesirable, Bad Conduct, and Dishonorable. Bad Conduct and Dishonorable discharges were only awarded by court-martial. Coast Guard Personnel Manual, Article 12-B-2.

duty ashore until another evaluation could be made. Therefore, on December 22, 1970, he was reassigned to Group [REDACTED]. The applicant returned to the hospital in [REDACTED] for evaluation on March 18, 1970, where he was found to have no psychiatric disorder. He returned to Group [REDACTED] in a fit for full duty status and received orders to report for duty aboard the CGC [REDACTED] a [REDACTED] cutter, on April 13, 1971.

On March 30, 1971, the applicant received non-judicial punishment (NJP)³ at mast for a March 22, 1971, incident in which he was disrespectful towards a superior officer. He was sentenced to restriction to base for a period of 15 days. However, he went absent without leave (AWOL) on April 4, 1971; turned himself in on [REDACTED] the next day; and was returned to Group [REDACTED] under guard on April 6, 1971.

On April 13, 1971, the applicant reported for duty aboard the CGC [REDACTED] but he was removed at another port the next day because he had swallowed a handful of aspirin and vomited blood. He was reassigned to Group [REDACTED] the next day and sent to the hospital in [REDACTED]. He was released on April 18, 1971, with a medical recommendation to be assigned to sea duty immediately.

On April 22, 1971, the applicant was informed that he had orders to report for duty aboard the CGC [REDACTED] on April 26, 1971. He asked to be assigned to a ship based in [REDACTED], instead, but his request was denied. He sent a four-page handwritten letter to Mr. F at Coast Guard Base [REDACTED] wherein he asked to be assigned to a shore unit because of his debilitating fear of ships. He also requested a discharge for unsuitability, hardship, or the convenience of the government, stating that he was very nervous, tired, depressed, and had been forced to use drugs “as an escape and I fear that this will increase even more so.” In his closing paragraph, he stated that drugs had become a “very real part” of his life and that he had been smoking marijuana and hashish every day in the Coast Guard, in addition to taking pills.

On April 26, 1971, the Group Commander sent a letter to the commanding officer (CO) of the CGC [REDACTED] noting that the applicant was supposed to report for duty aboard the cutter that day, but whether he would was doubtful because of his threats to go AWOL. The Group Commander recounted the applicant’s recent history and noted that the applicant had indicated that he did not intend to carry out any orders, had written a letter admitting to daily use of drugs, and had “an absolute aversion to the Coast Guard and specifically towards serving on a floating unit.” The applicant had refused further medical and psychiatric assistance saying, “I want out. I don’t want help in coping with the Coast Guard.” The Group Commander reported that the applicant had repeatedly stated that he wanted to be discharged for unsuitability or any other reason, that his only interest was to be discharged, and that he had started investigating how to apply for conscientious objector status. The Group Commander stated that while he did not want to transfer problematic personnel to other commands, the doctors had reported that he was 100% fit for duty and should be assigned to sea duty.

³ Article 15 of the Uniform Code of Military Justice (UCMJ) authorizes NJP as a disciplinary measure for minor offenses under the UCMJ.

On April 27, 1971, the [REDACTED] District Commander forwarded to Group [REDACTED] another letter written by the applicant in which he made the same requests and arguments that he made in the April 26, 1971, letter; admitted that he used various illegal drugs on a daily basis; and asked to be discharged from the Coast Guard for unsuitability.

On May 7, 1971, the CO of the CGC [REDACTED] signed a letter asking that the applicant be discharged. He cited several derogatory letters about the applicant from his previous duty station, his possible drug use, and malingering. The applicant was temporarily reassigned to Base Boston pending his discharge.

On May 17, 1971, the Group Commander submitted a request to the Commandant wherein he recommended that the applicant receive an undesirable discharge for unfitness due to drug use and/or shirking of duty. He noted that the applicant had been treated for anxiety but had been found fit for duty and had refused further treatment, stating, "I want out, I don't want help in coping with the Coast Guard." He also noted that the applicant had been suspected of using drugs and that his use was confirmed when he submitted two unsolicited letters admitting to having used drugs. Finally, he wrote that the applicant

is considered as absolutely undesirable for continued duty in the Coast Guard. His presence is detrimental to the morale of other personnel who carry out their assigned duties and orders. He is not considered suitable for rehabilitation for further service. He has established a pattern of shirking duty by continually seeking to be declared unsuitable or fit for shore duty only. In his duty ashore he has been thoroughly unsatisfactory and requires constant supervision in every task, without exception. His admission of daily drug use makes him unfit for duty.

The Group Commander also notified the applicant that he was being recommended for an undesirable discharge from the Coast Guard by reason of unfitness due to his unsolicited admission of daily use of drugs and his verbal admission to the Deputy Group Commander. Because of the recommendation for an undesirable discharge, the applicant was entitled to counsel and an administrative discharge board (ADB).

On June 4, 1971, the applicant and his counsel signed a memorandum in which he acknowledged having been notified that his CO had initiated action to discharge him for unauthorized use of marijuana, hashish, and "pills" and that he might receive an undesirable discharge. He acknowledged that he had a right to counsel, to submit a statement objecting to the discharge, and to a hearing before an ADB. The applicant waived his right to submit a statement and waived his right to an ADB "contingent upon my being issued a discharge under honorable conditions (honorable or general).

On July 22, 1971, the applicant submitted to his CO a waiver to a hearing before an administrative discharge board. He stated that he understood that he may receive a discharge characterized as under other than honorable conditions and that as a result of such discharge he might be deprived of many or all of his rights as a veteran. The applicant also submitted a written statement in which he stated that he wanted to be discharged because it was "straining" on his nerves, was in "extreme contradiction" to his beliefs, and that a general discharge was not an unreasonable request.

On July, 28, 1971, the District Commander forwarded the discharge packet to the Coast Guard Personnel Command and asked that the applicant be separated from the Coast Guard with an undesirable discharge by reason of unfitness.

On August 12, 1971, the applicant signed a Grant of Exemption, in which he acknowledged and understood that he would not be punished under the UCMJ, tried by court-martial, or issued an undesirable discharge for his past illegal drug use because he had voluntarily disclosed it. The exemption covered only his illegal use of drugs prior to the exemption.

On September 21, 1971, the Commandant denied the CO's request to discharge the applicant, stating that the material presented was not legally sufficient to support a discharge by reason of unfitness. The Commandant apparently relied on a September 2, 1971, letter from an attorney at the Coast Guard Office of Personnel, who opined that there was insufficient factual evidence to establish a pattern of shirking and drug use, because the only proof of drug use was the brief admissions by the applicant in two letters, both of which were too vague, too generalized, lacking in factual detail, and likely written in an effort to get out of the Coast Guard. The Commandant also stated that the applicant's records failed to show that he had been properly counseled regarding his deficiencies and was not afforded a reasonable opportunity to overcome them.

On September 27, 1971, the applicant reported was transferred to the CGC [REDACTED]. He also sent a letter to his congressman, in which he explained why he wanted out of the Coast Guard and how disappointed he was that the Commandant had denied his CO's discharge request. The applicant implored his congressman to assist him in getting transferred off the cutter and to help him get discharged from the Coast Guard.

On October 6, 1971, a Personnel Action sheet was placed into the applicant's record to document that he had been AWOL from October 4 to 6, 1971, and had missed the movement of his cutter. He was then transferred to Base Boston for temporary duty pending possible discharge.

On October 22, 1971, the Base Commander notified the applicant by letter that he was recommending that the applicant be discharged by reason of unfitness for drug abuse. The applicant acknowledge receipt of the letter by signing it at the bottom of the page. In his attached written statement, he wrote that he had been using drugs daily and had signed many statements admitting to drug use abuse. The applicant also stated that his command's previous request for an undesirable discharge had been denied and that he felt he "must be discharged before something serious happens and destroys me."

On October 26, 1971, the Base Commander sent a letter to the Commandant asking that the applicant be discharged by reason of unfitness (drug abuse). The CO noted that the applicant had previously disclosed that he had used a wide range of illegal drugs before and during his enlistment and that he had been granted an exemption from the CO of the USCGC [REDACTED] on September 29, 1971. However, the applicant had recently admitted to using drugs after that date. The Base Commander also stated that the applicant's grossly inadequate performance was likely the result of his "consistent and deep involvement in unauthorized drugs over the past 3½ years, coupled with his totally negative attitude toward the military system" and that the applicant was not a good candidate for rehabilitation.

On November 1, 1971, Commander, Group Boston forward the Base Commander's request and recommended that the applicant receive a general discharge by reason of unfitness (Drug abuse).

On November 10, 1971, the applicant was tried by summary court martial for failing to go at the time prescribed to the appointed place of duty; leaving appointed place of duty without authority; missing movement of his cutter on October 4, 1971; two violations of willful disobedience of orders; and disrespect towards a petty officer. He was reduced from SA to SR and received 60 days' restriction.

On November 11, 1971, the District Commander endorsed the discharge package and cited the November 10, 1971, court martial. He stated that the applicant could best be described as a malingerer and that it would be in the best interests of the Coast Guard and the applicant that he be administratively separated from the Coast Guard.

On November 18, 1971, the Commandant ordered that the applicant be discharged for the convenience of the government pursuant to Article 12-B-6 of the Coast Guard Personnel Manual, with an RE-4 reenlistment code. On November 19, 1971, the applicant was discharged from the Coast Guard. His DD 214 shows that he received a general discharge "under honorable conditions" pursuant to Article 12-B-6 of the Personnel Manual with a 21L SPD code⁴ and an RE-4 reentry code of RE-4, which made him ineligible for reenlistment. His final marks were 1.88 in proficiency and 3.42 in conduct on a 4.0 scale.

APPLICABLE REGULATIONS

Article 12-B-6 of the Coast Guard Personnel Manual in effect in 1971 states that the Commandant may separate enlisted personnel for the convenience of the government for many reasons, including substandard personal behavior or a history of minor disciplinary infractions. Paragraph (h) states that a member discharged for the latter should be issued an honorable or general discharge.

Article 1.A.2.k.(1) of COMDTINST M1000.10, the Coast Guard Drug and Alcohol Abuse Program Manual, states that the intentional use of drugs constitutes a "drug incident as determined by the commanding officer."

Article 1.B.17. of the Military Separations Manual, COMDTINST M1000.4, governs discharges for misconduct. Article 1.B.17.B.(4)(a) states the following:

Any member involved in a drug incident or the illegal, wrongful, or improper sale, transfer, manufacture, or introduction onto a military installation of any drug, as defined in Article 1.A.2.k. of reference (h), Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series), will be processed for separation from the Coast Guard with no higher than a general discharge.

⁴ In the Separation Program Designator (SPD) Handbook, code 21L was used pursuant to Article 12-B-6 of the Personnel Manual for members discharged for the good of the Service. It mandates an RE-4 reenlistment code.

ORDER

The application of former SR [REDACTED], USCG, for correction of his military record is denied.

April 27, 2018

