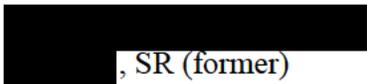


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-126

, SR (former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the application upon receiving the applicant's completed application on May 10, 2019, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 1, 2020, 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 is a former seaman recruit (SR) who received a bad conduct discharge from the Coast Guard on December 20, 2018. He asked the Board to amend the Remarks block on his DD 214¹ to state that his service from April 1, 2013, to July 14, 2016, was honorable. He stated that he served in the Coast Guard for a total of five years, nine months, and twenty days and argued that the first three years, three months, and fourteen days that he served were honorable. The applicant stated that he needs the Remarks block on his DD 214 corrected because characterizing all of his service as "bad conduct" is "causing confusion" with the Department of Veterans Affairs. In support of his request, the applicant submitted a copy of his DD 214, which is included in the Summary of the Record below.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on April 1, 2013. From July 14 to 15, 2016, the applicant was tried before a General Court-Martial. He had been charged with twenty-one specifications of violating eight articles of the UCMJ from 2014 through 2016, and he was found

¹ The DD Form 214 provides the member and the service with a concise record of a period of service with the Armed Forces at the time of the member's separation, discharge or change in military status (reserve/active duty). In addition, the form is an authoritative source of information for both governmental agencies and the Armed Forces for purposes of employment, benefit and reenlistment eligibility, respectively. COMDTINST M1900.4D.

guilty of eleven specifications, including assault on a female seaman in March 2014 and on a female civilian in December 2014; willful damage to the seaman's cell phone by bending it in half in March 2014 and to the civilian's cell phone by bending it in half in December 2015; disorderly conduct by soliciting sex in a threatening manner in February 2015; assault consummated by battery on female civilians in June 2015, September 2015, and November 2015; assault on a female civilian in December 2015; wrongful use of a controlled substance, cocaine, on divers occasions from September 2015 to January 2016; absence without leave on January 6, 2016; failure to obey a no-contact order regarding the female civilian on or about January 6, 2016.² His sentence included a reduction rank to E-1, four years confinement, and a bad conduct discharge.

On April 20, 2017, the Commander of the Seventh District approved the applicant's sentence and ordered that it be executed except for the bad conduct discharge, which would follow his confinement.

On August 24, 2018, the Coast Guard Clemency Board notified the Commandant that it had unanimously voted to deny the applicant's request for clemency.

On September 21, 2018, the Commander of the Coast Guard Personnel Service Center (PSC) stated that he had reviewed the records and proceedings in the applicant's court martial and denied his request for clemency.

On November 26, 2018, the Commander, PSC affirmed the April 20, 2017, General Court-Martial Order and stated that the applicant's bad conduct discharge should be executed.

On December 17, 2018, PSC issued orders for the applicant to be discharged effective December 20, 2018. The Separation Authorization states that he will be discharged pursuant to Article 1.B.18. of the Military Separations Manual (Conviction by Special or General Court-Martial)³ and that his Character of Service should be "Bad Conduct."

The applicant was discharged on December 20, 2018, and his DD 214 shows that he had served on active duty for three years, three months, and fourteen days between April 1, 2013, and December 20, 2018. Block 18, the Remarks section of his DD 214, states that he was in non-pay status due to confinement from July 14, 2016, to August 14, 2016, and from February 2, 2017, to December 20, 2018, and on appellate leave in between those periods from August 15, 2016, to February 1, 2017. His periods of confinement and appellate leave are also noted as "time lost" (not on active duty) in block 29 on the DD 214. Block 24 of the DD 214 states that his character of service is "Bad Conduct" and the narrative reason for separation in block 28 is "Court-Martial."

² The applicant was found not guilty on rape, sexual assault, larceny, and other charges.

³ Article 1.B.18 of COMDTINST M1000.4, the Coast Guard Military Separations Manual, provides the instructions for punitive discharges adjudged by sentence of general or special courts-martial.

APPLICABLE LAW AND REGULATIONS

COMDTINST 1900.4D contains the Commandant's instructions and directions for the preparation and distribution of the Certificate of Release or Discharge from Active Duty, DD Form 214. Chapter 9.b states that the DD 214 is issued to members who change their military status among active duty, reserve, or retired components or are separated/discharged from the Coast Guard to civilian status.

Chapter 1.D.2.A. of the instructions states that all entries, unless specified otherwise (i.e., blocks 7a, 7b), are for the current period of active duty only from date of entry as shown in block 12a through the date of separation as shown in block 12b. (Note exception, block 13).

Chapter 1.E. of the instructions states that only the following entries are permitted in the Remarks block on a DD 214, as well as any authorized by supplementary directives:

1. Continuation of Information.
2. Home of Record at Time of Entry on Active Duty.
3. Discharge for Physical Disability.
4. Involuntary Release of Reserves.
5. Effective Date of Retirement.
6. Reservist's Travel Time.
7. Extension of Enlistment/Active Service.
8. Place of Birth.
9. Selective Service Registration.
10. Disability Severance Pay.
11. Non-pay/Excess Leave Days.
12. Type of Certificate Issued.
13. Montgomery GI Bill.
14. Enlistment/Reenlistment Information.

Chapter 1.E. of the instructions state that Block 24, Character of Service, shall only indicate the member's character of service and shall not include or indicate the type of discharge. It states that for members who receive a bad conduct discharge, Block 24 shall indicate "UNDER OTHER THAN HONORABLE CONDITIONS," unless otherwise directed by the separation authority.

VIEWS OF THE COAST GUARD

On September 17, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion and adopted the findings and analysis in a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC recommended denying relief, arguing that

the type of separation and character of service reflected on the applicant's DD 214 are correct and appropriate for his separation authorization. PSC added that the applicant was on his first and only enlistment and Coast Guard policy prohibits any additional remarks be made regarding honorable service.

PSC also noted that contrary to the applicant's assertion that his time in service before the court-martial was honorable, he was in fact found to have violated Article 128 of the UCMJ (battery) in March 2014, which was within his first year on active duty. Moreover, PSC noted, the applicant was found guilty of numerous additional violations of the UCMJ from March 2014 to January 2016.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 20, 2019, the BCMR sent the applicant a copy of the Coast Guard's recommendation and invited him to respond within 30 days. The Chair did not receive a response.

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. The application is timely because the applicant was discharged in 2018.

2. The Board finds that the applicant has exhausted his administrative remedies. He is not required to submit an application to the Coast Guard's Discharge Review Board (DRB) to request this correction for two reasons: (1) Pursuant to 10 U.S.C § 1553, the DRB does not have the authority to review the discharge or dismissal by sentence of a general court-martial; and (2) the DRB does not have the authority to make corrections to the Remarks block of the DD 214.

3. The applicant alleged that his DD 214 is erroneous because it implies that all of his service consisted of "bad conduct," and he asked that the Remarks section be amended to state that his service prior to his Court-Martial was honorable. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁴ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁵

4. The JAG argued that the applicant has not shown an error or injustice in his discharge processing because the type of separation and character of service on his DD 214 are

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

correct. The Board agrees. His DD 214 states in Block 24 that his character of service is “Bad Conduct” and this was the character of service mandated by the separation authority in the discharge orders issued on December 17, 2018.

5. The applicant alleged that his DD 214 is erroneous because characterizing all of his service as bad conduct ignores the fact that he served honorably before his court-martial. The record shows that his active service began on April 1, 2013, and that he was charged with and convicted of a variety of offenses that took place from March 2014 through January 2016. His record also shows that upon his conviction he was sentenced to reduction in rank to E-1, four years’ confinement, and a bad conduct discharge. Therefore, the Board disagrees with the applicant’s assertion that all of his service from 2013 to 2016 was honorable.

6. The applicant asked the Board to amend the Remarks block on his DD 214 to state that his service from April 1, 2013, to July 14, 2016, was honorable. However, Chapter 1.E. of the Commandant’s instructions for preparing the DD 214 states that the Remarks block may only contain fourteen types of information and any authorized by supplementary directives. Nothing in the instructions and no other directive known to the Board allows the Coast Guard to include other information in the Remarks block or to identify a different character of service for specific periods within the enlistment documented by the DD 214.

7. The applicant’s request to include a statement in the Remarks block on his DD 214 that he served honorably for part of his enlistment should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

May 1, 2020

