

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-098

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION



This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on June 16, 2003, upon receipt of the completed application, including the military records.

This final decision, dated February 18, 2004, is 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 asked the Board to correct his military record by upgrading his 1971 "U.D." discharge to at least a "general" discharge or by removing him "from all records."

The applicant alleged that his military record was unjust because he was not a high school graduate when he enlisted. He alleged that he was told that he would be given a General Educational Development (GED) test after he enlisted but was never given one. He alleged that you had to be a high school graduate to be in the Coast Guard.

The applicant stated that he discovered the error in 1971. He argued that it is in the interest of justice for the Board to waive the three-year statute of limitations and consider his application "[b]ecause the Coast Guard didn't take non high school [graduates] without a GED or etc."

SUMMARY OF THE RECORD

On May 18, 1970, at the age of 19, the applicant enlisted in the Coast Guard for four years. Upon enlistment, he was advised in accordance with Article 137 of the Uniform Code of Military Justice (UCMJ).¹ Prior to enlistment, on May 1, 1970, the applicant had signed a medical history indicating that he had never had a drug or narcotic habit. In addition, because of a conviction for burglary in 1966, the applicant's recruiter had to seek a waiver from the Personnel Procurement Branch to enlist him. On the waiver application (form CGHQ-4052), the recruiter noted the applicant's lack of a high school diploma and the fact that he had scored in the 46 percentile on an Armed Forces Qualification Test as a "remark" but not as a potentially disqualifying fact that required waiver. The waiver was granted because the conviction had occurred when the applicant was 15 years old.

Upon enlistment, the applicant was sent to boot camp. On June 8, 1970, he went AWOL. He was apprehended near his home on June 28, 1970. He was awarded non-judicial punishment (NJP) and sentenced to 15 days of correctional custody and a \$25.00 fine. On July 6, 1970, he was again advised about the UCMJ in accordance with Article 137.

The applicant completed training on September 4, 1970, and advanced from seaman recruit to seaman apprentice (SA). From October 1 to 11, 1970, he again went AWOL. After his apprehension, he received transfer orders to a cutter. He was awarded NJP with a sentence of 45 days' restriction to the cutter and 30 days of extra duty.

On October 19, 1970, the executive officer (XO) of the cutter referred the applicant for a psychiatric evaluation because of his attitude and suspected drug abuse. The applicant told the doctor that he had enlisted to please his father and that he wanted to get out of the Coast Guard. He was diagnosed with an "inadequate personality."

On October 26, 1970, the applicant was counseled by the XO about his "apathy, defective attitude, and inability to expend effort constructively."

On October 29, 1970, the applicant admitted to his doctor that he used heroin, marijuana, "speed," and other illegal drugs.

In November 1970, the applicant was granted 17 days of leave to visit his home.

On January 8, 1971, the XO referred the applicant for another psychiatric examination pursuant to a "possible administrative discharge." The doctor reported that the

¹ Article 137 of the UCMJ (10 U.S.C. § 937) requires the military services to explain parts of the UCMJ, including the punitive articles regarding drug abuse, at the time of enlistment.

applicant's drug abuse and poor motivation continued and that the diagnosis was still "inadequate personality."

On January 26, 1971, the applicant went AWOL for one day because he was "stoned on drugs." He was awarded NJP with a sentence of 7 days' restriction and extra duty.

On January 27, 1971, the applicant's commanding officer (CO) advised him that he was going to recommend the applicant for an administrative, undesirable discharge by reason of unfitness, in accordance with Article 12-B-14 of the Personnel Manual (CG-207), because of his admitted regular use of illegal drugs that caused him to have black-outs and flashbacks. The applicant acknowledged receipt of the notice.

On January 28, 1971, the applicant was assigned counsel and advised that he had a right to be represented by counsel before an Administrative Discharge Board (ADB). The applicant signed a statement acknowledging this information and waiving his right to an ADB. He also acknowledged that his undesirable discharge would be "under other than honorable conditions," which would deprive him of his rights as a veteran and might prejudice him in civilian life.

On February 1, 1971, the applicant was advised of his right to remain silent, of his right to an attorney, of his right to make a statement on his own behalf, and of the fact that any statement he made could be used against him. The applicant signed a statement in which he admitted that since age 15 he had used marijuana "as often as [he had] access to it," which on average amounted to "at least one 'joint' or cigarette a day." He stated that he had used LSD at least 200 times and that he had purchased drugs with the profits that he made from selling them. He named eight friends and relatives with whom he had used marijuana, LSD, and intravenous crystal methadrine ("speed"). He also named three fellow crewmates with whom he had used, variously, marijuana, LSD, "speed," several types of barbituates, heroin, mescaline, "and a lot of others." He stated that each month he would buy a supply of drugs with his Coast Guard pay, save what he wanted for his personal use, and sell the rest. He concluded that "I enjoy my total drug experiences and have no motivation to continue my services in the Coast Guard."

On February 2, 1971, the applicant's CO recommended to the Commandant that the applicant be awarded an undesirable discharge for unfitness because of his drug habit and poor performance. The CO noted that the applicant "expresses a continuing desire to use drugs and does not desire assistance in breaking his habit." The CO also noted that the applicant had been awarded NJP three times and had been counseled in accordance with Article 12-B-10 of the Personnel Manual on October 26, 1970.

On February 5, 1971, the XO noted that he had explained to the applicant the provisions of the UCMJ, in accordance with Article 137 of the UCMJ, and the types of

discharges and related matters, in accordance with Article 12-B-29 of the Personnel Manual.

On April 1, 1971, the Commandant ordered that the applicant be separated with an undesirable discharge by reason of unfitness under Article 12-B-12 of the Personnel Manual.

On April 30, 1971, the applicant was found physically fit for discharge by an examining physician. The applicant agreed with the finding. On the same day, he was discharged "under other than honorable conditions" with an RE-4 reenlistment code (not eligible for reenlistment).

VIEWS OF THE COAST GUARD

On October 30, 2002, the Judge Advocate General submitted an advisory opinion in which he recommended that the Board deny relief because of the application's untimeliness and lack of merit.

Regarding the untimeliness of the application, the Judge Advocate General argued that the applicant had provided no explanation for his long delay in applying to the Board. He also pointed out that a brief review of the applicant's record indicates that he was properly discharged after three unauthorized absences and after confessing to drug use and distribution. The Judge Advocate General argued that the applicant's allegation that someone in the Coast Guard promised to administer a GED to him and never did does not rebut the presumption that his military records are correct.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 3, 2003, the Chair sent the applicant a copy of the advisory opinion and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

Under Article 12-B-12 of the Personnel Manual in effect in 1971 (CG-207), the Commandant could order the undesirable discharge of an enlisted member by reason of unfitness for "[d]rug addiction or the unauthorized use or possession of habit-forming narcotics or marijuana."

Article 12-B-14 of the Personnel Manual provided that when an undesirable discharge was contemplated, the enlisted member had a right to notice of the proposed action, the basis for the discharge, the potential loss of veterans' benefits and prejudice in civilian life. He also had a right to counsel, a right to an ADB (unless he waived the right), and a right to submit a statement on his own behalf.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error in his record.² The applicant received his discharge in 1971. Therefore, his application was untimely.

3. Pursuant to 10 U.S.C. § 1552(b), the Board may waive the three-year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board should conduct a cursory review of the merits of the case and consider the reasons for the delay.³

4. The applicant did not explain why he waited more than 30 years to apply to the Board for the requested correction.

5. The Board's review of the applicant's case reveals a complete lack of merit. The record indicates that the applicant was properly enlisted in the Coast Guard. His recruiter informed Headquarters about the applicant's lack of a high school diploma and was officially authorized to enlist him anyway. The applicant submitted no proof that he was promised a GED test or that he was denied one. Moreover, he has failed to persuade the Board that such an allegation, if true, would warrant an upgrade of his discharge or a purge of his military record. Whether or not the applicant was promised and given a GED test is irrelevant to whether the character of his discharge was correct.

6. The Board's review of the record indicates that the applicant was provided all due process and discharged in accordance with the regulations in Articles 12-B-12 and 12-B-14 of the Personnel Manual (CG-207). The Board finds no evidence of error or injustice in the applicant's record.

7. Accordingly, the Board will not waive the three-year statute of limitations, and the applicant's request should be denied based on its untimeliness and lack of merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

² 10 U.S.C. § 1552(b).

³ *Dickson v. Sec'y of Defense*, 68 F.3d 1396 (D.D.C. 1995); *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

ORDER

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

