


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-029

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION


This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The BCMR docketed the case on November 24, 2003, upon receipt of the applicant's completed application and military records.¹

This final decision, dated July 29, 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, who received a discharge under other than honorable conditions (OTH) from the Coast Guard on July 2, 1986, for possession of marijuana, asked the Board to correct his record by upgrading his discharge.

The applicant alleged that he was told, prior to his discharge, that he would receive a general discharge under honorable conditions and that, after six months, the general discharge would be changed to honorable. The applicant alleged that he served

¹ The applicant applied to the Discharge Review Board (DRB) and received an acknowledgement of his application dated March 21, 2000. Apparently, no action was taken by the DRB. The applicant applied to the BCMR on October 25, 2000. The BCMR ordered his military records several times. However, they were never received from the National Personnel Records Center (NPRC). On March 5, 2003, the applicant submitted another application to the BCMR. Upon inquiry, the DRB stated that it no longer had jurisdiction over the case because more than 15 years had passed since the applicant's discharge. Further attempts to order his records from the NPRC were unsuccessful. On November 24, 2003, the Chair determined that copies of his military records received from the DVA and from the applicant himself were sufficient to warrant docketing his case.

the Coast Guard with honor before and after his “mistakes” and received a medal and ribbon. The applicant alleged that the fact that he was issued a DD form 257CG at the time of his discharge proves that he was supposed to receive a general discharge rather than an OTH discharge. In addition, he submitted a letter to him from the Department of Veterans’ Affairs (DVA), which states that an “Administrative Decision finding your military service Honorable for VA Purposes was processed on February 22, 2001.”

The applicant alleged that he did not discover the error in his record until 1998, when he applied for benefits from the DVA and was denied them.² He alleged that it is in the interest of justice for the Board to consider his case because he served his country with honor and should not be deprived of his rights and benefits.

SUMMARY OF THE RECORD

On July 12, 1982, the applicant enlisted in the Coast Guard. He completed boot camp and was advanced to seaman apprentice (SA).

On September 20, 1982, the applicant was taken to mast for having marijuana in his possession. He was found guilty, reduced to pay grade E-1, fined \$550.00, and assigned forty-five days of extra duty. He later regained his rank and was further advanced to seaman (E-3) on October 31, 1983.

On June 24, 1985, the applicant was taken to mast for being drunk and disorderly aboard his cutter. He was found guilty and restricted to the cutter for thirty days with extra duties.

On January 28, 1986, the applicant was taken to mast for having marijuana in his possession. He was found guilty, reduced from pay grade E-3 to E-2, and restricted to base for thirty days with extra duties.

On February 19, 1986, the applicant’s commanding officer (CO) notified him that he was recommending to the Commandant that the applicant be discharged with a general discharge for possession of marijuana, which constituted a “drug incident” under Article 20 of the Personnel Manual. The CO also notified the applicant that he had a right to consult a lawyer and to submit a statement in his own behalf.

On the same day, the applicant signed a form acknowledging receipt of his CO’s notification and stating that he did not desire to consult a lawyer, he would not submit a statement in his own behalf, and he did not object to his general discharge.

² On another DD 149 submitted by the applicant, he alleged that he discovered the error in 2000.

Also on February 19, 1986, the CO sent the Commandant his recommendation that the applicant receive a general discharge for misconduct due to his possession of marijuana, which the applicant admitted at mast. The CO also noted the applicant's two prior masts.

On May 22, 1986, the Group Commander forwarded a copy of the CO's recommendation to the District Commander, indicating that the original had been lost in the mail. On June 2, 1986, the District Commander forwarded the CO's recommendation to the Commandant and recommended approval of a general discharge.

On June 11, 1986, the Commandant ordered the applicant's command to discharge him within thirty days with a general discharge by reason of misconduct due to drug abuse, in accordance with Article 12-B-18 of the Personnel Manual.

On July 2, 1986, the applicant was discharged. His discharge form, DD 214, and an Administrative Remarks entry in his record indicate that he was discharged "under other than honorable conditions" due to misconduct. However, a Personnel Action form of the same date shows that he received a general discharge due to misconduct.

VIEWS OF THE COAST GUARD

On April 14, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion recommending that the Board correct the applicant's record by upgrading his discharge to general under honorable conditions. He stated that the "record indicates that COMDT (G-PE-1) ordered a General Discharge, and the unit made an administrative error entering 'Under Other than Honorable Conditions' in block 24 of the Applicant's DD-214."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 14, 2004, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The applicant responded on May 17, 2004, asking that his discharge be upgraded to honorable because, he alleged, he has been deprived of military benefits and rights since his discharge.

APPLICABLE LAW

Under Article 12-B-18.b.(4) of the Personnel Manual in effect in 1986, the Commandant could separate a member for misconduct due to drug abuse as follows:

Drug abuse. The illegal, wrongful, or improper use, possession, sale transfer, or introduction on a military installation of any narcotic substance, intoxicating inhaled substance, marijuana, or controlled substance, as established by 21 U.S.C. 812. Any member involved in a drug incident will be separated from the Coast Guard with no higher than a

general discharge. However, in truly exceptional situations, commanding officers may recommend retention of members E-3 and below involved in only a single drug incident.

...

Under Article 12-B-18.e.(1), a member with less than eight years of active service who was being recommended for a general discharge for misconduct was entitled to (a) be informed of the reasons for the recommended discharge, (b) consult an attorney, and (c) submit a statement in his own behalf.

Under Article 20.C. of the current Personnel Manual, any member involved in any "drug incident" is administratively discharged with no greater than a general discharge under honorable conditions.

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. Although the applicant filed his application more than three years after he knew or should have known that his discharge form showed an OTH discharge, he filed it within three years of having timely filed an application with the DRB, which has a fifteen-year statute of limitations. Although the DRB apparently took no action on his application, the Board finds that the application must be considered timely in accordance with the decision in *Ortiz v. Sec'y of Defense*, 41 F.3d 738, 743 (D.C.C. 1994).

3. On June 11, 1986, the Commandant ordered the applicant's command to discharge him within thirty days with a general discharge by reason of misconduct due to drug abuse, in accordance with Article 12-B-18 of the Personnel Manual. For reasons not apparent in the record, on July 2, 1986, the applicant's command awarded him an OTH discharge, contrary to the Commandant's order. The Judge Advocate General has stated that the OTH discharge was an administrative error by the applicant's command and that it should be upgraded to a general discharge.

4. The applicant asked the Board to upgrade his discharge to honorable because, he alleged, he has been deprived of military benefits and rights since 1986. However, if the applicant has been deprived of anything since 1986, he bears the responsibility because he failed to seek correction of his command's error in a timely manner. He could have, but failed to, seek a correction of his OTH discharge in 1986.

5. The record indicates that the applicant was discharged for possession of marijuana, which constituted a "drug incident." Under Articles 12-B-18.b.(4) and 20.C. of the Personnel Manual, members involved in a drug incident must be separated with no better than a general discharge under honorable conditions. The record indicates that the applicant was provided all due process prior to his discharge in that he was offered, but chose to waive, his right to consult counsel and to submit a statement in his own behalf.

6. The applicant submitted correspondence from the DVA stating that an "Administrative Decision finding your military service Honorable for VA Purposes was processed on February 22, 2001." The fact that the DVA has determined that the applicant's service was honorable for its own purposes is insufficient to prove that the Commandant committed any error or injustice in ordering that the applicant receive a

general discharge, in accordance with Articles 12-B-18.b.(4) and 20.C. of the Personnel Manual.

7. Accordingly, partial relief should be granted by upgrading the applicant's discharge to general under honorable conditions.

ORDER

The application of former xxxxxxxxxxxxxxxx USCG, for correction of his military record is granted in part. His military records, including his DD form 214, shall be corrected to show that he received a general discharge under honorable conditions.

