

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-144



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on May 15, 2018, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 22, 2019, 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, a former Seaman discharged in 1973, asked the Board to upgrade his discharge from Under Honorable Conditions (UHC) to Honorable. The applicant stated that he believed that the Coast Guard never took into account his previous honorable discharge from the Army in 1971 or his medical records stating that he might have had problems adapting to military life and diagnosing him with an immature personality. He stated that he disagreed with his discharge based upon his previous service. Regarding the timing of his application, he stated that he discovered this error on February 4, 2018, and so the error and injustice have just come to his attention.

SUMMARY OF THE RECORD

The applicant was honorably discharged from the Army on August 24, 1971, with two years, eleven months, and fifteen days of military service. He enlisted in the Coast Guard for four years as a Seaman/E-3 on June 19, 1972.

On September 25, 1972, the applicant's Commanding Officer (CO) provided a "case statement" on "any information regarding the applicant's arrest record for wrongful possession of marijuana." The CO stated that the applicant enlisted in the Army in 1968, completed recruit training, and began training to become a military policeman. He was transferred to Germany in February 1969. In September 1969, there was a large scale marijuana investigation wherein many

personnel were questioned, including the applicant. As a result, he was “charged with possession of ‘about an ounce’ of HASHISH.” The applicant had entered a plea of guilty although he maintained his innocence. He had been tried by a Summary Court-Martial, which convicted the applicant and awarded him forfeiture of two-thirds pay for two months and reduction from E-3 to E-1. The applicant had served his full sentence in the Army but was not returned to duty until his confidential clearance was reinstated. Once his clearance had been reinstated, he resumed duty until he was transferred back from Germany in August 1971, when he was discharged with an honorable discharge “secure in the belief that the above incident had thoroughly and completely been closed.”

On November 21, 1972, the applicant was seen for a psychiatric evaluation “because of difficulty in adjusting to the Service.” The applicant “dwelled a great deal” on his race and how his race would affect how people viewed him and his ability to function and lead a complete life. (His record shows that he is African American.) He denied homicidal or suicidal ideations but noted that he had a “great deal of inward hostility which he attempted to control.” The applicant stated that he felt he had difficulty receiving a fair chance because of his race. For example, he was sent to steward training but he had requested training as a dental assistant. He spoke about how he had a rough time growing up and how he had been beat up by others in his neighborhood. He stated that he was determined to succeed despite the fact that he felt he was discriminated against. The psychiatrist stated that some of the applicant’s statements “could be described as having a slight paranoid tinge, however, it was difficult to objectively evaluate many of the things which he described.” The psychiatrist stated that the applicant had an “immature personality, moderately severe” but stated that he was fit for full duty and “any administrative and/or disciplinary action deemed appropriate by the command.” The psychiatrist added that members “of this type frequently have adaptational difficulties which may preclude satisfactory adjustment to military life. If such is the case, the [applicant’s] command may wish to consider administrative separation.”

On December 12, 1972, the applicant received non-judicial punishment (NJP) for being absent without leave (AWOL) and missing the movement of his cutter when it left for Cuba on October 30, 1972. He was sentenced to restriction for forty-five days.

On January 9, 1973, the applicant was notified that his CO was recommending his discharge for reason of unsuitability “due to a non-disabling character disorder diagnosed as Immature Personality (Moderately Severe).” The CO stated that after an investigation into the “facts of [the applicant’s] case,” he determined that this was the proper action.

On January 10, 1973, the applicant’s CO requested an unsuitability discharge for the applicant due to “immature personality, moderately severe.” The applicant was said to have no ratable disability and was certified mentally competent. The applicant had stated that he desired “to consult previously retained ... lawyer before making any further statement.” He had completed thirty-two days of his forty-five day NJP restriction for AWOL/missing movement. The balance would be waived if the discharge was approved.

On January 11, 1973, the CO’s request for unsuitability discharge was disapproved because the applicant’s “statement does not indicate that he [was] in substantial agreement” with the

recommendation. The command was requested to resubmit the request by message after the applicant had returned from consulting with his attorney if he was then in agreement with the recommendation. Otherwise the command would be required to submit the request via memorandum with full documentation.

On January 18, 1973, the applicant acknowledged receipt of his command's letter dated January 9, 1973. He stated that he had been advised of applicable policy and had been given an opportunity to consult with his lawyer. He stated that he was aware of the proposed action in his case and he was "in substantial agreement with it." He signed this document on the same date.

On January 19, 1973, the applicant's discharge was approved by reason of unsuitability. The character of discharge was still to be determined.

On January 22, 1973, the applicant's Executive Officer (XO) created a comprehensive summary of the circumstances involved in the applicant's unsuitability discharge. He stated that the applicant entered Steward School after graduating boot camp, but he disenrolled on his own request on August 11, 1972. He was transferred to a cutter as a Seaman due to his time in the Army. The XO stated that when the applicant reported, he "displayed a very good attitude, was a diligent worker with a pleasant personality." The applicant was able to work independently, perform normal duties and stand watches. He was described as "alert, very competent and quickly became qualified in watchstanding" and he "impressed both his petty officers and division officer as excellent petty officer material." On October 28, 1972, two days before the cutter departed for Cuba, the applicant went AWOL "without any notice to anyone onboard." When the cutter returned, the applicant returned aboard from base on December 5, 1972. Since then, the applicant had been "moody, lackadaisical, uncommunicative, and has displayed a complete loss of motivation, interest, and drive." The XO stated that the applicant appeared to be a different person. The applicant required supervision on all of his duties, even "the most elementary" and, if he was not watched, he would walk away "and disappear." The XO stated that several counseling sessions with various officers had "failed to evoke any significant change in his performance."

The XO also noted that the applicant was seen by three independent witnesses on December 18, 1972, to be wearing a .38 caliber revolver on his belt under his coat. The applicant refused to be searched by the Officer of the Day at the gangway. He then went below deck and was not seen for several minutes. He responded to a call to the wardroom and submitted to a body search, which was negative. The CO authorized a locker search which was also negative. The XO interviewed the applicant who denied possessing a firearm. The applicant was not taken to mast "because of peculiar circumstances and lack of evidence." However, the applicant reportedly told a representative at the hospital that he wore a gun "to be on an ego trip." The XO also noted that the applicant had been seen on January 4, 1973, for depression and inability to sleep. He was prescribed thirty 10 milligram tablets of Seconal.¹ On January 7, 1973, the applicant was observed "apparently intoxicated" and after he was restricted, he told the Officer of the Day that he had taken heroin. The applicant refused to provide blood or urine samples. The following day the applicant reported that he had taken "5 or 6" of the Seconal tablets. When asked to return the rest, he stated that he had thrown the rest away. A locker search was negative for guns or drugs.

¹ Seconal, full name secobarbital, is "a barbiturate that is used as a sedative." It is used "for the short-term treatment of insomnia." <https://pubchem.ncbi.nlm.nih.gov/compound/secobarbital#section=Drug-Indication>.

The applicant was discharged on January 22, 1973. The DD 214, which he signed, shows that he was discharged “under honorable conditions.” He received an RE-4 reentry code (ineligible to reenlist), and his separation code is 265, which according to the DD-214 Manual in effect at the time means “character and behavior disorders – individual evaluation.”² He had served about five months of his enlistment.

VIEWS OF THE COAST GUARD

On October 12, 2018, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case. She stated that when the applicant’s command originally requested authorization to discharge the applicant, it was denied because there was a concern that the applicant did not fully agree with the request. Despite the applicant’s restricted status, he was authorized leave to travel to meet with his attorney to discuss the situation. After the applicant met with his attorney, he signed a statement acknowledging that he agreed with the proposed action in his case.

The JAG argued that Article 12-B-1(b) of the Personnel Manual provides that a member’s *entire military record* and any other relevant factors will be evaluated in determining whether a member should be retained or administratively separated. The applicant had an honorable discharge from the Army and the JAG stated that “this was a part of the information available to and considered by [the cutter’s] Commanding Officer in regarding to his recommendation of whether or not to administratively separate” the applicant. The JAG argued that the applicant provided no evidence that a policy was violated or that he had been subject to an injustice, and therefore recommended that the Board deny relief.

In making this recommendation, the JAG adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC). PSC stated that the application is not timely and therefore should not be considered beyond a cursory review. PSC argued that the applicant displayed “total disregard to military authority and regulations including absent without leave, unauthorized absence, confinement to a brig, and NJP, which would have no bearing on any previous time in service.” PSC argued that there is no error or injustice in the applicant’s record and recommended that no relief be granted.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 26, 2018, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. The applicant responded on November 2, 2018. He stated that while he can understand why the Coast Guard recommended denying his claim, he had “a more subjective and experienced-based rationale for requesting [his] upgrade.”

The applicant stated that he served approximately three years in the Army before enlisting in the Coast Guard. He asserted that he never had any problems with “drugs, alcohol, psychological dysfunction, etc.” He stated that during his enlistment “these allegations” were cited and after

² COMDTINST M1900.4, Enclosure 2.

“reading [his] records [he] was a little surprised by allegations that [were] unsubstantiated” about his character. He stated that he needed assistance in becoming a functioning member of society but it was impossible to get a sympathetic professional to realize that he wanted to fulfill his obligation to his country. The applicant stated that there were “many issues that interrupted [his] initial plan,” including family problems and the fact that he was “functionally illiterate at the time.” He stated that he is currently a chaplain in a state guard and has earned his PhD since he left the Coast Guard. This was all he wished to say on this issue and added that regardless of the Board’s decision, he was honored to have served and thanked the Board for its time.

APPLICABLE REGULATIONS

The Personnel Manual in effect at the time, CG-207, Article 12-B-1(d) states:

In determining whether a member should retain his current military status or be administratively separated, his entire military record, including records of nonjudicial punishment imposed during a prior enlistment period or period of service, all records of conviction by courts-martial, and any other factors which are material and relevant, may be evaluated.

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 submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.³ The applicant was discharged in 1973 and received and signed his DD 214 at the time. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1973, and his application is untimely. However, the Board finds that the applicant’s request falls under its “liberal consideration” guidance, and will therefore waive the statute of limitations.⁴
3. According to the “liberal consideration” guidance, when deciding whether to upgrade the discharge of a veteran who was diagnosed with a mental health condition, the Board must liberally consider the evidence, including the applicant’s claims, and decide whether the preponderance of the evidence shows that the veteran had mental health condition(s) while in the Service that could excuse the veteran’s misconduct; whether the mental health condition(s) excused the misconduct that adversely affected the discharge; and, if not, whether they outweigh the misconduct or otherwise warrant upgrading the veteran’s discharge.⁵ In this case, it was the applicant’s diagnosis of “immature personality, moderately severe”—at age twenty-three—that began the administrative separation process, so it was definitely a known factor in the Coast

³ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

⁴ DHS Office of the General Counsel, “Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharges Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment” (signed by the Principal Deputy General Counsel as the delegate of the Secretary, June 20, 2018).

⁵ *Id.*

Guard's decision to discharge him. And his character of discharge was based on his misconduct: The applicant received NJP for being AWOL and for missing ship's movement; he was seen bringing a gun on board a cutter (although no gun could be found); and he stated that he had taken heroin and later stated he had taken more than his prescribed dose of Seconal. These records are presumptively correct,⁶ and the applicant has submitted nothing that refutes them. Although the applicant's discharge was initiated in part because of his diagnosed immature personality, the Board finds that his immature personality did not excuse the behavior that resulted in his general discharge Under Honorable Conditions.

4. The applicant also claimed that the Coast Guard did not take into account his previous service with the Army when choosing the character of his discharge. However, according to Article 12-B-1(d) of the Personnel Manual in effect at the time, CG-207, the Coast Guard considered the entire service record of a member when determining if an administrative discharge was appropriate. This would have included in the applicant's service in the Army. And while the applicant received an Honorable discharge from the Army, the record shows that he had pled guilty to possession of one ounce of "hashish" while serving in the Army. The fact that the applicant was found to have served honorably in the Army—where he completed his enlistment—does not prove that his less than five months of service in the Coast Guard was honorable. Based on the record before it, the Board finds that upgrading the applicant's discharge is not warranted.

5. Accordingly, the applicant's request to upgrade his discharge from UHC to Honorable should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁶ 33 C.F.R. § 52.24(b); see *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties "correctly, lawfully, and in good faith.").

ORDER

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

March 22, 2019

