

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-015


MK3 (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 case after receiving the completed application on December 22, 2020, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 23, 2021, 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 Machinery Technician third class (MK3/E-4) who received a general discharge under honorable conditions from the Coast Guard on August 13, 2018, for misconduct due to a drug incident, asked the Board to correct his record by upgrading his character of discharge to honorable.¹

The applicant stated that he was a really hard worker who accomplished a lot while he was in the Coast Guard. Despite his accomplishments, the applicant stated, he had made a mistake that cost him everything. Specifically, he stated that he cannot afford to go to school to get a higher education. The applicant argued that his discharge should be upgraded so that he can do something with his life.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 19, 2014. On December 4, 2015, he advanced to the rank of MK3 and was stationed at a Maritime Force Protection Unit.

¹ There are five types of discharge: three administrative and two punitive. The three administrative discharges are honorable, general under honorable conditions, and under other than honorable (OTH) conditions. The two punitive discharges may be awarded only as part of the sentence of a conviction by a special or general court-martial. A special court-martial may award a bad conduct discharge (BCD), and a general court-martial may award a BCD or a dishonorable discharge.

On June 11, 2018, the applicant received a drug incident. The applicant was subsequently screened pursuant to the drug incident.

On August 13, 2018, the applicant was discharged for misconduct in accordance with Article 1.B.17. of the Coast Guard Military Separations Manual. His DD-214 shows “under honorable conditions” as the character of discharge; “misconduct” as the narrative reason for separation; RE-4 (ineligible for reenlistment) as his reenlistment code; and JKK (misconduct) as his separation code. His DD-214 also shows that he had received the Global War on Terror Service Medal, the Coast Guard Rifle Marksman Ribbon, and the Coast Guard Good Conduct Medal. The applicant signed his DD-214.

VIEWS OF THE COAST GUARD

On May 27, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

Both the JAG and PSC argued that the applicant had failed to allege that the Coast Guard committed an error or injustice. The JAG argued that the Coast Guard had properly awarded the applicant a general discharge in accordance with the drug policy described in the Military Separations Manual.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 2, 2021, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Article 1.B.17.4. of the Military Separations Manual, COMDTINST M1000.4, states the following regarding discharging a member for drug use:

(a) Involvement with Drugs. 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 (under honorable conditions).

Article 5.C. of the Military Drug and Alcohol Policy Manual, COMDTINST M1000.10A, discusses conduct that constitutes a drug incident as follows:

C. Drug Incident. Any of the following conduct constitutes a drug incident as determined by the CO/OIC:

1. Intentional use of drugs for non-medical purposes;
2. Wrongful possession of drugs;

3. Trafficking of drugs—distributing, importing, exporting, or introducing to a military facility;
4. The intentional use of other substances, such as inhalants, glue, cleaning agents, or over-the-counter (OTC), or prescription medications to obtain a "high," contrary to their intended use; or
5. A civil or military conviction for wrongful use, possession, or trafficking of drugs, unless rebutted by other evidence (note the member need not be found guilty at court-martial, in civilian court, or be awarded non-judicial punishment for the conduct to be considered a drug incident).
6. However, if the conduct occurs without the member's knowledge, awareness, or reasonable suspicion or is medically authorized, it does not constitute a drug incident.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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. The application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).
3. The applicant alleged that his general discharge is unjust. 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.² 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."³
4. The applicant did not allege that the Coast Guard committed an error with respect to his discharge. Instead, the applicant argued that his general discharge is unjust because he was a hard worker who accomplished a lot during his career. The applicant's record shows that during his four-year career in the Coast Guard, he advanced from Seaman Recruit to the rank of MK3. Further, his record shows that he received several honors and awards including the Global War on Terror Service Medal, the Coast Guard Rifle Marksman Ribbon, and the Coast Guard Good Conduct Medal. However, the Board is not persuaded that the applicant's commendable service proves that a general discharge under honorable conditions following a drug incident is unjust. While the Board is unaware of the details regarding the applicant's drug incident, according to Article 5.C. of the Military Drug and Alcohol Policy Manual, a drug incident involves either the use, possession, or trafficking of illegal drugs in contravention of Coast Guard values. Coast Guard members risk their lives on a daily basis to try to stop the flow of illegal drugs. Moreover, the delegate of the Secretary advised the Board in 1976 that when exercising its equitable authority the Board "should not upgrade a discharge unless it is convinced... that in light of today's standards the discharge was disproportionately severe vis-à-vis the conduct in response to which

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

it was imposed.⁴ This direction to the Board is still in effect, and the Coast Guard's policies regarding drug incidents have not changed since 2018. The Military Separations Manual continues to allow no higher than a general discharge to anyone discharged for a drug incident. Therefore, the Board finds that the applicant has failed to prove by a preponderance of the evidence that his general discharge for a drug incident constitutes an injustice in his record.

5. The applicant's request for an honorable discharge should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ See Memorandum of the General Counsel to J. Warner Mills, *et al.*, Board for Correction of Military Records (July 8, 1976).

ORDER

The application of former MK3 [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

July 23, 2021

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