

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2019-078**

  
MK3 (Former)

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**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 February 12, 2019, and assigned it to the Deputy Chair to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated January 31, 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, a former Machinery Technician (MK3; pay grade E-4), received a general discharge from the Coast Guard on May 24, 1985, after his urine tested positive for cocaine and THC during a random urinalysis. He asked the Board to correct his record by upgrading his discharge from general to honorable.

The applicant stated that at the time of his discharge, he was experiencing psychological issues as well as marital issues. The applicant alleged that he requested medical help from his command, but that request was ignored. Next, the applicant alleged that he requested a transfer to another command, but that request was denied. Lastly, the applicant alleged that he requested a discharge, but that request was also denied. The applicant stated that he didn't feel as if he was receiving adequate help so he "did what I had to in order to get the help I needed."

The applicant stated that since his discharge, he has financially supported his wife and two children. Additionally, the applicant maintained that since his discharge, he has not participated in any criminal activity. To support his request, the applicant submitted a comprehensive background check of himself to show his clean criminal record.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on March 10, 1978. On a medical examination form dated August 10, 1978, the physician indicated that the applicant's psychiatric evaluation was normal. On a medical questionnaire dated the same day, the applicant indicated: "I'm in good health and taking no medication."

Following recruit training, the applicant was enrolled in "A" School to become a Machinery Technician. Upon completing "A" School in March 1979, he was assigned to a cutter homeported in [REDACTED]

On March 28, 1980, when his initial one-year tour of duty aboard the cutter was ending, the applicant asked to remain in [REDACTED]. His request was endorsed by his commanding officer (CO), and he received a three-year assignment to the same cutter.

On May 29, 1981, the applicant submitted a transfer request for an assignment near [REDACTED] in [REDACTED]. In his request, the applicant stated that he was getting married and would like to purchase land in that area. On June 10, 1981, the applicant's command recommended approval of his transfer if a replacement could be provided. But the applicant was not transferred.

On December 4, 1981, the applicant received nonjudicial punishment for wrongfully possessing, with the intent to deceive, a military identification card having the incorrect birthday. The applicant was sentenced to 30 days' extra duty, 30 days' restriction to the limits of his vessel, and a reduction to the next inferior pay grade.

On January 9, 1982, the applicant received nonjudicial punishment for consuming alcohol while on board a Coast Guard vessel. The applicant was sentenced to 30 days' restriction and forfeiture of \$100.00.

On a medical examination form dated July 20, 1982, the physician indicated that the applicant's psychiatric evaluation was normal. On a medical questionnaire dated the same day, the applicant wrote: "I'm in good health and taking no medication."

On April 4, 1983, when the applicant's tour of duty aboard the cutter was ending, he submitted a transfer request stating that he was getting married and would like to be assigned to a unit in or around [REDACTED] near his family. On April 7, 1983, the applicant's CO endorsed the request. He noted that the applicant's enlistment was due to end on August 14, 1983, and that his reenlistment "depends on next billet assignment." The applicant received transfer orders to [REDACTED] north of [REDACTED] and he extended his enlistment for five years.

On a medical examination form dated June 29, 1983, the physician indicated that the applicant's psychiatric evaluation was normal. On a medical questionnaire dated the same day, the applicant wrote "good health" in response to a question about the applicant's present health and list of medications.

On a medical questionnaire dated October 21, 1983, the applicant indicated that he felt “good” in response to a question that asked: “how do you feel about your health now?” Further, the applicant stated that he had never sought psychiatric care.

On July 24, 1984, the applicant submitted another transfer request citing “personal problems” as the reason. The request listed five preferences for transfer that were all located in [REDACTED]. On the same day, the applicant’s request was favorably endorsed by his CO. But the applicant was not transferred.

On January 14, 1985, the applicant received nonjudicial punishment for being absent without leave from his unit for approximately 5 days. The applicant was sentenced to extra duty for 14 days and reduction to the next inferior pay grade.

On February 14, 1985, the applicant submitted a final transfer request<sup>1</sup> listing the same five preferences that were listed on his July 1984 request for transfer. The next day, February 15, 1985, his transfer request was favorably endorsed by his CO provided that there was a suitable replacement on board prior to the applicant’s departure. The CO’s endorsement noted that the transfer would allow the applicant to address his family problems.

On March 18, 1985, the applicant was subject to a random urinalysis which revealed traces of both cocaine and THC. The urinalysis results were confirmed by a laboratory the following month.

On April 11, 1985, the applicant’s CO notified him as follows:

I have initiated action to discharge you from the U.S. Coast Guard under the provisions of reference (a)<sup>2</sup> by reason of misconduct, due to drug abuse. As a result of the random urinalysis test taken on 18 March 1985 which found you positive for cocaine and marijuana. I am recommending that you be awarded a General Discharge from the Coast Guard. Final decisions concerning your discharge rests with the Commandant. If awarded a General Discharge, you may expect to encounter prejudice against you in civilian life.

The CO also notified the applicant of his right to consult an attorney and to submit a statement on his own behalf, which the CO would forward to Commandant. In a memorandum dated April 15, 1985, the applicant acknowledged receipt of the notification for discharge and indicated that he waived his right to submit a statement on his own behalf, understood that he might encounter prejudice in civilian life if awarded a general discharge, had been provided the opportunity to consult with a lawyer, and did not object to a general discharge for illegal drug abuse.

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<sup>1</sup> The record does not contain evidence showing that the applicant ever requested a “humanitarian assignment,” pursuant to Article 4.B.11. of the U.S. Coast Guard Personnel Manual COMDTINST M1000.6, which requires that a member’s immediate family be affected by a “severe hardship normally not encountered by other members of the Coast Guard” that makes the member’s presence “essential.” Nor did he ever apply for a “hardship discharge,” which requires similar circumstances that are deemed long-term or permanent, pursuant to Article 12.B.13.

<sup>2</sup> Article 12.B.18, U.S. Coast Guard Personnel Manual COMDTINST M1000.6

In a separate memorandum also dated April 11, 1985, the applicant's CO initiated action for his discharge. The CO sent a memorandum to the Commandant with the recommendation that the applicant be discharged for misconduct under Article 12.B.18. of the Personnel Manual due to drug abuse. In support of this recommendation, the CO cited the laboratory analysis of the applicant's urine which revealed traces of cocaine and marijuana. Further, the CO stated that the applicant was aware of the Commandant's policy on illegal drug use and did not want to comply.<sup>3</sup>

On April 15, 1985, the applicant received nonjudicial punishment for drug abuse. The applicant was sentenced to another reduction in pay grade and forfeiture of 7 days' pay for one month.

On April 16, 1985, the applicant was transferred from [REDACTED] to [REDACTED] to undergo a pre-discharge physical examination and other separation processing.

On April 17, 1985, the Group Commander endorsed the CO's recommendation for the applicant's discharge. In support of this endorsement, the Commander cited the nonjudicial punishment that the applicant had received on April 15, 1985, for his drug abuse.

On April 18, 1985, the District Commander also endorsed the CO's recommendation for the applicant's discharge. In support of this endorsement, the Commander cited the Commandant's policy on drug abuse.

On April 23, 1985, the Personnel Command issued orders for the applicant to receive a general discharge for misconduct due to drug abuse with an HKK separation code pursuant to Article 12.B.18. of the Personnel Manual within thirty days.

On a medical form for a pre-discharge physical examination dated April 24, 1985, the physician indicated that the applicant's psychiatric evaluation was normal. On a medical questionnaire dated the same day, the applicant wrote: "I'm in good health and using no medications." The applicant also signed a document stating that he agreed with the physician's findings and did not want to rebut them.

On May 24, 1985, the applicant was discharged by reason of misconduct in accordance with Article 12.B.18. of the Coast Guard Personnel Manual. His DD-214 shows "general" as the character of discharge; "misconduct" as the narrative reason for separation; RE-4 (ineligible for reenlistment) as his reenlistment code; and HKK (misconduct due to drug abuse) as his separation code. The applicant signed his DD-214.

### **VIEWS OF THE COAST GUARD**

On July 16, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief. In recommending denial, the JAG adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC) in addition to providing their own findings and analysis.

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<sup>3</sup> The Commanding Officer cited a drug exemption lecture that the applicant attended on June 16, 1980.

PSC stated that the application is untimely. PSC also stated that the application should be denied because the applicant did not demonstrate an error or injustice in his discharge processing. PSC alleged that the applicant did not request any medical assistance. Further, PSC noted that illegal drug use is never an appropriate means of resolving issues.

The JAG reinforced both of PSC's arguments. First, the JAG reiterated that the applicant did not request medical assistance from his command. In fact, the JAG alleged, his medical records demonstrate that he was in good health by his own admission. Second, the JAG reiterated PSC's statement that illicit drug use is never permitted in the Coast Guard. The applicant's personal problems did not justify the use of illegal drugs.

The JAG alleged that the applicant's requests for transfer were granted. The JAG cited two requests for transfer, one in 1984 and one in 1985, and noted that both were endorsed by the applicant's CO. The JAG stated that it is uncertain whether the transfers occurred, but the JAG alleged that the command's endorsements are evidence of good faith efforts by the Coast Guard to accommodate the applicant since the Coast Guard is not obligated to transfer its employees. As a military organization, "the Coast Guard's needs take priority over the needs of its uniformed service members."

The JAG alleged that the applicant did not ask his command for a discharge. Even if the applicant had submitted a request for discharge, the JAG stated, the Coast Guard is not obligated to discharge a member prior to the end of their contract.

The JAG concluded by stating that the Coast Guard does not consider post-service conduct when determining whether to upgrade the applicant's character of service.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On July 26, 2019, 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 12.B.2. of the Coast Guard Personnel Manual in effect in 1985 discusses the types of discharge in pertinent part:

(2) General Discharge. A separation with a general discharge may be effected by the member's commanding officer or higher authority when the member is eligible for or subject to discharge and it has been determined that a general discharge is warranted under the standards prescribed in this paragraph. A general discharge will be issued to a member (also refer to subparagraph (1)(c) hereof):

- (a) Who is eligible for discharge for one of the reasons listed in subparagraph f.(1)(a) and
- (b) Whose final average marks are less than those shown in article 12-B-2f.(1)(b) for the respective periods, or
- (c) When, based on the individual's overall military records, the Commandant directs the issuance of a general discharge. NOTE: When a general discharge is issued for one of the reasons listed in subparagraph (1)(a) through (6). hereof, the specific basis therefore shall be included in an entry on page 7 of the service record.

- (d) When a member has been identified as either a user, possessor, or distributor of illegal drugs or paraphernalia, and if an administrative discharge is warranted, the commanding officer shall recommend a general discharge, except that a discharge under other than honorable conditions may be recommended under severe circumstances, including but not limited to: the tampering with evidence in drug seizure cases, distribution for a profit, distribution to other Coast Guard members or distribution to minors. (See article 12.B.2f.(3) below and article 12.B.32 for guidance and procedures).

Article 12.B.18. of the Coast Guard Personnel Manual in effect in 1985 discusses the circumstances that a Commandant may direct the discharge of a member for misconduct in pertinent part:

(4) Drug abuse. The illegal, wrongful, or improper use, possession, sale transfer, or introduction on a military installation of any narcotic substance, intoxicating inhaled substance, marijuana, or controlled substance, as established by 21 U.S.C. 812. Members E-6 and below identified only as users in a first drug-related offense may be considered good prospects for rehabilitation. If subsequent rehabilitation fails either because the member's involvement with drugs is so physically or psychologically acute or because there is evidence of less than good participation on the part of the member, the member shall be discharged under the provision of this article.

ALCOAST 016/84, issued by the Commandant on July 30, 1984, stated that “[e]ffective upon receipt, any member involved in a drug incident as defined by [the Personnel Manual] ... will be processed for separation.” It noted that the then-current drug policy had been in effect for more than two years and had been widely publicized through recruit training and required unit indoctrination. It stated that in the Service's attempt to rid itself of anyone who abused drugs, more than 700 members had received general discharges due to drug abuse since April 1982.

### 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.<sup>4</sup> The applicant was discharged in 1985 and his DD-214, which he signed, indicates that he received a general discharge. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 1985, and his application is untimely. However, the Board will waive the statute of limitations because the applicant's request falls under its “liberal consideration” guidance as the applicant is claiming that a mental health condition led to his general discharge.<sup>5</sup>
3. According to the “liberal consideration” guidance, when deciding whether to modify the discharge of an applicant based on a mental health condition, the Board must liberally

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<sup>4</sup> 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

<sup>5</sup> 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).

consider the available evidence to determine whether the preponderance of the evidence shows that while in the Service, the applicant suffered a mental health condition that could excuse the misconduct that led to his discharge or that otherwise warrants upgrading his character of discharge.<sup>6</sup> However, the disputed record is presumptively correct,<sup>7</sup> and it contains no evidence that substantiates the applicant's allegation that he was suffering from a mental health condition while in the Service. To the contrary, in the applicant's medical records, he consistently indicated that he was in good health, and the physicians consistently indicated that his psychiatric evaluations were normal. There is nothing in the applicant's personnel file to suggest that he had requested psychological or psychiatric help.

4. The applicant also alleged that he resorted to drug use because the Coast Guard refused to transfer him or discharge him. According to his record, the applicant never submitted a request for a humanitarian transfer or a hardship discharge, so presumably the circumstances that caused him to desire to be assigned near his family were not unusual.<sup>8</sup> Nevertheless, all of his requests for transfer were favorably endorsed by his CO. While the applicant was not transferred to the exact town in [REDACTED] where his family was located, the Coast Guard did issue him transfer orders to a unit in [REDACTED] which the applicant must have liked because he voluntarily extended his enlistment for five years to accept the orders. The applicant was not entitled to any particular assignment, and under Article 4.A.1. of the Personnel Manual, the needs of the Coast Guard come first in making assignments. And even if the applicant had demonstrated that he intentionally used drugs to force the Coast Guard to discharge him, his desire for discharge or for an assignment closer to home would not justify the use of illegal drugs.

5. Under Article 12.B.2. of the Personnel Manual and ALCOAST 016/84, the applicant's illegal drug use mandated his receipt of a general discharge. And members who use illegal drugs today continue to receive general discharges. The applicant has not proven by a preponderance of the evidence that his general discharge for misconduct due to drug abuse is erroneous or unjust. Accordingly, his request should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>6</sup> *Id.*

<sup>7</sup> 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.").

<sup>8</sup> Article 12.B.13, U.S. Coast Guard Personnel Manual COMDTINST M1000.6

**ORDER**

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

January 31, 2020

