

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-068


SNYN (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 March 27, 2021, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated October 27, 2023, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT’S REQUEST & ALLEGATIONS

The applicant, a former Seaman Yeoman (SNYN/E-3) who received a General – Under Honorable Conditions discharge¹ on August 7, 2009, pursuant to an administrative discharge for misconduct, asked the Board to correct her record by upgrading her discharge from a General—Under Honorable Conditions to Honorable.

The applicant stated that although she served on active duty for almost three years, until 2015, she did not consider herself a veteran. The applicant explained that to this day, she is still hesitant and uncomfortable talking about her military service. The applicant claimed that she feels ashamed, like she wants to “crawl in into a hole,” whenever others excitedly tell someone that she was in the Coast Guard. According to the applicant, she feels this unexplainable urge to tell everyone who finds out that she was in the Coast Guard her entire story—mostly how she was kicked out—so they do not accidentally mistake her for a hero, or someone awesome, cool, or a decent person because she does not deserve it.

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.

The applicant claimed that every time someone mentions military sexual trauma (MST), Post Traumatic Stress Disorder (PTSD), depression, or anxiety, she feels like a fraud because she did not deserve to be called a service-connected veteran and receive help because strong brave men—men that she knew—went to war and came back with their faces burned off and bullets in their heads. The applicant stated that she knew men who were buried under concrete and rebar rubble for hours until help arrived, and men who lost everyone and everything, and her mind tells her she does not deserve to be compared to those men. The applicant alleged that whenever she gets caught up in a conversation about someone else's military service and she wants to tell them about all the cool things she did or was a part of, she feels like a complete loser and that it would probably be best if she did not say anything. The applicant stated that she wished she could completely erase those years of her life.

However, the applicant stated that joining the military saved her life and was the best decision she ever made. The applicant explained that the military taught her more about the real world than anything else she could imagine and that she strongly encourages anyone of age to enlist because it would be the best thing they could do for themselves. The applicant stated that she is exuberantly proud to be a Coast Guard veteran, and she gets teary-eyed when she hears the Coast Guard anthem.

The applicant claimed that she remembers things about bootcamp, like when she was at the range and the instructor put his arms around her, put his head on her shoulder, and pressed his body into hers to help her aim. The applicant further claimed that she remembers when her company commander said that she was "too pretty" to be there and she remembers being catcalled and harassed throughout her insignificant career. The applicant stated that she did not mind because it was a fact of life, but what she did care about was when she had to go to a captain's mast for NJP and describe before the entire Base the events surrounding her now diagnosed service-connected MST. The applicant further stated that she cared about having to show up to work with a black eye or busted lip that she received from a male shipmate. According to the applicant, she cares now because she was too young and dumb to care then. She claimed that at the time, she had no idea what was happening because her life was a total blur. The applicant alleged that she did not have legal representation and she does not recall ever waiving that right. The applicant claimed that not a single person explained anything to her.

The applicant explained that what she knows she learned working in peer support and helping veterans connect with local resources.² While she cannot change the past, she would like to improve her future and the future of her children by receiving an upgraded discharge.

The applicant alleged that the Coast Guard failed her, but she did not fail the Coast Guard. She entered the Coast Guard headstrong and advanced from an E-1 to and E-4 in less than two years. The applicant alleged that she wanted to do law enforcement and work on Coast Guard 110s,³ but there was no room for females. Instead, she was assigned to a small boat station two

² The applicant spent a great deal of time in her personal statement going over her resume and work after leaving the Coast Guard. However, this information is not pertinent to her allegations that MST contributed to her misconduct and will therefore not be summarized. Accordingly, only those portions of the applicant's personal statement that are relevant to her discharge and requests will be summarized.

³ 110s are Coast Guard Island-Class Patrol cutter.

hours from the hometown she was trying to leave behind. The applicant stated that she wanted to save lives out on the water and eventually retire, but instead she was sexually harassed, along with another non-rate, by an E-8 Reservist. The applicant stated that she now understands that because she did not get adequate mental health treatment for being sexually harassed, in addition to other related issues, she quickly began self-medicating and nearly ended up in jail. The applicant explained that she got a black eye and busted lip, but her command told her they did not want to look at her and sent her home for the day.

The applicant alleged that when she moved next door to the boat station, she was greeted by potheads, plain and simple. She never named names and did not pull them down with her, but the truth is that her entire unit was smoking marijuana and that is where she got hers from. The applicant alleged that when she was going through her divorce, her ex-husband pretended to be her friend, and when she confided in him that she had been smoking marijuana to self-medicate, he called her command and told them what she had been doing. The applicant stated that the shipmate who gave her the marijuana was assigned to help conduct the urinalysis and watched her pee in a cup. The applicant claimed that while many of her shipmates went into work drunk, she never reported for duty high, but after her reported use of marijuana, she never stood watch again. The applicant alleged that by any other standards she would have passed the drug test because her THC levels were not that high, but the Coast Guard is allowed to do whatever they want, and they chose to throw her to the curb. The applicant stated that she lost her uniform, her benefits, her pride, and her dignity, and became an unemployed single mother.

The applicant claimed that after her discharge, she gave up on herself. She stated that she became the person the Coast Guard told her she was, but after realizing the Coast Guard's view of her was a lie, she pulled herself together, worked hard, and earned a college degree. The applicant alleged that she has not smoked marijuana or used any other drugs in years, and she did not need rehab and is not in "recovery." The applicant explained that she finally received the help she needed to deal with her MST and at the same time realized she was just another statistic and that her story was the same as that of many others who had served in the military. She alleged that she has friends that "popped" hot for meth more than once while serving in the Army and Marines who were deserters, but were allowed to come back and continue serving. However, she stated, the Coast Guard eats their own, mistreats their female members, and makes them feel like they are the perpetrators rather than the victims they are. The applicant claimed that if we want to improve the Coast Guard, we can start by upgrading her discharge from General—Under Honorable Conditions to Honorable. She further stated we can start by making sure that men and women alike get the adequate mental health treatment that they need and by talking to all Coasties and asking them what they are going through.

The applicant claimed that when she was in the Service she was healthy, and it was not until the Coast Guard had its way with her that she really became ill. She stated that she praises God every day for pulling her out of that darkness and helping her become her true self again. The applicant claimed that for a short time her life was hell, but thanks to the support of individuals outside of the Coast Guard, she was able to get the help she needed for her depression and anxiety. The applicant stated that she is here because she knows she served her country honorably. She further stated that she hopes that the Board will agree that the Coast Guard could have done more

to help her. The applicant explained that she is the same person that she was when she joined the Coast Guard all those years ago, except she is now much wiser.

The applicant argued that it would have been cheaper for the Coast Guard to keep her because she is now 70% disabled for life due to her service-connected PTSD.⁴ According to the applicant, she would have been a Chief by now and a really good one, and one of her wishes is that her discharge be upgraded to Honorable because she did serve honorably. The applicant explained that her upgraded discharge would allow her to continue to serve and let others know there is hope.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 5, 2006, at age 19. The same day, she signed an Administrative Remarks Page CG-3307 (“Page 7”) wherein she was 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.” The applicant further acknowledged her understanding that she is “not able to use, possess, or distribute illegal drugs, drug paraphernalia or hemp oil products.”

On November 9, 2006, after completing recruit training, the applicant was transferred to a search and rescue station collocated at a Base with other units. At some point while stationed at this unit the applicant was allegedly sexually harassed by a senior enlisted reservist.

On April 28, 2008, after receiving her rating designator as a yeoman (YN), the applicant was transferred to a Coast Guard office in the same city.

On April 1, 2009, the applicant submitted to a urinalysis, and on April 8, 2009, the applicant’s Command was notified that the applicant’s urine sample had tested positive for marijuana (THC) at a level of 28 ng/ml.⁵

On May 6, 2009, the applicant was seen by a mental health specialist and diagnosed with Panic Disorder without Agoraphobia. During this mental health meeting, the applicant reported that her parents divorced when she was 13 years old and that her father had recently been arrested for the sexual assault of a minor. The applicant also reported that she had been raped at 16 years old, that she had a long history of polysubstance abuse, and that she had recently tested positive

⁴ According to the Diagnostic and Statistical Manual of Mental Health Disorders (DSM-5), the primary requirement for a diagnosis of PTSD is—

Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:

1. Directly experiencing the traumatic event(s).
2. Witnessing, in person, the event(s) as it occurred to others.
3. Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental.
4. Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (e.g., first responders collecting human remains; police officers repeatedly exposed to details of child abuse).

⁵ This information was obtained from the applicant’s Non-Judicial Punishment Court Memorandum. The military cut-off for a positive test is 15 ng/ml.

for marijuana. However, the applicant also stated that she had not used drugs since she enlisted. The applicant stated that she was not taking her psychotropic medications due to having recently undergone plastic surgery.

On June 2, 2009, the applicant was taken to mast for non-judicial punishment (NJP) because of her drug use. According to the applicant, when asked if there were any circumstances mitigating her drug use, she told her commanding officer (CO) that she had been sexually harassed at her previous duty station. At this point, the CO considered not only the applicant's sexual harassment, but other personal circumstances she spoke about, such as her father's arrest for the sexual assault of a minor, as mitigating circumstances. Nevertheless, the applicant was found guilty at Captain's Mast of violating Article 112a—Wrongful Use of a Controlled Substance of the Uniform Code of Military Justice (UCMJ). She was reduced in rank from E-4 to E-3.

Also on June 2, 2009, the applicant's CO issued her a memorandum, "Notification of Discharge," wherein he notified the applicant that in accordance with Article 12.B.18.b.4. of the Coast Guard Personnel Manual, COMDTINST M1000.6, he was initiating the necessary action to discharge the applicant for misconduct due to her wrongful use of a controlled substance. The applicant was informed that she had the right to make a statement on her own behalf and that she had the opportunity to consult with an attorney.

On June 9, 2009, the applicant submitted a First Endorsement wherein she acknowledged the notification of her proposed discharge and elected to submit a statement in response to the discharge. The applicant acknowledged that if she were to receive a General discharge, she should expect to encounter prejudice in her civilian life. The applicant also acknowledged her right to consult with an attorney. Finally, the applicant objected to her discharge. The applicant's personal statement, submitted in conjunction with the First Endorsement is summarized as follows:

I would like to submit this statement along with my statement from my recent NJP. I do not wish to repeat myself in this statement but only deny that I openly accept discharge from the United States Coast Guard. I do not wish to be discharged from the Coast Guard and desire that my case be looked at closer as my medical record indicates that what I was going through at the time of the offense, withdrawal from many medications and multiplied stress with my diagnosed medical condition, conflicted with my normal state of being. I do not deny that I used marijuana, as you will also see in my NJP statement. I do regret it however, and request that my medical condition and recent experiences be brought into consideration. I want to be in the Coast Guard. I was a dedicated YN and would like [to] have the opportunity to continue building my Coast Guard career. The military is currently my only source of income, and I am a single mother. I know the difference between right and wrong and am fully aware of what the UCMJ states about the illegal use of drugs. I can never take this back but do not feel that one mistake solely, especially under my circumstances, is any reason to discharge an educated, hard-working, normally positive, motivated, dedicated, deserving Coastie. Attached you will find a statement from my therapist as to my medical condition. Please also consider that I have not had an opportunity (time wise) to improve with this condition, I feel that no matter what a Coast Guard member does they deserve the best medical treatment before being discharged. I am currently attending therapy and psychiatry, and would like to continue these sessions before moving on with my life. If I must, as it would put a hardship on my future functionality on the outside. Please consider what I have requested before not saving the Coast Guard from a criminal or ill-committed member of the service, but a normal, functioning and proud member of our beloved Coast Guard.

On June 18, 2009, the applicant's CO issued a memorandum, "Request for Administrative Discharge," wherein he recommended to Commander, Personnel Service Center (PSC) that the applicant be administratively discharged in accordance with Article 12.B.18.b.4. of Coast Guard

Personnel Manual, due to her wrongful use of a controlled substance. However, the CO recommended that the applicant receive an Honorable discharge because of the evaluation marks since her enlistment. The CO also requested that the applicant receive special consideration for receiving an Honorable discharge. The CO stated that the applicant had been a devoted member of the Coast Guard but was not always treated with the same loyalty and respect. The following is an excerpt from the CO's request:

Prior to my arrival in May 2007, she was initially attached to [redacted] and was sexually harassed by a senior reservist from [redacted]. A few months after my arrival, I remember receiving a phone call from ISC [redacted] asking why I did not make sure she was afforded counseling, and why work life was not informed. At the time I remember responding by indicating she was not from my command and should call station [redacted] about the issue. In that I am responsible for supporting over 2300 active duty and reserve members; thousands of DoD, dependents, retirees, disabled veterans and others; Base security to 14 tenant units and have my own command without an Executive Officer; I moved on to the next several crises of the day and soon forgot about the member or the issue.

During the winter of 2007 through 2008, I was informed of a non-rate from station [redacted] that wanted to strike YN at SFO [redacted]. We worked with the applicant who successfully struck third class and although I didn't remember she was the person who was previously sexually harassed, I remember being told she excelled on the test and even notified the test editors of errors that existed on the test. It was this type of excellence that is indicative of [Applicant]. Shortly thereafter, she had a child and as a single mother still performed as required and never complained or asked for special consideration. For example, she always performed her job to the best of her ability, stood duty in a 1 in 5 rotation on average as required of everyone at the unit and worked long hours as required to service our customers. In addition, she upheld the Coast Guard's requirements of All Threats, All Hazards, Always Ready. When SFO [redacted] prepared and evacuated for five hurricanes during the 2008 hurricane season, including hurricane [redacted], she was there. She worked seven days a week for several weeks as did the rest of us during the preparation, response and recovery phases to hurricane [redacted] without seeing family or her child in order to execute the mission.

...

SNYN [Applicant] had been experiencing emotional challenges since December 2008, but was afraid to seek counsel from her male supervisors. Her prior harassment issues had never been addressed by her previous command, forgotten by me, and due to the workload, was continually pushed to get the job done. Therefore, she turned to the one person who she thought she could trust, the father of her child. However, he was very manipulative and purposely advised her to smoke marijuana for medicinal purposes, knowing that it would hurt her career and then reported the incident to us immediately. Therefore, I believe that the CG has let SNYN [Applicant] down. It was not until the investigation surrounding her use of marijuana that the sexual harassment incident surfaced and reminded me of the situation. As I think back to that phone call in 2007, I quickly wrote down the names of approximately 30 people from units outside SFO [redacted] and about five others from SFO [redacted] that needed my help. There were many others of whom I don't remember, but also helped in many cases. In each of those cases, I spent hours, weeks and sometimes months of my time trying to improve those members' situations with some still resulting in discharges based upon my recommendations. But regardless of the outcome in those cases, I spent the time, and I remembered their names, however, I did not spend the time back in 2007 for SNYN [Applicant].

Therefore, I believe the CO has not provided SNYN [Applicant] the proper care and support following her harassment which was exasperated by the stresses brought about by hurricane [redacted] and eventually led to her poor decision. I do not condone her actions, but believe that her hard work and dedication to the Coast Guard are worthy of special consideration and deserving of an honorable discharge.

On June 29, 2009, the Sector Commander submitted a First Endorsement wherein he endorsed the CO's recommendation for discharge for misconduct. The Sector Commander stated that the applicant's sole evaluation supported an Honorable discharge, but pursuant to Article

12.B.18.b. of the Coast Guard Personnel Manual, COMDTNST M1000.6, she should receive a General discharge.

On July 9, 2009, the District Commander issued a Second Endorsement wherein he endorsed the recommendation for discharge. However, the District Commander recommended that the applicant receive a General discharge due to the applicant's involvement with drugs.

The applicant was discharged on August 7, 2009, with a General—Under Honorable Conditions characterization of service, a narrative reason for separation of "misconduct," and a separation code of JKK.

On October 13, 2009, the applicant applied to the Discharge Review Board (DRB) for an upgrade to her discharge.

On January 14, 2010, the DRB issued its findings and conclusions and stated that after reviewing the records, supporting documents, facts and circumstances unique to the case, they concluded that the applicant's General discharge was proper. The DRB's discussion and conclusion is summarized below:

The applicant was discharged for misconduct. On 5 September 2006 she acknowledged the Coast Guard policy on illegal drug use. The applicant tested positive for THC (marijuana) on a urinalysis on April 1, 2009. The applicant admitted to illegal drug use and acknowledged her mistake. Her command recommended special consideration for an honorable discharge due to mitigating circumstances related to previous sexual harassment and issues with her sister. The discharge authority prescribed a General "Under Honorable Conditions" discharge.

While the applicant presents arguments regarding her sister's rape, and has a previous incident of sexual harassment, policy prescribes for no higher than a general discharge for involvement with drugs. The applicant's case was reviewed for special consideration for an honorable characterization of service pursuant to PERSMAN 12.B.2.f.1.f and the discharge authority deemed that a General "Under Honorable Conditions" discharge was appropriate. The Board concurs with the assigned character of service. While the applicant presents issues that may have led to her voluntary drug use, these do not negate the seriousness of her misconduct related to illegal drug use. The applicant is seeking an upgrade to garner eligibility educational benefits, however her General "Under Honorable Conditions" discharge is consistent with policy and not inequitable.

The Board members thoroughly reviewed the applicant's record of service and all available documentation and deemed that the applicant's reason for separation and reenlistment code are appropriate and should not be changed, the applicant has not substantiated any error or inequity.

VIEWS OF THE COAST GUARD

On October 26, 2021, a Judge Advocate (JAG) for 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 PSC.

The JAG argued that the applicant's claims should not be eligible for liberal consideration pursuant to 10 U.S.C. § 1552(g) in light of DHS's guidance. The JAG stated that while the applicant does not specifically aver that liberal consideration guidance should be applied to her request for an upgrade discharge, she did include a service-connected diagnosis of Post Traumatic

Stress Disorder (PTSD) from the Department of Veterans Affairs (VA), as well as claims of sexual harassment and MST. The JAG stated that because the applicant was diagnosed with a mental health condition while serving in the Coast Guard, the Coast Guard sought a psychological opinion. Dr. O acknowledged the applicant's in-service sexual harassment and mental health conditions but stated that he was unable to opine on a correlation between the applicant's mental health conditions and her misconduct with the available documentation. The JAG argued that the applicant's chain of command was aware of her mitigating circumstances and took her mental health conditions into consideration when it ultimately decided her characterization of discharge. The JAG further argued that the DRB was also aware of the applicant's mitigating circumstances when it denied her request for an upgraded discharge.

The JAG claimed that the applicant's facts seem at odds with DHS's guidance on liberal consideration, found in paragraph 7(f) of the Delegate of the Secretary's June 20, 2018, memorandum. Specifically, the JAG argued that paragraph 7(f) states that liberal consideration is appropriate because an error or injustice may have occurred if "the separation authority was unaware of their condition or experience ... at the time of the separation." The JAG explained that while the separation authority was unaware of an official diagnosis of PTSD at the time of the applicant's discharge, they were aware of the applicant's mitigating circumstances affecting her mental health and behavior when they made their decision on the character of discharge the applicant was entitled to receive. Moreover, the JAG argued that while the applicant may have been experiencing mental health issues related to her sexual harassment, the applicant's decision to utilize an illegal drug to self-medicate was deliberate and not minor misconduct. The JAG stated that use of illegal drugs, including marijuana, is a criminal offense under the UCMJ. The JAG claimed that these factors cannot be reconciled with DHS's liberal consideration guidance with regards to excusing only minor misconduct and not premeditated misconduct. Accordingly, the JAG stated that while the VA may have found the applicant suffered from service-connected PTSD and the record shows the applicant was suffering from a mental health condition at the time of her discharge, these facts should not outweigh the informed decisions of the Coast Guard and the DRB.

The JAG argued that the applicant failed to submit a timely application and failed to show why it was in the interest of justice to excuse the delay. The JAG stated that assuming the applicant is not entitled to liberal consideration, which could toll the statute of limitations, 10 U.S.C. § 1552 sets forth the procedures governing applications to this Board. The JAG argued that under this law, "[n]o correction may be made ... unless the claimant or his heir or legal representatives files a request for the corrections within three years after he/she discovers the error or injustice. However, [the] Board ... may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice." In determining if it is in the interest of justice to waive the statute of limitations on applications, the Board has been directed to "consider the reasons for the delay and the plaintiff's potential for success in the merits, based on a cursory review..."⁶

The JAG explained that here, the applicant attempts to justify the delay by claiming that she was "[r]ecently diagnosed with service-connected PTSD from the VA ... was severely depressed, panic attacks frequently in service." The JAG argued that this should not be viewed as a sufficient justification for an almost ten year delay between when the applicant received her final DRB decision and her application for relief to this Board. The JAG further noted that the

⁶ *Allen v. Card*, 799 F. Supp. 158, 166 (D.D.C. 1992).

applicant's alleged mental health issues, which she allegedly suffered while she was still in the service, did not stop her from timely applying to the DRB. The JAG stated that the applicant did not seem to explain why she waited the amount of time she did except for the 2018 diagnosis of PTSD from the VA. However, the JAG argued that this comes long after her discovery of the alleged error or injustice and the statute of limitations to apply for relief.

The JAG claimed that the applicant did not provide a sufficient justification for not applying for relief within the three years of the DRB's denial of her request or approaching the VA within the proper time period to try and obtain this diagnosis in a timely fashion. Furthermore, the JAG argued that the applicant's diagnosis of a mental health condition is not necessarily new evidence that the separation authority and the DRB were not aware of. The JAG explained that while the applicant had not yet been diagnosed with PTSD at the time of the applicant's separation and subsequent DRB application, these authorities were aware of the applicant sexual harassment and the mitigating circumstances affecting the applicant's mental health that surrounded her drug incident. The JAG stated that the separation authority considered the mitigating circumstances when they evaluated the applicant discharge in 2009 and the DRB did so too when they evaluated the applicant's claims in 2010. Therefore, the JAG argued that the delay of almost ten years, solely to add an official diagnosis of PTSD from the VA, should not be considered justified and the application should be considered untimely.

The JAG further argued that assuming *arguendo*, that this new official diagnosis of PTSD in 2018 does constitute good cause for the delay, this Board's inquiry into whether to waive the statute of limitations must include a cursory review of the merits to determine the likelihood that the applicant's claims will prevail. The JAG stated that if one conducts a cursory review of the merits in the applicant's case, it reveals that the applicant has failed to provide sufficient evidence to demonstrate that she would succeed on the merits or that the Coast Guard committed an error or injustice. The JAG claimed that the applicant's alleged error or injustice is that her intentional use of marijuana should be mitigated due to the circumstances that were occurring in her life at the time and the effects these events had on her mental health. The JAG explained that while there is policy to allow for the discharge authority to consider certain mitigating circumstances when deciding a characterization of service, the decision to provide an upgraded discharge is still discretionary. The JAG argued that in this case, the applicant has failed to prove that the Coast Guard committed an error or injustice in not upgrading her discharge. The JAG argued that the applicant's Command and discharge authority followed policy in regard to special consideration, and ultimately found that a General—Under Honorable Conditions characterization of service was the appropriate characterization in the applicant's case. The JAG further argued that absent evidence to the contrary, Coast Guard officials are presumed to have carried out their duties correctly, lawfully and in good faith.⁷ The JAG claimed that the applicant failed to provide evidence sufficient to overcome her burden and her requests for relief should be denied.

Coast Guard Psychiatric Opinion

Because the applicant alleged that mental health issues contributed to her discharge, pursuant to 10 U.S.C. § 1552(g)(1), the Coast Guard was required to obtain and include a medical

⁷ *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

opinion from a clinical psychologist or psychiatrist with its advisory opinion. The contents of this medical opinion are provided below:

1. Did the veteran have a mental health condition or experience a sexual assault or sexual harassment that may excuse the conduct or poor performance that adversely affected the discharge or may otherwise warrant modifying the discharge?

The veteran was diagnosed with panic disorder w/o agoraphobia and experienced documented sexual harassment, but there is insufficient information to determine whether these conditions adversely affected the discharge or warrant modifying the discharge.

2. Did the mental health condition exist or did the experience of sexual assault or sexual harassment occur during military service?

The veteran was diagnosed with panic disorder w/o agoraphobia and experienced documented sexual harassment during military service.

3. Does the mental health condition or experience of sexual assault or sexual harassment excuse the conduct or poor performance that adversely affected the discharge?

There is insufficient information to determine whether the mental health condition or sexual harassment outweigh the conduct that led to discharge.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 24, 2022, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited her to respond within thirty days. The Chair received the applicant's response on July 21, 2022.

The applicant responded to the advisory opinion by changing the date she allegedly discovered the error or injustice, from August 7, 2009—the date she provided on her original application—to November 17, 2017. The applicant claimed that on this date she attended an eight hour training where she finally realized that everything she had experienced was a symptom of untreated MST.

The applicant explained that in 2015, while she was working in a home health office, a lady came to her office and asked to speak with all of the veterans there. The applicant claimed that up until this point, she had never thought about whether or not she was a veteran and never sought services specific to veterans. She further claimed that she was hesitant to answer the lady, but sat in on the meeting that she held. The applicant explained that the lady began telling the small group about the Military Veteran Peer Network and the services they provided. She talked about Peer Support for veterans who may be experiencing PTSD, MST, or other mental health challenges that making transition from military to civilian life difficult. The applicant stated that she had never thought that maybe there were other people out there who may have experienced the same thing she did.

The applicant alleged that she did not want to consider herself a veteran because of the kind of discharge she received, and she did not understand at that time that maybe her discharge was in fact because of her experiences with MST. She claimed that she started participating in this program and attended trainings that helped her provide peer support to other veterans who may

have had similar stories to hers. After a short time of volunteering, the applicant stated that the lady in charge of the program was leaving and moving on to another job, and asked the applicant if she wanted to apply for her job as the Peer Service Coordinator. The applicant stated that she was interviewed and offered the job and for the next two years, she underwent a lot of training and met a lot of veterans with a variety of experiences. According to the applicant, this was the first time since she left the service that she spoke to anyone about her military service or theirs.

The applicant alleged that she started putting the pieces together and started to realize that what she experienced was not unique to only her. She stated that in training she learned that over 50% of all females in the military report MST and that service members are four times more likely to develop PTSD from sexual trauma than from combat. The applicant explained that MST is a unique military trauma compared to combat because combat is consistent with expectations, training, and purpose, whereas MST is not expected. The applicant alleged that MST is usually perpetrated by a fellow service member, resulting in a deep sense of betrayal, eroding unit cohesion and trust and MST survivors often feel isolated and ostracized from the community. The applicant argued that while on active duty, MST can disrupt performance and morale leading to early discharge, as well as a cascade of lifetime negative consequences. In fact, the 2012 Department of Defense workplace and gender relations survey of active duty members found that more than half of those who reported being sexually assaulted said they felt it negatively impacted their job performance and almost three out of five said it made them think about leaving the military. Thus, the applicant argued that MST is not only a devastating experience in itself, but it can make people feel trapped and terrorized ultimately ruining people's military careers.

The applicant stated that for some this can be a secondary trauma compounding the sense of isolation, depression, hopelessness, shame, and self-blame and that women veterans are three to four times more likely to become homeless than non-veteran women. The applicant claimed that the link between MST and homelessness may be due to accumulated systems, lack of financial resources, and lack of supportive family network. The applicant further claimed that MST survivors may struggle with feeling overwhelmed by external and internal stress, having to cope with chronic pain or medical problems, and unable to sleep or stop racing thoughts, which can all lead to an increased desire for substance abuse or wanting to escape. In addition, the applicant alleged that some may get into a relationship, or stay on a friend's couch as a strategy for survival, but may find themselves once again in a vulnerable position – and possibly in an abusive or coercive situation – which is what happened to her.

The applicant alleged that she has experienced every single last one of those issues and now lives with autoimmune disorder, GERD, sleep disorder, anxiety, and depression. However, she stated that thanks to proper treatment, she is able to carry on as a productive member of society who helps others. The applicant claimed that her request is timely, because it was not until she began putting all of these pieces together that she realized that what she had experienced was an injustice. She explained that she had felt sorry for herself and made excuses, was angry and confused. She explained that her mental health provider told her that she was acting impulsively, and she gave her a partial diagnosis, but they never completed treatment and the mental health provider never got the full picture of what she had previously experienced.

The applicant explained that according to the American Psychological Association (APA) PTSD Clinical Practice Guidelines, research indicates that on average 15 to 20 sessions are required for 50% of patients to recover as indicated by self-reported symptom measures. The applicant alleged that she never received the necessary treatment sessions from her previous mental health provider, but had to wait several more years to understand and seek proper care. As noted in the Coast Guard's recommendation, the applicant stated that she never had the opportunity to discuss the MST with her previous mental health provider. However, the applicant claimed that her Command knew about the MST and immediately requested an honorable discharge. The applicant claimed that she was not in her right mind when she used marijuana, which is clearly indicated in the consult report. Also indicated in the consult report, she stated that she had already ceased using the drug and was not diagnosed with a substance abuse disorder.

The applicant explained that prior to her discharge she had been diagnosed with anxiety, but what was not evident on the report was how long she had been seeing Dr. C.P. or what the initial reason for seeking mental health treatment was. The applicant further explained that it is unclear as to why she began treatment, when she received a diagnosis, or when she stopped using the drug. However, the applicant stated what was clear was that she had been going to treatment for enough time to get a diagnosis, have a treatment plan, and then decided on her own to stop using marijuana. The applicant stated that she knew that she needed help and sought out that help. She further stated that she knew that using the drug was wrong and decided to stop using it. The applicant argued that knowing, after the fact, that something should be stopped does not mean that the use was premeditated. The applicant questioned how something can be premeditated if the consult report says that she was acting impulsively and was off her regular mental health medications? The applicant asked if her MST was not noted in her consult report, then how could she have been self-medicating for MST or PTSD?

The applicant argued that she did not know what she was doing. According to the applicant, at that time, she was not fully aware of 1) what she was feeling; 2) why she was feeling the way she was; 3) the gravity of what she had experienced; 4) what she was doing; or 5) why she was doing it. The applicant stated that the truth is, her actions cannot be said to be premeditated. The applicant claimed that her actions were nothing more than a symptom of what she had experienced while serving in the Coast Guard. The applicant alleged that she reached out for help and had received help for a short while, but not long enough for her mental health to improve. She explained that she had just begun to scratch the surface of her mental health issues, but there were so many puzzle pieces to put together and because of the Coast Guard's decision to discharge her, it was not until several years later that she actually got the mental health treatment that she needed.

The applicant stated that it was not until after 2015 that she sought any further mental health treatment, and it was not until 2017 that she requested the records from her Captain's Mast. The applicant claimed that it was not until that point in time that she started to put the pieces together and requested all of her medical records and began searching for answers. The applicant explained that since 2017 she has been seeking answers and seeking closure and that requesting this upgrade to her discharge, now that she understands the injustice and is not just begging for mercy, is her seeking closure. She stated that she knows what she has experienced and that the Coast Guard failed to help her after she experienced documented MST.

The applicant alleged that she experienced complex PTSD as a result of a combination of stressors, but when she started treatment, she had never got back far enough to fully understand that the MST had led her to where she was. The applicant asked how, if the VA understands it, could the Coast Guard question it? “I experienced MST first and then I changed jobs, saw a decrease in performance, experienced relationship issues, used drugs, and had things complicated by further stress.” The applicant argued that her request is timely, and her discharge is an injustice to her and other people who have had a similar experience with MST, PTSD, and received no help while the members who assaulted them continued to serve. The applicant stated that her service in the military was pristine up until the date of her MST. According to the applicant, her MST affected her service and life in a very negative way until she received the proper mental health treatment she needed from the VA.

To support her advisory opinion the applicant submitted a three-page timeline of events. However, those events that are pertinent and contemporaneous to the applicant’s allegations and requests are fully summarized in the Summary of the Record section of this decision, and will therefore not be summarized here. The applicant also submitted a statement from her mental health provider, which reads as follows:

Mrs. [Applicant] has been in my care through the CCN program and my private practice since August of 2020. Mrs. [Applicant] was also in my care when I was an employee of the VA. I do not have access to her previous notes but estimate that we worked for 2+ years while I was there. She currently attends psychotherapy by telehealth to cope with issues of changes in mood, relationship difficulties, maintaining sobriety and difficulty functioning. She is officially diagnosed with: F43.12 - Post-traumatic stress disorder, chronic.

In our work during the time I was a VA employee, Mrs. [Applicant] was addressing issues related to her dismissal from the Coast Guard and we focused on her growing her skill base so she could complete paperwork which caused her anxiety and triggered her PTSD. We were getting closer to her being more comfortable but then in 2018, she was set back emotionally after the [redacted] school shooting where she played a significant role in helping the families of the survivors. We worked on helping her unpack her feelings and reactions related to the mass shooting until I left in 2019.

Mrs. [Applicant] has reported that she feels more capable and independent. She has finished her bachelor’s but although she was able to complete that, she had considerable anxiety and struggled with her goal of completing tasks for her Master’s. She has now returned to her studies after a break to help organize her anxiety and develop a plan to address her difficulty coping with stressors.

It is this clinician’s conclusion that Mrs. [Applicant’s] PTSD symptomology and anxiety have lengthened time in tasks and caused significant disruption in her ability to handle stressful or triggering situations. It is not outside of this clinician’s view that she avoided the paperwork due to the issues above and has just recently been able to address them with the support of therapy and changes in self-view and positive perceptions of self-efficacy and competence.

APPLICABLE LAW AND POLICY

Article 12 of the Coast Guard Personnel Manual, COMDTINST M1000.6A (June 2007), provides the necessary guidance on discharging a service member for misconduct due to drug use. In relevant part:

12.B.2.f. Standards of Discharge.

1. Honorable Discharge. A member's commanding officer or higher authority can effect a separation with an honorable discharge if the member is eligible for or subject to discharge and the member merits an honorable discharge under the standards prescribed here. Issuing an honorable discharge depends on:

...

7. Misconduct (except involvement with illegal drugs or obstructing drug urinalysis testing by tampering).

2. General Discharge. The member's commanding officer or higher authority may effect a separation with a general discharge if the member is subject to discharge and a general discharge is warranted under the standards prescribed in this paragraph. When a general discharge is issued for one of the reasons listed in Article 1.B.2.f. (1)(a) of this Manual, the specific reason shall be stated in an entry on an Administrative Remarks, Form CG-3307, entry in the member's PDR. A general discharge applies in these situations:

a. The member either:

1. Has been identified as a user, possessor, or distributor of illegal drugs or paraphernalia;

...

Article 12.B.18.b. provides the following guidance on separating a member for misconduct due to involvement with drugs:

12.B.18.b. Reasons to Discharge for Misconduct.

...

4. Drugs.

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 20.A.2.k., will be processed for separation from the Coast Guard with no higher than a general discharge.* Commanding Officer, Training Center Cape May is delegated final discharge authority for members assigned to recruit training or prior service training program under this Article in specific cases of drug use before enlistment (as evidenced by a positive urinalysis shortly after entering training). New inductees shall sign an Administrative Remarks; CG-3307 entry acknowledging the presence of drugs in their bodies is grounds for a general discharge for misconduct. (Emphasis added.)

...

Article 12.B.18.e. states that before initiating an administrative discharge for misconduct for a member who, like the applicant, has fewer than eight years of total military service, the command must take the following steps:

Commanding officers shall process members with fewer than eight years of total active and inactive military service recommended for honorable or general discharge for misconduct as follows:

1. Inform the member in writing of the reason(s) for being considered for discharge (specifically state one or more of the reasons listed in Article 12.B.18.b. supported by known facts).
2. Afford the member an opportunity to make a written statement. If the member does not desire to do so, the commanding officer sets forth that fact in writing over the member's signature. If the member refuses to sign a statement his or her commanding officer will so state in writing.
3. Afford the member an opportunity to consult with a lawyer as defined by Article 27(b)(1), UCMJ, if contemplating a general discharge. If the member requests counsel and one is not available, the commanding officer must delay discharge proceedings until such time as counsel is available.

Article 20 of the Coast Guard Personnel Manual (June 2007), provides the relevant guidance on the preponderance of the evidence standard used when determining if a drug incident has occurred and the illegal use of prescription drugs. The relevant sections are as follows:

20.A.1.a. Policy. Substance and alcohol abuse undermine morale, mission performance, safety, and health. They will not be tolerated within the Coast Guard. Thus, drug and alcohol screening is mandated by law, (10 USC 1090), to identify, treat, and rehabilitate members of the Armed Forces who are dependent on drugs or alcohol. Furthermore, the possession, use, or distribution of a controlled substance as defined in the Uniform Code of Military Justice (UCMJ), Article 112a, and (10 USC 912a), constitutes a serious breach of discipline. Effective leadership at all levels is necessary to curb substance and alcohol abuse in the Coast Guard. Each command must be prepared to identify and eliminate substance and alcohol abuse.

...

20.A.1.c. Objectives.

The objectives of the substance and alcohol abuse prevention programs are to:

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.

...

20.A.2k. Drug Incident.

1. Any of the following conduct constitutes a drug incident as determined by the commanding officer:

- a. Intentional use of drugs;
- b. Wrongful possession of drugs;

...

- e. A civil or military conviction for wrongful use, possession, or trafficking of drugs, unless rebutted by other evidence.

2. The member need not be found guilty at court-martial, in a civilian court, or be awarded NJP for the conduct to be considered a drug incident.
3. If the conduct occurs without the member's knowledge, awareness, or reasonable suspicion or is medically authorized, it does not constitute a drug incident.

...

20.C.3.d. Determining a Drug Incident.

In determining whether a drug incident occurred, a commanding officer should consider all the available evidence, including positive confirmed urinalysis test results, any documentation of prescriptions, medical and dental records, service record (PDR), and chain of command recommendations. Evidence relating to the member's performance of duty, conduct, and attitude should be considered only in measuring the credibility of a member's statement(s). If the evidence of a possible drug incident includes a positive urinalysis result, the command should also determine whether the urinalysis was conducted in accordance with this article and whether the collection and chain of custody procedures were properly followed. The commanding officer may delay final determination to pursue any of these options deemed appropriate:

1. Ask the member to consent to a urinalysis test as outlined in Article 20.C.2.a.
2. Direct the member to participate in a urinalysis evaluation program for a maximum of six months as outlined in Article 20.C.2.a.
3. Request the laboratory reexamine the original documentation for error.
4. Request the laboratory retest the original specimen. Retesting requires additional urinalysis confirmation documentation and reduces the quantity of urine available for future directed retesting; i.e., in the case of court-martial. This should not be a routine course of action.

e. The findings of a drug incident shall be determined by the commanding officer and an Administrative Discharge Board, if the member is entitled to one, using the preponderance of evidence standard. That is, when all evidence is fairly considered, including its reliability and credibility, it is more likely than not the member intentionally ingested drugs. A preponderance of the evidence refers to its quality and persuasiveness, not the number of witnesses or documentation. A member's admission of drug use or a positive confirmed test result, standing alone, may be sufficient to establish intentional use and thus suffice to meet this burden of proof.

...

20.C.4. Findings of a Drug Incident. If after completing the investigation described in Article 20.C.3, the commanding officer determines that a drug incident did occur, he or she will take these actions:

1. Administrative Action. Commands will process the member for separation by reason of misconduct under Articles 12.A.11., 12.A.15., 12.A.21., or 12.B.18., as appropriate. Cases requiring Administrative Discharge Boards because of the character of discharge contemplated or because the member has served a total of eight or more years, will also be processed under Articles 12.B.31. and 12.B.32.,- as appropriate.
2. Disciplinary Action. Members who commit drug offenses are subject to disciplinary action under the UCMJ in addition to any required administrative discharge action.

FINDINGS AND CONCLUSIONS

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in her Coast Guard military record. The Board finds that the applicant has exhausted her administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application filed by the applicant was not timely. To be timely, an application for the correction of a military record must be submitted to the Board within three years after the alleged error or injustice was discovered or within three years of the decision of the Discharge Review Board.⁸ The applicant stated in her original application to the Board that she discovered the error or injustice on August 7, 2009, and in her response to the Coast Guard's advisory opinion, the applicant changed the alleged date of discovery to November 17, 2017. The record shows, however, that the applicant contested her separation for misconduct with the DRB on October 13, 2009, and received the DRB's decision in 2010. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in her record—that she had received a General discharge for misconduct due to the illegal use of a controlled substance—no later than 2010. Because she did not submit her application to this Board until March 27, 2021, her application is untimely.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁹ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyzing both the reasons for the delay and the potential merits of the claim based on a cursory review”¹⁰ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that “the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.”¹¹ Although the record shows that the applicant long delayed her application to the Board, the record also shows that she has been diagnosed with PTSD, which might well have interfered with her ability to submit her application. In light of her mental health condition, the Board will excuse the untimeliness of the application and consider the case on the merits.

4. The applicant alleged that the Coast Guard committed an error and injustice when it administratively separated her for misconduct and gave her a General—Under Honorable Conditions characterization of service as a result of her illegal use of a controlled substance, when it should have given her an Honorable discharge due to her mitigating circumstances. 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

⁸ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22; *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994).

⁹ 10 U.S.C. § 1552(b).

¹⁰ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

¹¹ *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

information is erroneous or unjust.¹² 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.”¹³ And under the Board’s “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 VA records, and decide whether the preponderance of the evidence shows that the veteran had an experience of military sexual trauma and mental health condition(s) while in the Service that could excuse the veteran’s misconduct; whether the experience of military sexual trauma and mental health condition(s) actually excused the misconduct that adversely affected the discharge; and, if not, whether the experience of military sexual trauma and mental health conditions outweigh the misconduct or otherwise warrant upgrading the veteran’s discharge.

5. **Intentional Use of Marijuana.** The Board’s review of the record shows that on April 1, 2009, the applicant tested positive for marijuana. The Board’s review also shows that on June 2, 2009, the applicant was subjected to NJP for her illegal use of a controlled substance, and the applicant admitted to her intentional use of the drug. She told her CO that when she told a friend about her issues and stress, he advised her to smoke marijuana, and she decided to do so. This shows a premeditated intention to use marijuana to relieve her stress. The applicant also admitted to her illegal use in her personal statement wherein she contested her separation and in her application for relief to this Board. Article 20.C.4.1, “Findings of a Drug Incident,” states, “If after completing the investigation described in Article 20.C.3, the commanding officer determines that a drug incident did occur, he or she will take these actions: 1. Administrative Action. Commands will process the member for separation by reason of misconduct under Articles 12.A.11., 12.A.15., 12.A.21., or 12.B.18., as appropriate.” Accordingly, the Board finds that the preponderance of the evidence shows that the applicant’s administrative discharge due to her illegal use of a controlled substance was not erroneous or unjust.

6. **Allegations of MST.** The applicant alleged that it was erroneous and unjust for the Coast Guard to give her a General—Under Honorable Conditions characterization of service because she was suffering from PTSD due to having been sexually harassed by a senior Reservist—sexual harassment that she stated caused military sexual trauma (MST). The applicant’s claims are based on the VA’s 2018 rating and the following statements: “Those things have not been erased. I remember when I was at the range and the instructor put his arms around me, put his head on my shoulder, and pressed his body onto mine to help me aim. I remember when my company commander said that I was ‘too pretty’ to be there. I remember being catcalled and harassed all throughout my insignificant career.” She also claimed to have received a black eye and busted lip from a fellow service member without describing any of the circumstances. However, the Board’s review of the records show that these allegations were taken into consideration by her chain of command and the Separation Authority at the time of the applicant’s separation due to misconduct, and the Separation Authority nonetheless found that a General—Under Honorable Conditions characterization of service was required under Coast Guard policy, which states that anyone discharged due to drug abuse may receive no higher than a General,

¹² 33 C.F.R. § 52.24(b).

¹³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

Under Honorable Conditions discharge.¹⁴ Finally, the record shows that the applicant took her claims of error and injustice to the DRB, which also found that the character of service the applicant received was in accordance with Coast Guard policy and that, although the applicant presented extenuating circumstances to her drug use, the Separation Authority's final determination was proper and equitable. Therefore, the Board finds that at the time of the applicant's separation, the Coast Guard had a substantially complete record of her traumatic experiences in the Service and arrived at a reasonable decision about the characterization of the applicant's discharge based on that substantially complete record.

7. **Due Process and Right to Counsel.** The applicant alleged that the Coast Guard failed to inform her of her right to seek counsel and that she never waived her rights to counsel. However, the record shows that the applicant was notified of the basis for her discharge in writing on June 2, 2009, which included her right to consult with a lawyer within the meaning of Article 27(b)(1) of the UCMJ. Then on June 9, 2009, she signed a "First Endorsement" acknowledging her discharge notification, her right to consult counsel, her right to object, and her right to submit a written statement. This acknowledgement specifically states, "I hereby acknowledge I have been provided with the opportunity to consult with a military lawyer." And on this same date, June 9, 2009, the applicant submitted a detailed statement about her pending discharge, wherein she objected to the discharge and requested that the Coast Guard take her mitigating circumstances into account and give her the opportunity to continue her Coast Guard career. Therefore, the preponderance of the evidence shows that the applicant received all due process afforded under the Coast Guard Personnel Manual, including the opportunity to consult with an attorney.

8. **PTSD Diagnosis.** The new information that has been added to the record since the DRB decision was issued is (a) the VA has diagnosed the applicant with service-connected PTSD and (b) the Department's "liberal consideration" guidance. The record shows that during her service, the applicant was sexually harassed and learned that her younger sister had been sexually assaulted by her father. As the sexual harassment she described did not involve threatened death, serious injury, or sexual violence—as is required for a PTSD diagnosis—it was presumably the applicant's experience of learning that her sister had been sexually assaulted by her father that resulted in her PTSD being deemed "service connected."¹⁵ 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 VA records, and decide whether the preponderance of the evidence shows that the veteran had the mental health condition while in the Service; whether the mental health condition could excuse the veteran's misconduct; whether the experience of military sexual trauma and mental health condition(s) actually excused the misconduct that adversely affected the discharge; and, if not, whether the experience of military sexual trauma and mental health conditions outweigh the misconduct or otherwise warrant upgrading the veteran's discharge.¹⁶ The guidance also states the following in pertinent part:

[7.d.] An honorable discharge does not require flawless military service. Many veterans who have committed some minor misconduct are separated with an honorable discharge.

¹⁴ Article 12.B.18.b.4.a. of the Coast Guard Personnel Manual (June 2007), COMDTINST M1000.6A.

¹⁵ See footnote 4, above.

¹⁶ *Id.*

[7.e.] Military and civilian mores and standards may change over time. The Board may modify a veteran's discharge if it is deemed unduly severe in light of contemporary mores or standards regarding the conduct or poor performance that adversely affected the discharge.

[7.f.] ... Veterans separated under prior procedures and medical standards may have suffered an error or injustice because the separation authority was unaware of their condition or experience or the possible effects of their condition or experience at the time of separation.

[7.g.] Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, in cases of minor misconduct or other conduct or performance problems commonly associated with mental health conditions, sexual assault, or sexual harassment, and even in some cases of significant misconduct if it is sufficiently justified or outweighed by the facts and circumstances.

...

[23] A veteran's mental health condition or experience of sexual assault or sexual harassment does not generally excuse premeditated misconduct. The Board shall exercise caution in assessing the causal relationship between any asserted mental health condition, sexual assault, or sexual harassment and a veteran's premeditated misconduct.

[24] The Board shall liberally consider whether a mental health condition *or* experience of sexual assault or sexual harassment that the Board finds to have existed at the time of separation outweighs the conduct or poor performance that adversely affected the veteran's discharge or otherwise warrants modifying the discharge.

In this case, the preponderance of the evidence shows that the applicant experienced the trauma of learning that her sister had been sexually assaulted by her father while in the Service. Although she was not diagnosed with a mental health condition while in the Service, the preponderance of the evidence shows that she suffered considerable stress after learning of the assault. The preponderance of the evidence also shows that the applicant's chain of command was aware of this trauma and the applicant's resulting stress. And although the applicant committed the misconduct for which she was discharged—using an illegal drug—to deal with the stress, the record shows that she did not use the marijuana impulsively on the spur of the moment. Instead, as she told her CO, she sought the advice of a friend, was advised by the friend to use marijuana to cope with her stress, and decided to take that advice, instead of seeking counseling. Therefore, the preponderance of the evidence shows that her use of marijuana was premeditated.

Using marijuana and other controlled substances has long been a violation of the Uniform Code of Military Justice, and it is not considered a minor offense in the Coast Guard, which is a law enforcement agency tasked with the interdiction of illegal drugs. In fact, involvement with and use of illegal drugs is the only offense for which—for the past four decades—Coast Guard policy has mandated no higher than a General discharge if the member is found to have committed the offense by a preponderance of the evidence. Therefore, the Board finds that in this case, the applicant has not proven by a preponderance of the evidence that her mental health condition in 2009 outweighed or justified her misconduct or otherwise warrants upgrading her discharge.

9. The applicant made numerous allegations with respect to the actions and attitudes of herself and various officers in her office. Those allegations not specifically addressed above

are considered to be unsupported by substantial evidence sufficient to overcome the presumption of regularity and are not dispositive of the case.¹⁷

10. For the reasons outlined above, the applicant has not met her burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.¹⁸ She has not proven, by a preponderance of the evidence, that her General discharge for “Misconduct” is erroneous or unjust. Accordingly, the applicant’s request should be denied.

¹⁷ 33 C.F.R. § 52.24(b); *see Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997) (noting that the Board need not address arguments that “appear frivolous on their face and could [not] affect the Board's ultimate disposition”).

¹⁸ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

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

October 27, 2023

[REDACTED] [REDACTED] Digitally signed by [REDACTED]
[REDACTED] [REDACTED] Date: 2023.10.30 15:06:23 -04'00'

[REDACTED] [REDACTED] Digitally signed by [REDACTED] [REDACTED]
[REDACTED] [REDACTED] Date: 2023.10.30 15:41:31 -04'00'

[REDACTED] [REDACTED] Digitally signed by [REDACTED] [REDACTED]
[REDACTED] [REDACTED] Date: 2023.10.30 15:49:45 -04'00'
