

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-116


SNOS (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 May 1, 2019, 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 April 3, 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 Operations Specialist who was discharged in 2006, asked the Board to correct his record by upgrading his character of service from under other than honorable (OTH) conditions to an honorable discharge.¹

On February 3, 2006, the applicant was discharged from the Coast Guard after he requested to be discharged in lieu of trial by court-martial. The applicant was facing three charges under the Uniform Code of Military Justice (UCMJ) related to the possession, use, and distribution of marijuana. The applicant put forth two arguments in support of upgrading his character of service. First, the applicant argued that the events leading to his charges under the UCMJ would not have occurred had the Coast Guard ordered the applicant to complete treatment for alcohol abuse. Second, the applicant argued that his arrest was the result of illegal entrapment by an undercover Coast Guard agent.²

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.

² According to Rule 916(g) of the 2000 edition of the Manual for Courts-Martial, entrapment is an affirmative defense to a crime. Entrapment is defined as "a defense that the criminal design or suggestion to commit the offense originated in the Government and the accused had no predisposition to commit the offense."

The applicant alleged that the Coast Guard failed to diagnose the applicant's alcohol addiction and provide proper treatment. After an alcohol incident in 2002, the applicant was evaluated by the Navy Counseling and Assistance Center (CAAC). According to the applicant, one of the CAAC's recommendations was outpatient therapy. He argued that the Coast Guard erred when it offered him the opportunity to attend outpatient treatment because he believed that the treatment should have been mandated. Further, he argued that the three other recommendations made by the CAAC were not implemented. According to the applicant, had he been ordered to complete the recommendations of the CAAC, the subsequent violations that led to his OTH discharge might not have occurred.

The applicant stated that he had a second alcohol incident in 2005.³ He alleged that a substance abuse counselor recommended that he be enrolled into a psychoeducational course to educate him on the effects of drinking. He alleged that the alcohol abuse counselors "deemed necessary" an alcohol program. He further alleged that no action was taken to educate him on his drinking problem. He argued that this was another example of his alcohol abuse and yet the Coast Guard did not offer him any help. He argued that the Coast Guard created an injustice by not mandating that the applicant attend an alcohol program. He argued that because he had never been ordered to attend any type of alcohol program, he had no idea that he had a disease.

The applicant alleged that the Coast Guard's failure to provide proper treatment for his alcohol abuse violated the Substance Abuse Prevention Program. The applicant cited three sections of COMDTINST M6200.1B to support this allegation, which went into effect in 2013.⁴

In addition to the Coast Guard's awareness of the applicant's alcohol abuse, he argued that the Coast Guard was aware of his use of marijuana between July 2004 and December 2005. He argued that this demonstrated a pattern of the Coast Guard to ignore the signs of his substance abuse and allow him to self-destruct.

The applicant alleged that his arrest for marijuana was the result of illegal entrapment by an undercover agent of the Coast Guard. According to him, he was called by a fellow Coast Guard member who asked him if he had any marijuana. When he confirmed that he did have marijuana, he was asked to bring it to the barracks. When he arrived, he was arrested.

The applicant alleged that when he was arrested, he was questioned by Coast Guard agents without an attorney present. He stated that he was intimidated and afraid, so he answered the agents' questions. He alleged that when he was assigned an attorney, the attorney was a part-time reservist who made him feel "uneasy and afraid" and not a full-time Coast Guard officer. He alleged that the lawyer advised him that he would likely face prison time if he went to court-martial, but that he could avoid prison if he accepted an OTH discharge. Having already been in pre-trial confinement for a month and a half, he was willing to do whatever he was advised. The

³ The applicant is likely referring to a second alcohol incident that occurred on July 10, 2004.

⁴ COMDTINST M6200.1B was adopted on May 7, 2013, approximately seven years after the applicant was discharged. The applicable manual in effect at the time of the applicant's discharge was COMDTINST M6200.1. which did not include provisions regarding the Substance Abuse Prevention Program as cited by the applicant.

applicant alleged that his attorney wanted to get the case over with as quickly as possible rather than provide adequate defense.

The applicant alleged that since his discharge, he has turned his life around. He is married and has a daughter. He also works full-time. To support his application, the applicant provided four letters of reference. The first letter, dated January 31, 2012, was from a fellow Operations Specialist in the Coast Guard who stated that the applicant was a professional, hard-working, and intelligent individual. She stated that the applicant was always willing to help fellow members either personally or professionally. She recalled that he was the go-to member on base because of his technical capabilities. The second letter, dated May 15, 2012, was from one of the applicant's supervisors while he was in the Coast Guard, who stated that the applicant was an outstanding individual. The third letter, dated January 4, 2013, was from the applicant's supervisor from when he worked as a camp counselor. She stated that the applicant was punctual and reliable. The final letter was from the father of a member who the applicant served with in the Coast Guard. He described the applicant as organized, efficient, and extremely competent.

The applicant also provided a letter that he wrote to the Commandant on November 2, 2014. In his letter, the applicant discussed what he had accomplished while in the Coast Guard. He stated that he always went above and beyond the call of duty. He alleged that he volunteered to assist in the responses to both Hurricane Katrina and Hurricane Rita. In discussing the events that led to his discharge, the applicant wrote that he made the stupid mistake that many other service members make and that is falsely believing that no one will bother you for marijuana. However, since his discharge, the applicant stated, he has earned a college degree, has kept a hard-working job, and had recently gotten engaged. The applicant requested that the Commandant upgrade his character of service.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard at age 20 on July 26, 2002. Upon enlisting, he signed a form acknowledging the following:

I have been advised that the illegal use or possession of drugs constitutes a serious breach of discipline which will not be tolerated in the United States Coast Guard. Also, illegal drug use or possession is counter to esprit de corps & mission performance and jeopardizes safety. I understand that I am not to use, possess, or distribute illegal drugs, drug paraphernalia or hemp oil products.

On July 4, 2002, the applicant acknowledged on an Administrative Remarks form ("Page 7") that stated that he completed the Substance Abuse Free Environment (SAFE) Awareness Course presented by an Addiction Prevention Specialist.⁵

On October 13, 2002, the applicant consumed approximately 24 beers and 2 mixed drinks. The volume of alcohol consumed led to an alcohol-induced blackout, which prevented him from performing his Coast Guard duties the following day at work. This was considered the applicant's

⁵ This training consists of a 2-hour session for personnel E-2 through E-5 and provides a basic awareness of Coast Guard Addictions Program policies. Subjects covered include signs and consequences of alcohol abuse, explanations of the term "alcohol incident" and how it can affect a member's career, and available treatment resources.

first alcohol incident. The applicant was counseled on Coast Guard policy regarding alcohol abuse and underage alcohol consumption.

On October 28, 2002, the applicant was screened at a Navy Counseling and Assistance Center (CAAC). Based on the applicant's responses to the screening questions, the CAAC determined that the applicant did not meet the criteria for being alcohol dependent. Regardless, the CAAC recommending the following:

- a. Outpatient Individual and/or Group Psychotherapy.
- b. Individual or Group counseling at the Substance Abuse Rehabilitation Program.
- c. Meet with CDAR [Command Drug and Alcohol Representative] on a weekly basis.
- d. Attend a minimum of 1 Alcoholics Anonymous meeting per week.

On November 18, 2002, the applicant was examined by a medical officer. The medical officer also determined that the applicant did not meet the criteria for being alcohol dependent. The medical officer concurred with the CAAC's recommendation for outpatient treatment including individual counseling and group therapy.

On November 25, 2002, the applicant advised in writing that he was being offered an opportunity to attend an outpatient treatment program. He was also advised that declining treatment might disqualify him for alcohol treatment by the Department of Veterans Affairs.

On July 10, 2004, the applicant failed to appear for the day watch at 0530. Instead, the applicant arrived at 0730 and stated that he had overslept. The Integrated Command Center Controller determined that he was too intoxicated to properly perform his duties. The applicant admitted that that he had been out drinking until 0300 and did not go to bed until 0450. The applicant was counseled by his Chief concerning his responsibilities, the Coast Guard Core Values, and the possible consequences of his actions. He was referred to the Command Drug and Alcohol Representative (CDAR) for evaluation. This was considered the applicant's second alcohol incident. He was advised that he could be processed for separation from the Coast Guard due to continued alcohol abuse.

On May 20, 2005, a counselor sent the applicant's physician a letter. The counselor stated that the applicant had been referred to her for an alcohol screening. The counselor noted the following:

[The applicant] informed [me] that he had recently been late for work, and there was suspicion of alcohol involvement. He had an alcohol-related incident in his previous command, in which he admitted that he had exceeded his normal drinking limit. Since then, he has successfully cut down on the amount of alcohol he drinks. He has had no adverse effects on his drinking in his personal or military life.

The counselor determined that the applicant did not meet the clinical criteria for either substance abuse or substance dependence. The counselor recommended that the applicant be enrolled in a Level 1-type psychoeducational course to educate him on the effects of continuing to drink in this manner.

On May 25, 2005, the applicant underwent an alcohol screening by his physician. The physician also determined that the applicant did not meet the criteria for alcohol dependency. But the physician recommended that the applicant attend Alcoholics Anonymous meetings.

On December 8, 2005, the applicant was charged with three violations of the Uniform Code of Military Justice: 1) attempt⁶; 2) wrongful use, possession etc. of controlled substance⁷; and 3) soliciting another to commit an offense.⁸ These charges stemmed from events that occurred between December 5, 2005, and December 8, 2005, that involved the distribution of 1.2 grams of marijuana on a Coast Guard installation. That same day, the applicant was placed in pre-trial confinement pending trial.

On January 6, 2006, the applicant's charges were referred for trial to a special court-martial and the applicant was notified in writing.

On January 19, 2006, the applicant sent a letter to his Commander requesting to be discharged: "I hereby request a discharge under other than honorable conditions for the good of the Service in lieu of trial by court-martial under circumstances which could lead to a bad conduct discharge." In his letter, the applicant acknowledged the following: 1) he had consulted with counsel; 2) an OTH discharge might deprive him of all veterans' benefits; 3) the request could only be withdrawn with the consent of the Commander (epm-1); 4) he could submit a statement on his own behalf; and 5) his request was voluntarily submitted.

On January 20, 2006, the applicant's captain sent the Coast Guard Personnel Center (CGPC-epm-1) a letter. In the letter, the captain forwarded the applicant's request for an OTH discharge for the good of the service. The captain stated that the OTH discharge would be in lieu of trial by special court-martial for alleged misconduct that could result in a punitive discharge. The captain believed that an OTH discharge was in the Government's best interest and would provide an expeditious resolution to the matter. The captain recommended that the applicant's request be approved. On January 30, 2006, the applicant's Commander endorsed this request for discharge.

On February 2, 2006, the Coast Guard Personnel Command issued a Separation Authorization for the applicant, which stated as follows:

Discharge member no later than the effective date indicated above with under other than honorable conditions for the good of the service under Article 12.B.21. PERSMAN in lieu of trial by court martial.

On February 23, 2006, the applicant was discharged in accordance with Article 12.B.21. of the Coast Guard Personnel Manual. His DD-214 shows "under other than honorable conditions" (OTH) as the character of discharge; "triable by court martial" as the narrative reason for separation;

⁶ Article 80, UCMJ

⁷ Article 112a, UCMJ

⁸ Article 134, UCMJ

RE-4 (ineligible for reenlistment) as his reenlistment code; and KFS (triable by court-martial) as his separation code. The applicant signed his DD-214.

VIEWS OF THE COAST GUARD

On September 18, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she 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).

PSC argued that the application is not timely. Further, PSC argued that the applicant had not demonstrated an error or injustice in his discharge processing. Military medical screening had determined that the applicant was not alcohol dependent. However, he was still afforded the opportunity to attend treatment, counseling, and Alcoholics Anonymous. The applicant apparently did not take any action to utilize these programs.

PSC stated that the applicant was facing three separate charges involving the use, possession, and distribution of marijuana at court-martial. PSC alleged that the applicant voluntarily waived his right to a trial by court-martial with the understanding that the administrative separation he was requesting could have long-term negative consequences.

The JAG reiterated that the application is not timely. The JAG also argued that the Coast Guard was not obligated to order the applicant to attend rehabilitation. The applicant's record does not support his allegation that he was considered to be alcohol dependent. As such, the Coast Guard had no obligation to order the applicant to do anything related to the treatment of any perceived alcohol dependency.

Additionally, the JAG argued that the Doctrine of Laches should apply because the applicant's thirteen-year delay in submitting his application has severely limited the Coast Guard's ability to obtain necessary evidence to determine if his record should be corrected. For example, statements from those who would have firsthand knowledge of the facts are unavailable because those members are no longer in the Service. Additionally, documents relevant to the applicant's arrest and subsequent plea agreement are missing from his Personal Data Record (PDR). The JAG cannot determine whether these documents were never created or were created but not entered in his PDR because he requested an administrative OTH discharge for the good of the service in lieu of trial by court-martial. The JAG argued that without these documents, it is impossible to determine whether the applicant was entrapped and whether his due process rights were afforded to him after his arrest. However, the JAG argued that these arguments are without merit based on the available records:

- 1) Applicant was represented by counsel; 2) Applicant's attorney is presumed to have acted appropriately at all times⁹; 3) Applicant's attorney would have recommended that the charges be dismissed due to alleged entrapment (affirmative defense) vice recommendation of a plea agreement; 4) Applicant's attorney, though bearing designation as USNR (US Navy Reserve) does not mean that he was part-time; 5) the fact that Applicant's attorney was not in the Coast Guard is irrelevant as it is assumed that his attorney was certified under Art. 27, UCMJ; and 6) Applicant

⁹ 33 C.R.F. § 54.24(b)

voluntarily and knowingly pled guilty to the use, possession, and distribution of marijuana and the wrongful solicitation to distribute cocaine.

The JAG argued that all of the applicant's charges could have led to a maximum punishment at a special court-martial as follows: 1) bad conduct discharge; 2) one year of confinement; 3) forfeiture of 2/3 pay for up to 12 months; and 4) reduction to E-1. The JAG presumed that the applicant's attorney advised him of the maximum potential punishment and that this contributed to the applicant's decision to request an OTH discharge in lieu of trial by court-martial.

The JAG stated that the Coast Guard is a Federal Law Enforcement Agency and does not condone the use of illegal drugs. The Coast Guard's position on the use of illegal drugs is written in all known personnel manuals. The applicant's personal problems did not justify the use of illegal drugs.

The JAG concluded by stating that the Coast Guard does not have a policy that permits the upgrade in characterization of service due to post-service conduct. The JAG noted that even if the applicant had lived his life without issue since his discharge, he committed a crime that led to his discharge and he must be held accountable for his actions.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 21, 2019, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. In his response, the applicant explained the delay in his application by stating that he was never informed that he could appeal. He was encouraged to apply to the Board by his father-in-law, a disabled Vietnam veteran, who believed his arrest was entrapment because "no law enforcement officer can entice a person to commit a crime."

In response to the JAG's argument that they are unable to locate evidence because of the delay in submitting the application, the applicant stated that evidence is not supposed to vanish. He argued that if the JAG were to locate evidence regarding his arrest, that evidence would show that there is a question about the legality of his arrest.

The applicant concluded by stating that he made mistakes when he was younger. However, since his arrest, he has stayed on the "straight and narrow." He asked the Board to take his whole life into consideration rather than just his mistake.

APPLICABLE LAW AND POLICY

Chapter 2 of the Coast Guard's Health Promotion Manual discusses the Addiction Treatment and Prevention Program in relevant part:

C. Definitions and Commonly Used Terminology.

...

5. Aftercare. A required program of ongoing therapy for alcohol dependent members following formal inpatient/outpatient alcohol rehabilitation treatment.

8. Alcohol Abuse. A maladaptive pattern of alcohol use that meets the following criteria as published in the Diagnostic and Statistical Manual, Fourth Edition (DSM), code number 305.0.

9. Alcohol Dependence. A diagnosis made by a physician or psychologist using the criteria as published in DSM, code number 303.9.

F. Levels of Treatment: Continuum of Care Model.

1. Education. The first intervention level towards treatment in the Continuum of Care model is education. All personnel shall be familiar with Coast Guard policy regarding alcohol/drug use, abuse, and dependency. Any member involved in an alcohol incident or situation where treatment is not recommended should attend alcohol awareness education program such as the 20-hour Navy PREVENT or Coast Guard SAFE Alcohol-IMPACT course, or community-sponsored program. Such programs normally require only local travel and charge minimal (or no) fees.

2. Outpatient Rehabilitation. Personnel recommended for outpatient treatment due to a diagnosis of alcohol abuse will normally be referred to outpatient care at a Navy CAAC or ATF. All U.S. Navy CAACs and ATFs are supervised by and work for medical treatment facility. Each facility follows a treatment model from the continuum of Care. Treatment lengths vary depending on the individual's degree of returning to their commands may require local outpatient care, as determined by the treatment facility and the MLC(kma). The MLC APR must approve all requests prior to member's start of treatment.

Article 12.B.2.f. of the Coast Guard Personnel Manual in effect in 2006 discusses the standards for discharge in relevant part:

3. Discharge Under Other Than Honorable Conditions. The Service may issue a discharge under other than honorable conditions for misconduct, security reasons or good of the Service if an administrative discharge board approves a recommendation for such a discharge or the member waives his or her right to board action. Such a discharge will be issued in lieu of trial by court-martial only if the Commandant determines an administrative discharge will best serve the interests of both the Service and the member.

Article 12.B.21. of the Coast Guard Personnel Manual in effect in 2006 discusses discharge for the Good of the Service in relevant part:

a. Request for Discharge. An enlisted member may request a discharge under other than honorable conditions for the good of the Service in two circumstances: in lieu of UCMJ action if punishment for alleged misconduct could result in a punitive discharge or at any time after court-martial charges have been preferred against him or her.

Article 20.A.1.c. of the Coast Guard Personnel Manual in effect in 2006 discusses the objectives of the Coast Guard's substance and alcohol abuse prevention program:

1. Reduce the incidence of substance and alcohol abuse by Coast Guard members;
2. Detect and separate from the Coast Guard those members who abuse, traffic in, or unlawfully possess drugs; and
3. Facilitate the identification, treatment, and rehabilitation of members who are found to be chemically dependent on drugs or alcohol prior to discharge from the Coast Guard.

Article 20.B.2. of the Coast Guard Personnel Manual in effect in 2006 discusses the guidelines on alcohol abuse in relevant part:

e. Alcohol Screening. Any member who has been involved in an alcohol incident or otherwise shown signs of alcohol abuse shall be screened in accordance with the procedures outlined in the Health Promotions Manual, COMDTINST M6200.1, Ch 2. The results of this alcohol screen shall be recorded and acknowledged on a CG-3307 entry or letter, as appropriate, in the member's PDR with a copy to Commander (CGPC-epm) or (CGPC-opm), as appropriate, and (CGPC-adm-3). The entry shall describe the facts of the incident or risk factors, the results of alcohol screening, the position and organization of the individual conducting the screening, and a statement of the treatment recommended, if any.

...

g. First Alcohol Incident. The first time a member is involved in an alcohol incident, except those described in Article 20.B.2.f., the commanding officer shall ensure this counseling is conducted; for enlisted members recorded on a CG-3307 entry in the member's PDR; acknowledged by the member; and a copy sent to Commander (CGPC-epm) and (CGPC-adm-3). For officers the record of counseling shall be by letter with copy to Commander (CGPC-opm) and (CGPC-adm-3). This entry is in addition to that required by Article 20.B.2.e.

1. The member shall be counseled on Coast Guard policy on alcohol abuse contained in this article.

...

3. If the incident involves underage consumption, the CG-3307 shall also state the circumstances of the incident and whether the consumption affected the member's ability to perform assigned duties or brought discredit upon the Uniformed Services.

h. Second Alcohol Incident.

...

2. Enlisted members involved in a second alcohol incident will normally be processed for separation in accordance with Article 12.B.16.

a. Commanding Officer retain the authority to request retention of those enlisted members who they believe warrant such exception. However, retention of enlisted members following a second alcohol incident should not be considered a routine action. In those cases when a commanding officer feels that mitigating circumstances or an exceptional situation warrants consideration for retention, a letter request for retention and treatment, including the medical screening results, treatment plan, and commanding officer's recommendation concerning treatment shall be forwarded via the chain of command to Commander (CGPC-epm) who shall consult with Commandant (G-WKH) and direct the appropriate action regarding retention. The command recommendation for retention will be submitted as a cover letter to the required discharge package.

...

c. Only after serious consideration, will enlisted members described in Article 20.B.2 f., be retained beyond a second alcohol incident. These members have already received one exceptional retention and have belied the faith placed in them.

...

k. Unsuccessful Treatment. Members refusing to undergo the treatment the commanding officer and competent medical authority deem necessary, failing to complete this treatment, or violating an alcohol rehabilitation aftercare plan normally are processed for separation.

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.¹⁰ The applicant was discharged in 2006 and received and signed his DD-214 showing an under other than honorable (OTH) conditions discharge at the time. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in 2006, and the application is untimely. However, the Board may excuse the untimeliness of an application if it is in the interest of justice to do so,¹¹ and the Board will excuse the untimeliness in this case because the applicant's request falls under the Board's "liberal consideration" guidance since the applicant is challenging his type of discharge based in part on an alleged mental health problem.¹² Therefore, the Board waives the statute of limitations in this case.

3. The applicant alleged that the OTH discharge is erroneous and unjust because a mental health condition—alcohol addiction—caused or contributed to the behavior that resulted in the discharge. 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 record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.¹³ 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."¹⁴ And under the "liberal consideration" guidance, when deciding whether to upgrade the discharge of a veteran based on an alleged 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) actually excused the misconduct that adversely affected the discharge; and, if not, whether the mental health conditions outweigh the misconduct or otherwise warrant upgrading the veteran's discharge.¹⁵

4. The applicant alleged that his character of service should be upgraded because he suffered from alcohol abuse/alcohol dependence while in the Coast Guard and that caused the misconduct that led to his OTH discharge. Alcohol abuse and alcohol dependence are medical terms that require a diagnosis from a medical professional. According to the applicant's record, he underwent four separate examinations by medical professionals. In each examination, the applicant did not meet the criteria for being alcohol dependent. Further, the only examination that discussed alcohol abuse determined that he also did not meet that criteria. While the applicant may have drunk too much alcohol occasionally, his military record does not support his allegation that he suffered from alcohol abuse/alcohol dependence while in the Coast Guard. Further, he has provided no medical evidence that he was diagnosed with alcohol abuse/alcohol dependence after he was discharged. Therefore, the Board finds that the applicant did not suffer from a mental health

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

¹¹ 10 U.S.C. § 1552(b).

¹² 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).

¹³ 33 C.F.R. § 52.24(b).

¹⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

¹⁵ *Id.*

condition while in the Coast Guard. But even if the applicant had proven that he suffered from untreated alcohol abuse/alcohol dependence while in the Coast Guard, that would not excuse his possession, use, and distribution of marijuana. As the JAG noted, the Coast Guard is a law enforcement agency and does not tolerate the use of illegal drugs.

5. The applicant argued that an OTH discharge was unjust because he would not have been facing a special court-martial had the Coast Guard ordered the applicant to complete treatment for alcohol abuse/alcohol dependence. As discussed above, there is no evidence that the applicant suffered from alcohol abuse/alcohol dependence while he was in the Coast Guard. Further, the record shows that the Coast Guard followed protocol after the applicant's alcohol incidents. According to Article 20.B.2. of the Coast Guard Personnel Manual in effect at the time, after the applicant's first alcohol incident, he received an alcohol screening and the results of the screening and recommended treatment were recorded on a Page 7. Because the applicant did not meet the criteria for being considered alcohol dependent, no further action was required by the Coast Guard. Regardless, the Coast Guard recommended that the applicant attend outpatient treatment. However, the record suggests that the applicant denied treatment. As the treatment was not deemed necessary by medical authorities, there were no required repercussions for the applicant's apparent refusal to seek treatment. Therefore, the Board finds that the Coast Guard did not commit an error or injustice by failing to require that the applicant undergo treatment for alcohol abuse/alcohol dependence.

6. The applicant argued that his arrest was unjust because it was the result of illegal entrapment by an undercover Coast Guard agent. The applicant has submitted no evidence to support this allegation. While the Coast Guard is unable to locate evidence regarding the applicant's arrest and subsequent plea agreement, the applicant's voluntary request for an OTH discharge is evidence that the Coast Guard acted legally. After consulting with legal counsel, the applicant, voluntarily and in writing, requested separation from the Coast Guard in lieu of trial by special court-martial. The Board agrees with the Coast Guard that had there been evidence of entrapment or a lack of due process, the applicant's counsel would have advised him against such request. The Board therefore finds no grounds for upgrading the characterization of his discharge.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

April 3, 2020

