

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2022-082**

  
SN (Former)

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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on December 7, 2022, and assigned the case to an attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 22, 2024, 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 Seaman (SN/E3), who was administratively separated on May 29, 2006 for misconduct (drug use) asked the Board to liberally consider her request to correct her DD-214, and change her characterization of service from “Under Honorable Conditions” to “Honorable;” her separation code from JKK, (denoting an involuntary she discharge for misconduct due to drug abuse) to JFF (“Secretarial Authority”); and her narrative reason for separation from “Misconduct” to “Secretarial Authority”.<sup>1</sup>

In her application to this Board, the applicant alleged that during the short time she served in the Coast Guard that she suffered from a mental health condition that directly related to her discharge: recurrent major depressive disorder (MDD) with moderate generalized anxiety disorder. She claimed that her mental health diagnoses and treatments were documented throughout her medical service records, and that her mental health condition “contributed to and outweighed circumstances that lead to [her] discharge in that [her] mental judgement was impaired as a direct result of subtherapeutic treatment.” She also claimed that she “needed longer durations of medication and consistent cognitive behavioral therapy, but [] feared to seek more help after receiving threats of being denied entry into A-school or being ‘Section-8-discharged’ for [her] condition from [her] command and [] superiors.” She claimed that, as a result, she “experimented

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<sup>1</sup> The applicant did not request a change to her Reentry Code, which is listed as RE4 (not eligible to reenlist).

with self-medication of alcohol and illicit substances to try to alleviate [her] depression and anxiety symptoms.”

In her July 18, 2014 application to the Coast Guard Discharge Review Board (DRB), which she requests this Board reconsider, the applicant claimed that her due process rights were violated because she was not provided the right to an attorney before being questioned by CGIS about her drug use and that her confession was coerced. She stated that no drugs were found in her room, that her urinalysis tested negative, and she was never tried by Captain’s Mast or Court-Martial. She also stated that at that time she also consented to a search of her room CGIS did not find any drugs in her room.

The applicant further alleged that her discharge was inequitable because it “was based on one isolated incident in 22 months and 4 days of service.” She stated:

Since my discharge I have never committed a criminal offense. I have also improved my financial credit history substantially and become a contributing member of society by seeking a college education, voting, participating in numerous community service events, and being a part of the American workforce. I have also attained 2 Associates degrees with honors from [ ] community college and 1 Bachelors degree with honors from [a university] in biomedical sciences. I am currently applying for the Doctorate of Pharmacy program at [a university] for which I am a prime candidate. I would appreciate the opportunity to upgrade my discharge so that I will not have a damaged reputation as I enter into my future profession as [a] licensed pharmacist in the state of [ ]. (Original capitalization omitted.)

The DRB only granted her limited relief by changing her character of service from “General” to “Under Honorable Conditions”.

In support of her application to the Coast Guard BCMR, the applicant provided a rating decision of the Department of Veterans Affairs (VA), dated October 8, 2021, and she also submitted various other records. Those deemed relevant will be included in the Summary of the Record below.

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on July 26, 2004 at age 20.

On June 30, 2004, the applicant signed paperwork associated with her enlistment in which she acknowledged by her signature that she had been advised:

that the illegal use of 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. I also understand that upon reporting to recruit training, I will be tested by urinalysis for the presence of illegal drugs. If my urine test detects the presence of illegal drugs, I may be subject to discharge and receive a general discharge. I hereby affirm that I am drug free and ready for recruit training.

Also on June 30, 2004, the applicant acknowledged by her signature that:

all information in my enlistment documents is current and accurate. I have not had any involvement with the police or had any changes in dependency unless noted on these documents. I understand withholding information is punishable under the Uniform Code of Military Justice (UCMJ) and may result in less than honorable discharge for fraudulent enlistment.

On November 23, 2004, the applicant received a negative Page 7 for failing to report for fitness training. This training was required because the applicant failed to meet the Boat Crew Fitness Standards, for which she also received a negative Page 7.

During April 2006, upon receiving information regarding the applicant's alleged drug use, the applicant's CO asked CGIS to conduct an investigation. Witness statements from this investigation corroborated that the applicant used drugs while enlisted, including cocaine and methamphetamine; the applicant also admitted to CGIS that she had used drug while enlisted. Prior to questioning, the applicant was advised of her rights under Article 31(b), UCMJ, and that she was suspected of using illegal drugs. The applicant acknowledged her rights, both verbally and in writing, and agreed to be interviewed without a lawyer present. Also, during the course of this investigation, CGIS, with her consent, searched the applicant's room and found drug paraphernalia.

On April 6, 2006, the applicant signed an affidavit in which she acknowledged by her signature and initials the following statements:

1. I have the right to remain silent.
2. Any statement I do make can be used against me in a trial by Courts-Martial, civilian court, or any other administrative or judicial proceedings.
3. I have the right to consult with, and have a lawyer present, prior to and during any questioning. This lawyer may be a civilian lawyer retained by me at no cost to the government, or a military lawyer appointed to act as my counsel at no cost to me if the government intends to continue questioning me.
4. I have the right to terminate this interview at any time, for any reason, including exercising my right to have a lawyer present during any questioning.
5. I have carefully read the above, I understand my rights. Any questions I have asked concerning my rights have been answered to my satisfaction.

WITH FULL KNOWLEDGE OF MY LEGAL RIGHTS, I VOLUNTARILY MAKE THE FOLLOWING ELECTION

I choose to answer questions and/or make a statement at this time without consulting with a lawyer.

By memorandum dated April 13, 2006, CAPT D recommended that the applicant be discharged from the Coast Guard for misconduct:

...

2. My reasons for recommending you for a misconduct discharge stem from your admission of drug use during an interview with Coast Guard Investigative Service's investigations on 5 April 2006 []. Furthermore, you consented to a search of your barracks room where drug paraphernalia was discovered in your possession.

Because of this admission under oath and the subsequent discovery of drug paraphernalia, I find a drug incident did occur . . .

3. The decision on your discharge and the type of discharge you will receive rest with Commander, Coast Guard Personnel Command (epm-1).
4. You may submit a statement on your behalf.
5. You may disagree with my recommendation, if so, your rebuttal will be forwarded with my recommendation.

Also on April 13, 2006, the applicant acknowledged notification of her proposed discharge, objected to her discharge, stated that she did desire to consult with an attorney, and provided a statement on her own behalf.

The applicant provided a statement dated April 14, 2006, which she signed that stated:

1. I, Airman, [], was disenrolled from avionics electrical technician class "A" school on Wednesday, April 6, 2006 for omission of use of illegal drugs and possession of drug paraphernalia. I sincerely wish that I could retract each and every mistake I made. I feel extremely ashamed and embarrassed for what I have done.
2. My family and the Coast Guard have been greatly dishonored by my irresponsible decisions. I would like to apologize to the commands at Sector [] and Aviation Technical Training Center for bringing them negative publicity. I would also like to apologize to my family whom has had a long and proud military tradition.
3. During my time in the Coast Guard I have accomplished many things. I became the first woman in my family to serve my country. Also, I have learned to become financially independent and emotionally supportive of myself and others. My self-esteem and sense of pride has increased greatly as well. One of my toughest stumbling blocks that I have overcome successfully was learning how to work with others as a team to achieve common goals. Most importantly, I have found my calling in aviation.
4. The repercussions of my actions are making and will continue to make a great impact on my life. Now, I realize that I took the greatest decision of my life, entering the Coast Guard, for granted. Now that I see the consequences drugs bring; broken hearts, broken homes, broken bodies, and death. It is because of those things that I will never repeat those mistakes ever, ever again. Also, I now passionately desire to participate in the war against drugs.
5. I do not want to be separated from the organization that has become my parental unit. I cannot imagine being thrown back into a world with no order, respect, and honor again. If given the chance to stay in I would be absolutely elated and thankful to go back to [] as an E-1 recruit for not eight weeks, but sixteen weeks. I would consider myself blessed to be stationed on a 'Big White' cutter [] as an E-1. I would be content to serve at a [] station for more than one year without complaint.
6. I know I have done wrong and I agree that I should be punished. However, I adamantly believe that if I were allowed to remain in I could and would most certainly make a great contribution to the Coast Guard, be it years of diligent manual labor, public relations or even financial retribution. I am still a good Coastie.
7. In closing, I would like to thank those who have contributed to the wonderful learning and growing experience that I have received. First, I thank the Company Commanders for instilling in me order, a higher level of self-respect, and high expectations of others. Secondly, I would like to thank my previous commands and Aviation Technical Training Center for seeing my potential and providing me with far more than the basic technical and leadership tools any Coastie needs. With those tools, I will get far in life. Coast Guard Intelligence, specifically [], I show you my gratitude for opening my eyes to the truth about drugs. Finally, and most importantly, to my uncle, [], thank you for being my inspiration and leading the way for me to follow in your footsteps. Without your guidance, I could not have made it this far.

By memorandum dated April 17, 2006, CAPT D sent a memorandum to Coast Guard Personnel Command (CGPC) (epm-1), in which he recommended the applicant for an expedited misconduct discharge due to a drug incident and referred the applicant to the Navy Legal Services Offices for consultation with a military attorney as she requested.

The applicant was discharged from the Coast Guard on May 29, 2006. At that time, she received a General discharge for Misconduct pursuant to Article 12.B.18 of the Personnel Manual; JKK (drug use).

The applicant appealed to the Coast Guard Discharge Review Board (DRB), requesting an upgrade of her characterization of service to Honorable. On April 6, 2015, the Assistant Commandant for Human Resources reviewed and rendered a final decision on the recommendations of the DRB, directing only that the applicant's character of service be changed from General to Under Honorable Conditions. The DRB declined to make any other changes to the applicant's DD 214. The DRB acted in accordance with ALLCOAST 562108: the characterization of discharge will no longer be listed as General.

In an October 8, 2021 rating decision, the VA granted service connection, effective March 31, 2020 for, as relevant here, major depressive disorder, recurrent, moderate with generalized anxiety disorder with an evaluation of 50% as directly related to military service.

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

On February 16, 2023, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The Coast Guard argued that the application was not timely based on the applicant's separation date of May 29, 2006 and that "[i]n addition to other administrative requests, the applicant seeks processing by the CG Physical Disability Evaluation System (PDES) for medical retirement or separation rather than the actual basis of her administrative separation" referencing COMDTINST M1850.2D (2006) and COMDTINST M6000.1F (2018). The Coast Guard continued, claiming that "[t]he Applicant states she was afflicted with an unfitting condition that should have been adjudicated via the CG PDES, which triggered the misconduct that resulted in her administrative separation." The Coast Guard argued that although there was no evidence of a MEB prior or following the applicant's separation from service that even had her condition been found to be unfitting for duty and a MEB were submitted, PDES processing would have been suspended and closed upon conclusion of administrative proceedings. Citing to *Hinkle v. United States*, 229 Ct. Cl. 801, 804-05 (1982) (as cited in *Wollman v. United States*, 108 Fed. Cl. 656, 671 (2013)), the Coast Guard made the point that "[w]hile informative, the findings and standards employed by the . . . VA are not binding upon the Coast Guard and its determination of fitness for duty."

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

On June 1, 2023, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. On August 1, 2024, in a response to an inquiry from a BCMR attorney, the applicant sent several hundred pages of VA treatment records dated from 2022 through 2024. The large majority of the documentation are not relevant to the issue pending before the Board.

A July 27, 2022 VA psychiatry consult for the purposes of establishing mental health services notes that the applicant reported she first engaged in mental health services in the Coast Guard between 2004 and 2006.<sup>2</sup> She reported experiencing difficult during her first assignment and sought care, but was not able to continue mental health treatment for long because "she was told she couldn't take time away from work." After leaving the Coast Guard, the applicant reported on and off care in the community.

## APPLICABLE LAW AND POLICY

Department of Homeland Security (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 Discharge Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment" (June 20, 2018) (DHS Liberal Consideration Guidance) provides, in most relevant part, that:

- Unless otherwise specified, the term "mental health condition" in this guidance refers to both diagnosed and undiagnosed mental health conditions, including PTSD and TBI.
- The Board shall waive the statute of limitations (if applicable) and liberally consider and reconsider veterans' requests for discharge modifications based in whole or in part on claims that a mental health condition, sexual assault, or sexual harassment either excuses the conduct or poor performance that adversely affected the discharge or otherwise warrants modifying the discharge.
- Requests for discharge modifications should not be denied based solely on the absence of a pre-separation diagnosis of the asserted mental health condition or the lack of a pre-separation report of sexual assault or sexual harassment.
- An honorable discharge does not require flawless military service. Many veterans who have committed some minor misconduct are separated with an honorable discharge.
- 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.
- Absent clear evidence to the contrary, a diagnosis rendered by a licensed psychiatrist or psychologist is evidence that the veteran has or had the diagnosed mental health condition.

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<sup>2</sup> These in service treatment records were not available for the Board's review.

- A diagnosis made by a licensed psychiatrist or psychologist indicating that a mental health condition existed during military service shall be liberally considered along with other evidence.
- A determination made by the VA that a veteran’s mental health condition, sexual assault, or sexual harassment is “service connected” is not binding on the Board but shall be considered persuasive evidence that the condition existed or the experience occurred during military service.
- The Board shall liberally consider whether the conduct or poor performance that adversely affected a veteran’s discharge should be considered excused by a mental health condition or experience of sexual assault or sexual harassment that the Board believes to have existed at the time of that conduct or poor performance.
- 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.
- 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.
- The Board may find that a veteran’s misconduct is so severe that it should not be excused because of a mental health condition, sexual assault, or sexual harassment.

Article 12 of the Coast Guard Personnel Manual, COMDTINST M1000.6A (October 2005), 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.

**FINDINGS AND CONCLUSIONS**

The Board makes the following findings and conclusions based on the applicant’s military record and submissions, the Coast Guard’s submission and applicable law:

1. The Board has jurisdiction 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 applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.<sup>3</sup>

3. The applicant is requesting a modification to the type of discharge she received based, in part, on her contention that the misconduct she engaged in that led to her discharge was the result of a service-related mental health condition.<sup>4</sup> DHS's Liberal Consideration Guidance directs the Board to waive the statute of limitations in such situations. Accordingly, the application shall be considered by the Board.

4. Under 10 U.S.C. § 1552, the Board is authorized not only to correct errors but to remove injustices from any Coast Guard military record. For the purposes of the BCMRs, "injustice" is sometimes defined as "treatment by the military authorities that shocks the sense of justice but is not technically illegal."<sup>5</sup> The Board has authority to determine whether an injustice exists on a "case-by-case basis."<sup>6</sup> Indeed, "when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate,"<sup>7</sup> and "[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious."<sup>8</sup>

5. The applicant requests an upgrade to her discharge, including characterization of service, narrative reason, and separation code, and claims that her mental health condition, major depressive disorder with generalized anxiety disorder, contributed to and outweighed the circumstances that led to her discharge because her mental judgment was impaired as a direct result of subtherapeutic treatment. The applicant contends she experimented with self-medication of alcohol and illicit substances to alleviate her depression and anxiety symptoms. In her DRB application, the applicant alleged that certain entries on her DD Form 214 were inequitable because her due process rights were violated because she was not provided the right to an attorney before being questioned by CGIS; her confession was coerced; no illegal substances were found by CGIS in her room; her urinalysis tested negative; and she was never tried by Captain's Mast or Court Martial.

6. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.<sup>9</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out

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<sup>3</sup> *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

<sup>4</sup> *DHS Liberal Consideration Guidance*, at § 8.

<sup>5</sup> *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); *but see* 41 Op. Att'y Gen. 94 (1952), 1952 WL 2907 (finding that "[t]he words 'error' and 'injustice' as used in this section do not have a limited or technical meaning and, to be made the basis for remedial action, the 'error' or 'injustice' need not have been caused by the service involved.").

<sup>6</sup> Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

<sup>7</sup> *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)).

<sup>8</sup> *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

<sup>9</sup> 33 C.F.R. § 52.24(b).

their duties “correctly, lawfully, and in good faith.”<sup>10</sup> Additionally, under DHS’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.<sup>11</sup>

7. Initially, the Board notes that the Coast Guard argued that the applicant is seeking PDES consideration, and her request should be denied. The Board finds that the Coast Guard’s analysis is not responsive to the relief sought by the applicant; therefore, it will not be further addressed.

8. DHS Liberal Consideration Guidance provides that “[a] determination made by the VA that a veteran’s mental health condition . . . is ‘service connected’ is not binding on the Board but shall be considered persuasive evidence that the condition existed . . . during military service.”<sup>12</sup> The Guidance further provides that “[a]bsent clear evidence to the contrary, a diagnosis rendered by a licensed psychiatrist or psychologist is evidence that the veteran has or had the diagnosed mental health condition.”<sup>13</sup> In addition, “[a] diagnosis made by a licensed psychiatrist or psychologist indicating that a mental health condition existed during military service shall be liberally considered along with other evidence.”<sup>14</sup> The applicant has been diagnosed with major depressive disorder and generalized anxiety disorder, which has been service connected by VA as directly related to military service. Further, the applicant has reported seeking mental health treatment during service. There is nothing in the record that contradicts this diagnosis, its connection to the applicant’s service, or the applicant’s statement that she sought mental health treatment during service.<sup>15</sup> Therefore, applying the DHS Liberal Consideration Guidance, the applicant has shown by a preponderance of the evidence that she has a mental health condition that existed during service.

9. However, the Board finds the applicant has failed to demonstrate by a preponderance of evidence that the misconduct, specifically drug use, that resulted in the less than honorable discharge should be excused or is otherwise outweighed by the mental health condition. While the applicant contends she used alcohol and illicit substances to self-medicate because of her mental health symptoms, the Board finds this to be outweighed by the other evidence of records, specifically statements from the applicant and others made during the CGIS investigation. The DHS Liberal Consideration Guidance notes that a “a veteran’s mental health condition . . .

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<sup>10</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>11</sup> *DHS Liberal Consideration Guidance*, at § 8-9.

<sup>12</sup> *Id.*, at § 20.

<sup>13</sup> *Id.*, at § 13.

<sup>14</sup> *Id.*, at § 19.

<sup>15</sup> *Id.*, at § 10. (“The Board shall carefully consider the veteran’s own testimony, oral or written, and may find that it is sufficient by itself to establish a basis for relief.”)

does not generally excuse premeditated misconduct.”<sup>16</sup> The evidence reflects the applicant purchased and used methamphetamine and cocaine on a myriad of occasions during service, including buying drugs from someone at a local bar. Witnesses during the CGIS investigation reported that the applicant and her friend would have drugs mailed to them at the boat station and, one time at a bar, she told another member that she liked “crystal meth.” During the investigation, the applicant also reported using Lipodrene (ephedra) to lose weight. The Board finds the premeditated misconduct of repeatedly buying and using drugs to be so severe that it should not be excused by the mental health condition.<sup>17</sup> The Board thus finds that the applicant has not established by a preponderance of the evidence that the misconduct that led to her discharge was excused, or outweighed, by the service-related mental health condition or otherwise warrants upgrade of her discharge.

10. Regarding the alleged due process violations during the investigation, the Board’s review of the record shows that the applicant admitted to drug use, was provided the right to consult with an attorney at the time of the CGIS interview, consented to the search of her room, and that drug paraphernalia was found in her room. Further, the applicant’s recruitment paperwork shows that she was aware of the Coast Guard’s policy on the use of illegal substances. Article 20.C.4.1 of the Coast Guard Personnel Manual COMDTINST M1000.6A, “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. The Board finds that the applicant has not proven, by a preponderance of the evidence, that her type of separation, characterization of service, narrative reason for separation, or her separation code are erroneous or unjust. Accordingly, the applicant’s request should be denied.

11. Finally, the October 8, 2021 VA rating decision notes the evidence referenced in support of the VA’s decision includes service treatment records from July 26, 2004 to May 29, 2006, which is during the applicant’s time in the Coast Guard. The applicant may submit an application for reconsideration to the Board if she has service treatment records or other medical records to provide for the time period July 26, 2004 to May 29, 2006 that show that she was diagnosed with a mental health condition and/or was being treated for a mental health condition that may have contributed to her misconduct while in the Coast Guard.

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

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<sup>16</sup> *Id.* at § 23.

<sup>17</sup> *Id.* at §§ 23, 25.

ORDER

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

August 22, 2024

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