

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

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 2003-048

**FINAL DECISION**

██████████

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was docketed on March 7, 2003, upon the Board's receipt of the applicant's complete application for correction of his military record.

This final decision, dated November 20, 2003, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant asked the Board to correct his record so that he would be eligible to join another service. He was discharged from the Coast Guard under honorable conditions (general discharge) by reason of fraudulent enlistment due to drug abuse. He was assigned an RE-4 (not eligible for reenlistment) reenlistment code and a JDT (fraudulent entry into military service, drug abuse) separation code. Therefore, the Board interprets the applicant's request as one for an upgrade of his general discharge, for removal of fraudulent enlistment as the reason for his discharge, and for an upgrade of his RE-4 reenlistment code.

**APPLICANT'S ALLEGATION**

The applicant did not allege a specific error or injustice with respect to his discharge, but he offered the following statement in support of his application:

I believe I deserve another chance to enter into military service. I am an American and wish to be apart of protecting my country! I did not realize that I would not be able to join another service. I would [have] not signed release papers if I had. I am not a drug abuser. I made a misjudgment that cost me my career. . . .

I also would like to state for the record [that] your wording of involvement with drugs is inappropriate. I was involved with trying marijuana one time. I believe you should change that. Also, I had passed

the first drug test & I know I should have used my brain. I regret what has happened & with everything going on in the world you should respect me for wanting to help my country & protect her.

### **SUMMARY OF RECORD AND SUBMISSIONS**

The applicant enlisted in the Coast Guard on November 13, 200x. At that time, he signed an administrative remarks (page 7) page, which advised him of the following:

I have been advised that the illegal use or possession of drugs constitutes a serious breach of discipline [,] which will not be tolerated. 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

On his enlistment contract date November, 13, 200x, the applicant denied that he had "ever tried, used . . . any narcotic . . ." The applicant also verified by his signature that the information contained on the enlistment documents was correct to the best of his knowledge. In this same paragraph the applicant was warned that "if any of the information was knowingly false or incorrect, [he] could be tried in a civilian or military court and could receive a less than honorable discharge which could affect [his] future employment opportunities."

On December 6, 200x, the applicant's commanding officer (CO) informed the applicant that he had initiated action to discharge the applicant from the Coast Guard with a general discharge under honorable conditions due to drugs. The CO stated that on November 14, 200x, the applicant gave a urine specimen that tested positive for the presence of THC (marijuana metabolite), a controlled substance. The CO advised the applicant that he could submit a statement in his own behalf and consult with a lawyer because a general discharge was contemplated.

On December 6, 200x, the applicant acknowledged notification of the proposed discharge, did not object to being discharged, waived his right to submit a statement in his own behalf, acknowledged that he had been provided with the opportunity to consult with a lawyer but waived his right to do so, and stated that he understood that a general discharge could cause him to suffer some prejudice in his civilian life.

The applicant was discharged from the Coast Guard on December 14, 200x. He had served one month and two days on active duty.

## **Views of the Coast Guard**

On July 18, 2003, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. The Chief Counsel recommended that the Board deny the applicant's request for relief.

The Chief Counsel stated the Coast Guard did not commit an error or injustice in discharging the applicant from the service. He stated that the applicant had no absolute right to remain in the service until the end of his enlistment period. Giglio v. United States, 17 Cl. Ct. 160, 166 (1989). Therefore, as a member of the armed forces, the applicant could be administratively discharged prior to that time. He further stated that the applicant bears the burden of proving his case and that absent strong evidence to the contrary, government officials are presumed to have carried out their duties correctly, lawfully, and in good faith. See, Arens v. United States, 969 F.2d 1034, 1037 (D.C. Circuit 1992).

The Chief Counsel asserted that even with the presumption of regularity, the available evidence including the applicant's enlistment documents and associated administrative remarks (page 7s) dated November 13, 200x, show that the applicant was aware of the possible consequences of falsifying his enlistment application, which included a discharge under honorable conditions.

The Chief Counsel asserted that the RE-4 reenlistment code was the only appropriate code under the circumstances. A major reason why the code should remain unchanged, according to the Chief Counsel, is the need of the armed forces for their personnel to remain free of illegal substances. The Chief Counsel further stated as follows:

Applicant does not deny using illegal drugs. Rather, Applicant simply characterizes the falsification of his enlistment application as a simple "misjudgment" and asserts that he is not a "drug abuser." . . . The unsupported contentions of an individual, who admittedly falsified an official government document under pain of criminal proceedings, should not provide grounds to potentially undermine the integrity of the military by affording Applicant the opportunity to reenlist.

## **Applicant's Response to the Views of the Coast Guard**

On July 21, 2003, a copy of the Coast Guard views was sent to the applicant for any response that he desired to make. He did not submit a response.

## **Discharge Review Board (DRB) Proceeding**

Prior to filing his application with the Board, the applicant exhausted his administrative remedies by filing an application with the DRB. On March 26, 200x, the

DRB refused to upgrade the applicant's general discharge under honorable conditions, the reason for his discharge, or his RE-4 reenlistment code. In denying relief to the applicant, the DRB stated the following:

The Board carefully examined the applicant's record of service during the period of enlistment under review. The board discussed the applicant admitted to using marijuana prior to going to the Coast Guard recruiter, and the fact the applicant acknowledged on a form 3307 (page 7) that he understood the use of drugs would result in a general discharge. Members of the Board read the letters sent on behalf of the applicant. The positive test is a defacto proof of drug use, regardless of the type of test administered at MEPS (Military Enlistment Processing Station) and at recruit training.

### **APPLICABLE REGULATIONS**

Article 12.B.18.b.2. of the Personnel Manual authorizes the Commander, Coast Guard Personnel Command (CGPC) to discharge a member by reason of misconduct for "[p]rocur[ing] a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment, which, if known at the time, might have resulted in rejection."

Article 12.B.18.b.4.a. of the Personnel Manual states the following:

**Involvement with Drugs.** Any member involved in a drug incident or the illegal, wrongful, or improper sale, transfer, manufacture, or introduction onto military installation of any drug . . . 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 under this Article in specific cases of drug use before enlistment (as evidenced by a positive urinalysis shortly after training). New inductees shall sign a CG-3307 entry acknowledging the presence of drugs in their bodies is grounds for a general discharge for misconduct.

Separation Program Designator (SPD) Handbook, section two, authorizes only the assignment of an RE-4 reenlistment code for the JDT separation code. The SPD Handbook states that the JDT separation code is appropriate when there is an "[i]nvoluntary discharge directed by established directive (no board entitlement) when a member procured fraudulent enlistment, induction or period of military service through deliberate material misrepresentation, omission or concealment of drug use/abuse."

### **FINDINGS AND CONCLUSIONS**

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

1. The BCMR has jurisdiction over this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant has failed to prove by a preponderance of the evidence that the Coast Guard committed an error in discharging him with a general discharge under honorable conditions because of fraudulent enlistment due to concealment of drug use/abuse. The applicant enlisted in the Coast Guard on November 13, 200x. On November 14, 200x, upon entering recruit training, the applicant gave a urine specimen that subsequently tested positive for illegal drugs.

3. On November 13, 200x, the applicant had affirmed on his enlistment documentation that he was drug free and ready for recruit training. However, he admitted in his statement to the Board that he had used marijuana, although he claimed it was only once. Therefore, the Board concludes that the applicant's statement that he was drug free and ready for recruit training was false and the applicant probably knew it was false at the time he signed the affirmation. The Coast Guard did not commit an error by discharging the applicant due to fraudulent enlistment, drug use. The applicant was warned at the time of his enlistment that he would be discharged with a general discharge under honorable conditions if his urine tested positive for drug use upon entering recruit training.

4. In addition, the Board is not persuaded that the applicant's discharge constituted an injustice. The applicant's explanation that he tried marijuana only one time and that he should be respected for wanting to help his country does not persuade the Board that the applicant's discharge for fraudulent enlistment due to drug use/abuse was an injustice. The Board notes that the applicant was warned that his urine would be tested for illegal drugs upon entering recruit training and that he would be discharged if his urine tested positive for illegal drugs.

5. The general discharge for fraudulent enlistment due to drug use/abuse was assigned in accordance with regulations. The SPD handbook authorizes the assignment of only an RE-4 reenlistment code with the JDT (fraudulent entry into military service, drug use/abuse) separation code.

6. The applicant suggested that Article 12.B.18.b.4.a. of the Personnel Manual does not apply to him because he was not involved with drugs, allegedly having only tried marijuana one time. The phrase "Involvement with Drugs" is the topic heading of Article 12.B.18.b.4.a. of the Personnel Manual, which prohibits the use of drugs. It does not contain an exception for one-time use, even if such could be proven.

7. The applicant failed to prove an error or injustice in this case. Accordingly, relief should be denied.



**ORDER**

The application of xxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

