

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-095

[REDACTED]

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 Chair docketed the case on February 16, 2007, upon receipt of the applicant's completed application, and assigned it to staff members [REDACTED] [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 25, 2007, 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 [REDACTED]; pay grade E-4) who served nearly three years in the Coast Guard before being discharged in 1983 for misconduct (marijuana use), asked the Board to correct his record by upgrading his "general" discharge to "honorable." He stated that "[t]he record is not in error nor is it unjust. What I am seeking is clemency. I am a recovering alcoholic and part of my program is making amends. I deeply regret my behavior and if there were any way to make it up to the Guard, I would." He added that in his career as a teacher he has "pointed a number of well qualified individuals to the Coast Guard's direction," and frequently shares with his students the "positive parts" of his Coast Guard service. The applicant did not explain his long delay in seeking the requested correction.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 27, 1980, after serving in the Air Force for six years. On November 14, 1980, he completed prior service indoctrination and a Page 7¹ was placed in his record documenting that he had "been informed of the Coast Guard exemption program for disclosure of drug use and possession incident to such use and was given a full explanation of the program."

¹ A Page 7 entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

On March 20, 1981, the applicant was awarded non-judicial punishment (NJP)² for “being in possession of marijuana,” a violation of Article 134 of the Uniform Code of Military Justice (UCMJ).

On May 5, 1983, the applicant was awarded NJP for “knowingly and willfully us[ing] an illegal substance, to wit - Marijuana.” This was his second violation of Article 134 of the UCMJ.

On June 2, 1983, the applicant’s commanding officer (CO) notified him by memorandum that he had initiated action to discharge the applicant from the Coast Guard. The CO cited the applicant’s two NJPs for marijuana possession and use as the reasons for discharge.

On June 21, 1983, the applicant responded to his CO’s letter of June 2, 1983. Acknowledging his marijuana use, he stated that he had been counseled on his legal rights and “accept[s] the decision to be discharged from the Coast Guard,” and “understand[s] the implications of a general discharge.” In his letter, he also requested “serious consideration for an honorable discharge” because he successfully performed his Coast Guard duties and the Coast Guard benefited from his “professionalism as an instructor and as a DC aboard ship.”

On June 23, 1983, the applicant sent a letter to the Commandant indicating that he waived his right to a hearing before an administrative discharge board, and acknowledged that he understood that a discharge under other than honorable conditions could deprive him of many or all of his rights as a veteran.

On July 1, 1983, the CO of the applicant’s unit sent a memorandum to the Commandant wherein he recommended that the applicant be discharged from the Coast Guard by reason of misconduct. The commander cited the applicant’s two NJPs as the reasons for the recommended discharge, and noted that “although [the applicant] has performed very well in the past, ... a General Discharge is recommended due to the gravity of the marijuana related offenses.” The District Commander endorsed this recommendation.

On August 19, 1983, the applicant was discharged from the Coast Guard pursuant to Article 12.B.18. of the Coast Guard Personnel Manual. He received a general discharge characterized as “under honorable conditions,” a separation code of HKK,³ and “misconduct” as the narrative reason for separation. The record indicates that the applicant received an RE-4 reenlistment code (ineligible for reenlistment).

² Article 15 of the UCMJ provides NJP as a disciplinary measure that is more serious than administrative corrective measures but less serious than trial by court martial.

³ HKK denotes an involuntary discharge directed in lieu of further processing or convening of a board (board waiver) when a member who commits drug abuse, which is 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 USC 812... The Separation Program Designator (SPD) Handbook also requires that an RE-4 reenlistment code and a narrative reason for separation of “Misconduct” be assigned to members being discharged with the HKK separation code. (SPD) Handbook, 2-56.

VIEWS OF THE COAST GUARD

On June 5, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings provided in a memorandum on the case by Coast Guard Personnel Command (CGPC) and recommended that the Board deny the applicant's request. CGPC argued that the applicant was involved in two drug incidents, and awarded NJP for each of those instances, and that his subsequent discharge was in accordance with Coast Guard policy for processing members for misconduct. CGPC further noted that at the time of the applicant's discharge, Coast Guard policy required that enlisted members in the paygrades E-6 and below involved in a second drug related offense be processed for separation.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 11, 2007, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The BCMR did not receive a response.

APPLICABLE REGULATIONS

Article 12.B.18.a. of the Personnel Manual in effect at the time of the applicant's discharge, provides that an enlisted member may be separated by reason of misconduct with a discharge characterized as other than honorable conditions, general discharge, or honorable discharge as warranted by the particular circumstances of the given case.

Article 12.B.18.b.4. provides that the Commandant may direct the discharge of a member for the illegal, wrongful, or improper use, possession, sale, transfer, or introduction on a military installation of any narcotic substance, marijuana, or controlled substance.

Article 12.B.32. provides that a member being discharged under other than honorable conditions is entitled to legal counsel and must be afforded the right to present his case to an administrative discharge board.

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 section 1552 of title 10 of the United States Code.
2. An application to the Board must be filed within three years of the day the applicant discovers the alleged error in his record. 10 U.S.C. § 1552(b). The applicant was issued a DD Form 214 on August 19, 1983, with a discharge characterized as "under honorable conditions." This information is clearly marked on the DD 214 and thus he knew or should have known that he had received a discharge characterized as under honorable conditions. Therefore,

the Board finds that the application was filed more than 21 years after the statute of limitations expired and is untimely.

3. Under 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. In *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992), the court stated that in assessing whether the interest of justice supports a waiver of the statute of limitations, the Board “should analyze both the reasons for the delay and the potential merits of the claim based on a cursory review.” The court further instructed 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.” *Id.* at 164, 165. See also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

4. The applicant did not allege that his discharge from the Coast Guard was in error or unjust. In his application for correction, he merely stated that he wants his discharge upgraded because he is making amends as a recovering alcoholic. He failed to explain his delay in seeking the requested correction or to provide a compelling reason why the Board should waive the statute of limitations.

5. A cursory review of the record indicates the Coast Guard committed no error or injustice in awarding the applicant a discharge characterized as under honorable conditions. The records show that he was advised of the Coast Guard’s drug policies during his prior service indoctrination in November 1980. The records also show that he received two NJPs for marijuana possession and use during his three years in the Coast Guard, and Article 12.B.18.a. provides that a member may be separated with a discharge characterized as other than honorable or general if the member illegally possesses or uses marijuana. The record further indicates that before the applicant was discharged, he unconditionally waived his right to a hearing before an administrative discharge board, was informed of and afforded his due process rights under Article 12.B.32., and that he understood and accepted the Coast Guard’s decision to discharge him.

6. The delegate of the Secretary has held that, in considering the character of a discharge, the Board should not upgrade a discharge based on post-discharge conduct alone, but may “take into account changes in community mores, civilians as well as military, since the time the discharge was rendered, and upgrade a discharge if it is judged to be unduly severe in light of contemporary standards.”⁴ Article 12.B.18.b.4. of the current Personnel Manual mandates a general discharge for members who possess or use marijuana. Therefore, the Board finds that the applicant’s discharge in 1983 “under honorable conditions” was not unduly severe by today’s standards.

7. Accordingly, due to the lengthy delay and the probable lack of success on the merits of his claim, the Board finds that it is not in the interest of justice to waive the statute of limitations in this case. Although the Board notes that the applicant is regretful about his past behavior, the case should be denied because it is untimely and lacks apparent merit.

⁴ Memorandum of the General Counsel, U.S. Department of Transportation, to J. Warner Mills, et al., Board for Correction of Military Records (July 8, 1976).

ORDER

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

