

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-086

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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 March 7, 2008, upon receipt of the applicant's completed application, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 8, 2009, 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 asked the Board to correct his military record by upgrading his June 26, 2003, discharge for drug use from general "under honorable conditions" to "honorable." He stated that the general discharge was inequitable and unjust because it was based upon a single isolated incident of misconduct "during a period of service which included 34 months of outstanding performance and service."

The applicant stated that in November 2001, he was assigned as a [REDACTED]/E-4 to the Operations Department of a cutter homeported in a small town in [REDACTED]. His duties included navigational supervisor, assistant navigator, operations planning, radio communications, security watchstander, training mentor, aids-to-navigation positioning technician, and shipboard fire-fighter. A couple of months after he began serving on the cutter, he started to feel depressed, anxious, and unappreciated. His shipmates were not willing to socialize with him, and he had no way to relieve his depression in the small [REDACTED] town in the middle of winter. Therefore, he began to drink alcohol to relieve his suffering and became very intoxicated during three parties that he attended in February 2002. Under the influence of alcohol and depression at these parties, he made a terrible decision and allowed himself to smoke marijuana three times. The applicant stated that he knew he had violated the law but did not know what to do because he was scared of the consequences.

On March 6, 2002, he was questioned by Coast Guard investigators after someone reported seeing him smoke marijuana at a party. Although his urine did not test positive for marijuana use and he knew he had a right to remain silent, it “was not in [his] character to lie.” Therefore, he “voluntarily admitted to the consumption of alcohol and use of marijuana during a two-week period in February 2002.” The applicant stated that he chose to act honorably by admitting that he had unlawfully used marijuana “after becoming intoxicated [by alcohol] on three separate occasions during the previous two weeks at civilian parties.” The applicant stated that he realized that he had “made a terrible decision and wanted to do the honorable thing and take immediate steps to correct his behavior.” Therefore, he admitted to having smoked marijuana and pled guilty when taken to mast on April 19, 2002. At mast, he was awarded non-judicial punishment (NJP) of reduction in pay grade from E-4 to E-3 for six months; forfeiture of seven days’ pay; and fourteen days of restriction with extra duties.

The applicant stated that after the mast, he dedicated himself to duty and to ensuring that he would never use marijuana or abuse alcohol again. However, in June 2002, he was told that he would be separated as a result of his use of marijuana. Because of his excellent performance and dedication, his chain of command told him that they would recommend that he be given a second chance under the Coast Guard’s “second chance” policy. Therefore, he dedicated himself to earning the second chance, and his efforts resulted in his qualifying as Quartermaster of the Watch; scoring 98% on the QM2 end-of-course examination; completing the practical requirements to advance to QM2; and training his shipmates in navigation. His command trusted him enough to let him stand armed security watches and train to be an underway officer of the deck. In addition, because of his continuing exceptional performance, on November 14, 2002, his commanding officer (CO) recommended that his pay grade be restored to E-4. On March 1, 2003, he was re-advanced to pay grade E-4.

The applicant stated that in June 2003, despite all his efforts and the support of his CO, he was told that his request for a second chance had been denied and that he would receive a general discharge more than sixteen months after he had smoked marijuana and fifteen months after he had admitted to his misconduct. Since his discharge, he has become a seaman in the Merchant Marine and he has been taking classes toward a bachelor’s degree with the hope of becoming a licensed civil engineer.

The applicant asked that his discharge be upgraded from general to honorable because it is based on an isolated week of misconduct in the middle of 34 months of honorable service. He stated that he realizes the severity of his mistakes and has had two years to think about how he ruined his opportunities in the Coast Guard because of his irresponsible decisions. He alleged that he “will never let anything like this happen again and will do everything [he] can to make up for it for the rest of [his] life.”

SUMMARY OF THE RECORD

On August 22, 2000, at the age of 18, the applicant enlisted in the Coast Guard for four years. He admitted on his enlistment papers to having previously “tried cannabis.” Also upon enlistment, he acknowledged on a CG-3307 form having been counseled about the Coast Guard’s drug policy and about the fact that he would be subject to a general discharge if he used

illegal drugs. He enrolled in the Montgomery G.I. Bill program for educational benefits and acknowledged having been advised that he would not be eligible for the benefits unless he completed 48 months of active duty and received an honorable discharge. He also acknowledged having been advised that part of his enlistment bonus would be recouped if he did not complete his four-year enlistment.

On February 14, 2001, after completing boot camp and graduating from QM "A" School to earn the quartermaster rating, the applicant was assigned to a high endurance cutter as an SNQM/E-3. On February 15, 2001, he was counseled by the unit's Command Drug and Alcohol Representative about the Coast Guard's alcohol abuse policies, including policies about underage drinking, and was ordered to abstain from drinking alcohol until age 21.

On August 1, 2001, the applicant advanced to QM3/E-4. On September 18, 2001, his commanding officer commended him for outstanding performance from February to October 2001. The commanding officer wrote, *inter alia*, that during this period, the applicant "qualified as a gangway petty officer of the watch, completed basic and advanced damage control qualifications and qualified underway as helmsman/lookout and quartermaster of the watch." On October 1, 2001, after the cutter was decommissioned, the applicant was transferred to a buoy tender based in [REDACTED] which is on the [REDACTED] Coast about 75 miles northeast of [REDACTED].

On February 28, 2002, the applicant was charged with violating three articles of the Uniform Code of Military Justice (UCMJ) on three separate occasions. The Report of Offense in his record indicates that on February 16, 17, and 28, 2002, he had violated Article 112a by using a controlled substance (marijuana); Article 92 by failing to obey a regulation (underage drinking); and Article 134 by committing "conduct to bring discredit upon the Armed Forces." Listed witnesses included a seaman assigned to another Coast Guard cutter and two special agents of the Coast Guard Investigative Service (CGIS). The Report of Offense states that the applicant "had knowledge of regulation and failed to obey the regulation by participating in underage drinking"; "wrongfully possessed and used a controlled substance (marijuana) and signed a voluntary sworn affidavit which contained an admission of use on three separate occasions"; and "brought discredit upon the US Armed Forces by participating in underage drinking and using marijuana, which was brought to this command's attention by a civilian in the local community."

On March 7, 2002, the applicant's CO advised him that he was initiating action to discharge him based on his written admission of having used marijuana. He advised the applicant of his right to disagree with the recommendation for discharge and to submit a statement on his own behalf.

On April 15, 2002, the applicant acknowledged the charges against him and his right to refuse mast and demand trial by court-martial. The applicant elected to accept mast.

On April 19, 2002, the applicant was taken to mast for his offenses and awarded non-judicial punishment (NJP) including 14 days of restriction and extra duty, reduction in pay grade to E-3 (SNQM), and forfeiture of \$379. His commanding officer (CO) suspended only the forfeiture of pay for 6 months and recommended that the applicant be administratively discharged.

Pursuant to this mast, the applicant also received a performance evaluation with very poor marks and no recommendation for advancement. Written comments indicate that the applicant had “shown an apathetic attitude towards both the military and his work since his arrival,” had consistently delivered his navigation briefs “with a complete lack of professionalism,” and had displayed a “severe lack of responsibility” by his illegal drug use and underage consumption of alcohol. The CO noted on this evaluation that the applicant had been repeatedly counseled about his apathetic attitude and “apparent lack of Petty Officer potential.” The applicant’s eligibility period for a Good Conduct Medal was terminated.

The applicant continued to serve aboard the buoy tender and received high marks and his CO’s recommendation for re-advancement to [REDACTED] E-4 on his performance evaluation as an [REDACTED] E-3 dated July 31, 2002. The applicant’s supervisor noted that he had “taken a difficult situation, where he violated the trust of the unit, and turned it around by focusing his energies on his job, the ship and the crew. He has embraced the Joint Rating Review, trained [REDACTED]s in determining true noon, and interpolating sun lines. He has participated in Deck Force training, assisted with the superstructure painting project, and has remained flexible to last minute changes, always accepting the new direction with zeal and attentiveness.”

On August 26, 2002, the applicant’s CO sent the Coast Guard Personnel Command (CGPC), via the District Commander, a memorandum regarding the applicant’s “discharge for reason of misconduct,” as required by Article 12.B.18.b.4. of the Personnel Manual, “following command determination of a drug incident.” The CO cited the CGIS report, the applicant’s signed confession, and the negative urinalysis results. He stated that the applicant had been afforded and exercised his right to legal counsel. The CO stated that although he understood the Coast Guard’s drug policy, he was requesting clemency. He attributed the applicant’s misconduct to immaturity, feelings of isolation, and “a need to try to ‘fit in.’” The CO noted that the applicant had “accepted his punishment with dignity and honor” and that since the mast he had “consistently demonstrated remarkable and sustained improvements in performance, attitude and personal growth.” Therefore, the CO “strongly and specifically recommend[ed] that consideration be given towards retention of this member through the Commandant’s ‘second chance’ initiative.”

The CO forwarded with his recommendation the applicant’s objection to the proposed discharge. In this statement, the applicant attributed his misconduct to his “inexperience and the new environment [which] had caused me a real case of the ‘blues’.” The applicant noted that since the NJP, he had qualified as the quartermaster of the watch, completed the practical factors for advancement to [REDACTED], passed the [REDACTED] EOCT with a score of 98%, and trained junior personnel in navigation skills. He asked that he be retained in the Coast Guard so that he could serve his country honorably.

On November 14, 2002, the applicant’s CO sent the District Command copies of his memorandum dated August 26, 2002, and the applicant’s statement, which had apparently not been received.

On November 14, 2002, the applicant’s CO also asked CGPC to return the applicant’s rate to [REDACTED] E-4 because of his exceptional performance since his NJP. The CO stated that the

applicant had been performing at the [REDACTED] 2 level for some time and had “demonstrated pride in himself, the unit and his department no seen prior to his award of punishment and has served as a positive example to his fellow crewmembers.” The CO stated that the applicant “has demonstrated to me that he is truly remorseful for the charges he was found guilty of. The level of competence he consistently performs at gives substance and credibility to my strongest recommendation that he be restored to the rate of [REDACTED] 3.”

On January 13, 2003, the applicant’s CO submitted to CGPC, via the District Commander, a memorandum with the same text that he had submitted on August 26, 2002, and the same attachments. On May 23, 2003, the District Commander forwarded the CO’s memorandum to CPGC with his own recommendation that the applicant be discharged. He noted that the applicant had admitted to using a controlled substance on several occasions and that the applicant had “attempted to deceive urinalysis tests through the purchase and use of a commercially available ‘flushing kit.’” He concluded that the “second chance waiver provision is not appropriate in this matter.”

In late February and March 2003, the applicant was assigned temporarily to the District Operations Department. In March 2003, the applicant’s CO re-advanced him to [REDACTED] 3/E-4.

On May 29, 2003, CGPC ordered that the applicant receive a general discharge for misconduct under Article 12.B.18. of the Personnel Manual, with separation code JKK, no later than June 26, 2003.

On June 26, 2003, the applicant received a general discharge “under honorable conditions” because of “misconduct” with an RE-4 reenlistment code (ineligible to reenlist) and a JKK separation code (involuntary discharge for illegal drug use supported by evidence not attributed to urinalysis). He had completed 2 years, 10 months, and 5 days of active duty, including 2 years, 3 months, and 26 days of sea service.

DECISION OF THE DISCHARGE REVIEW BOARD

On December 5, 2005, the applicant petitioned the Coast Guard’s Discharge Review Board (DRB) to upgrade his character of discharge. He pointed out that he had voluntarily consented to a urinalysis and admitted his misconduct to the CGIS agents who questioned him on March 6, 2002, even though he knew that he had a right to remain silent. In addition to submitting the allegations summarized above, the applicant submitted several strong letters of recommendation from members who served with him and the CO of the buoy tender; documentation of his service in the Merchant Marine; and his college grade report.

In his statement to the DRB on behalf of the applicant, which is dated May 22, 2005, the CO noted that, unlike most members who become “virtually useless” once their discharge for illegal drug use has been initiated, the applicant found ways to pass on the lesson he had learned to junior shipmates and improved his attitude towards his responsibilities and the Coast Guard. The applicant maintained this high level of performance up to the day of his discharge. The CO stated that he worked hard to get the applicant a second chance despite his youthful indiscretion, and this process, which took about 14 months to complete, was ultimately unsuccessful. The CO

stated that he was not happy with CGPC's decision but understood it because giving someone with a drug incident a second chance "would have created an unusually difficult precedent that would have run counter [to] our service standards." The CO stated that he would be happy to serve with the applicant again.

In a statement on behalf of the applicant dated June 14, 2005, the District Operational Commander, CDR X, wrote that he was initially surprised that the CO was recommending that the applicant receive a "second chance" given the CO's "strong views against substance abuse." However, the CO was convinced that the applicant's misconduct was a "one-time incident"; that he had shown true remorse; and that he had backed up his words with superior performance. Because of the applicant's age, CDR X decided to keep an open mind when the applicant was assigned temporarily to the District staff in February and March 2003. CDR X stated that the applicant's performance during his weeks at the District office was "nothing short of exemplary," as the CO had described. CDR X stated that he believes that "it was a mistake to discharge [the applicant] from the Coast Guard as he clearly showed strong personal character and his ability to learn from mistakes." CDR X also recommended that the DRB upgrade the applicant's discharge to "honorable" so that he would not bear the stigma of a general discharge.

The Executive Petty Officer (XPO) of the buoy tender stated that in February 2002, the CO of Coast Guard Station Rockland "began receiving reports from concerned parents of under-age local girls of 'parties' taking place at an Unaccompanied Personnel Leased Housing Unit This unit consisted of two townhouse style apartments with three bedrooms each and was primarily used to house single personnel from the [buoy tender and another cutter]." Therefore, the CO requested the help of CGIS to substantiate the claims. During the investigation, the applicant admitted to smoking marijuana on three different occasions, although the results of his urinalysis were negative. Two crewmembers from the other cutter were also implicated although they did not confess. The XPO stated that because the Coast Guard was "feverishly trying to add personnel" after the attacks of September 11, 2001, the Commandant had just announced a "second chance program" and he and the CO decided to try to have the applicant retained under this program. The XPO noted that illegal drug use is "the one unforgivable transgression in the Coast Guard" but that the second chance program seemed to provide a "glimmer of hope." Therefore, they tried to get the applicant a second chance but advised him not to allow himself false hope because it "was a long shot at best" and "the only thing he could do if he wanted to stay in was to work hard, improve himself, and make the bridge of the [buoy tender] the best bridge in the fleet. That is exactly what he did; he worked intensely, honing his skills as a quartermaster, and worked around the clock organizing the bridge, training new personnel and improving planning of upcoming operations." The XPO also noted that the applicant was treated for mild depression after the NJP. He stated that despite their recommendations, the District Commander viewed the applicant's misconduct as three separate drug incidents and recommended that he not receive a second chance. The XPO stated that he fully supports the Coast Guard's drug abuse program but believes that each case should be judged on its own merits. He stated that in light of the applicant's voluntary admission and strong performance after his NJP, he recommends that his discharge be upgraded from general to honorable so that his mistake would not "continue to haunt his civilian endeavors and career."

After holding a hearing with the applicant on September 12, 2006, and reviewing his submissions and service record, the DRB unanimously recommended that his general discharge stand as issued because it was proper and equitable. The DRB noted that the applicant had shown remorse and a willingness to learn from his mistakes after the NJP but also that he had admitted to smoking marijuana and drinking alcohol while underage on three separate occasions and to “attempting to deceive the urinalysis test through the purchase and use of a commercially available ‘flushing kit’.” On June 15, 2007, the Commandant approved the recommendation of the DRB.

VIEWS OF THE COAST GUARD

On July 15, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case.

The JAG stated that the Coast Guard properly followed its regulations in awarding the applicant a general discharge for illegal drug use. The JAG noted that Article 20.C.4. of the Personnel Manual states that once a CO determines that a drug incident has occurred, the CO must process the member for separation by reason of misconduct. The JAG further noted that under the “second chance program,” which now appears in Article 12.B.1. of the Personnel Manual, members involved in a drug incident are not eligible for a second chance.

The JAG argued that there “is no injustice in the applicant receiving a general discharge from the Coast Guard” since he was advised of the drug policy and the consequence of using or possessing an illegal drug. The JAG stated that upgrading the applicant’s discharge “would run counter to the Coast Guard core values and to the compelling need for all members of the Coast Guard to remain free of illegal substances. Awarding an honorable discharge to the applicant would set a dangerous precedent that is inconsistent with the good order and discipline of the Armed Forces of the United States.”

The JAG included with his advisory opinion a memorandum on the case prepared by CGPC, which states that the Coast Guard acted in accordance with its regulations and that illegal drug use “is completely inconsistent with the Coast Guard’s maritime law enforcement mission whereby the organization conducts counter-drug operations each and every day of the year.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 17, 2008, the Chair sent the applicant a copy of the advisory opinion and invited him to respond within 30 days. The applicant requested and received a 23-day extension, but the Board did not receive any written response to the JAG’s advisory opinion. On October 17, 2008, however, the applicant asked for a hearing before the BCMR so that he could “enlighten the Board regarding his accomplishments.”

APPLICABLE REGULATIONS

Article 20.A.3.b. of the Personnel Manual in effect in 2002 and 2003 states that “[a]ll members entering the Coast Guard, recruits, officer candidates, direct commission officers, and

cadets shall have the Commandant's policies on drug and alcohol abuse explained to them during their initial training, documented by appropriate Administrative Remarks (CG-3307) entry in each member's Personnel Data Record.”

Article 20.A.2.k. defines “drug incident” as “[i]ntentional drug abuse, wrongful possession of, or trafficking in drugs. ... The member need not be found guilty at court-martial, in a civilian court, or be awarded NJP for the behavior to be considered a drug incident.” Article 20.C.3.b. states that members must be advised of their rights under the Uniform Code of Military Justice before being questioned about possible drug incidents.

Article 20.C.3. states that a commanding officer should determine whether a “drug incident” has occurred, warranting further action, based on the preponderance of all available evidence, and that the “absence of a positive confirmed urinalysis result does not preclude taking action based on other evidence. Article 20.C.3.e. states that a “member’s admission of drug use or a positive confirmed test result, standing alone, may be sufficient to establish intentional use and thus suffice to meet this burden of proof.”

Article 20.C.4. states that, if a commanding officer determines that a drug incident has occurred, he or she “will process the member for separation by reason of misconduct” under Article 12.B.18.”

Article 12.B.18.b.4.a. states that “[a]ny member involved in a drug incident ..., as defined in Article 20.A.2.k., will be processed for separation from the Coast Guard with no higher than a general discharge.” Article 12.B.2.c.1.b. states that a “general discharge” is a separation “under honorable conditions.”

Article 12.B.18.e. states that members with less than eight years of service who are being recommended for an honorable or general discharge by reason of misconduct must (a) be informed in writing of the reason they are being considered for discharge, (b) be afforded an opportunity to make a statement in writing, and (c) “[i]f a general discharge is contemplated, be afforded an opportunity to consult with a lawyer.”

The Separation Program Designator (SPD) Handbook states that persons involuntarily discharged for illegal drug use due to evidence other than a positive urinalysis result and without being tried by court-martial shall be assigned a JKK separation code, an RE-4 reenlistment code, and “misconduct” as the narrative reason for separation shown on their DD 214s.

The Personnel Manual in effect in 2002 and 2003 did not mention a second chance program, which was apparently in development. In October 2005, Article 12.B.1.a. of the Personnel Manual was revised to include the following language about the program:

In an effort to retain good, solid first-term performers with potential, but who have made a youthful mistake that would otherwise result in their discharge, the Commandant has established a “Second Chance Program”. The Second Chance Program authorizes the first Flag Officer/SES in the chain-of-command of the first term performers to waive all policy discharge authorities (except as noted below) contained in Article 12.B.9. (Unsatisfactory Performers), Article 12.B.12. (Convenience of the Government), Article 12.B.16. (Unsuitability), and Article 12.B.18. (Misconduct). The first Flag Officer/SES with assistance from their units shall define the internal proc-

esses for forwarding waiver requests to them. The Second Chance Program specifically excludes all policy discharges contained in Article 12.E. (Homosexuality), Article 12.B.12 (Obesity) or Chapter 20.C. (Substance Abuse Prevention Program) of this manual.

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. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers, or reasonably should have discovered, the alleged error or injustice. Although the applicant in this case filed his application more than three years after he knew or should have known of the "character of service" shown on his discharge form, DD 214, he filed it within three years of the decision of the Discharge Review Board. Therefore, under *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994), the application is considered timely.

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. See *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).

3. The applicant asked the Board to upgrade his general discharge, which he received as a result of illegal drug use. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust. 33 C.F.R. § 52.24(b); see Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)). Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

4. The record shows that the applicant was advised of the Coast Guard's drug policies at the time of his enlistment. A CG-3307 in his record shows that he was specifically advised that illegal drug use could result in a general discharge. The record further indicates that, after the parents of underage girls complained to the Coast Guard about parties being held in crew housing, CGIS investigators interviewed the applicant, who confessed in writing to having smoked marijuana at three different parties during a two-week period. Although the applicant's urinalysis results were negative, there is also evidence in the record indicating that he purchased a "flushing kit" to subvert the urinalysis by removing the metabolites of marijuana from his system. In light of his admission and the corroborating evidence about his purchasing a

“flushing kit,” the Board finds that his CO reasonably concluded that the applicant had been involved in a “drug incident” as defined in Article 20.A.2.k. of the Personnel Manual. Therefore, in accordance with Articles 20.C.4. and 12.B.18.b.4.a., he was properly subject to a general discharge.

5. The applicant was not quickly discharged upon discovery of the drug incident because the Coast Guard was developing a “second chance” program in 2002, and his CO hoped that he might be eligible for retention under the program. The applicant continued to serve on active duty for more than a year after he was punished at mast for the drug incident, and the record shows that he performed admirably during his final months in the Service, in contrast to his apparently apathetic attitude during the months prior to the mast. The XPO’s statement shows that the command informed the applicant that it was very unlikely that he would receive a second chance, and ultimately he did not, despite his CO’s recommendation. The applicant did not allege or prove any procedural error in the conduct of the investigation, mast, consideration for the second chance program, or discharge.

6. Under 10 U.S.C. § 1552, however, even when the Coast Guard has not committed any errors under its regulations, the Board must still consider whether an applicant’s record contains an injustice that should be removed. For the purposes of the BCMRs, “injustice” may be defined as “treatment by the military authorities that shocks the sense of justice, but is not technically illegal.” *See Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989), *rev’d on other grounds*, 930 F.2d 1577 (citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976)). The applicant argued that his general discharge in unjust and should be upgraded to honorable because he smoked marijuana only during a two-week period out of his 34 months on active duty. He claimed that he only smoked marijuana because he had been assigned to a small, isolated unit and was feeling lonely and rejected by his crewmates. In light of the fact that the applicant attended three parties with other enlisted members in crew housing during a two-week period, the Board is not persuaded that the applicant’s misconduct was an aberration induced by loneliness and difficult circumstances.

7. The applicant argued that his discharge should be upgraded because of his exemplary conduct after his NJP and since his discharge. He submitted references from superior officers attesting to his tremendous efforts to earn a second chance. On July 7, 1976, the delegate of the Secretary informed the BCMR of the following determination:

[T]he Board should not upgrade discharges solely on the basis of post-service conduct. ... [T]he Board should not upgrade [a] discharge unless it is convinced, after having considered all the evidence [in the record], that in light of today’s standards the discharge was disproportionately severe vis-à-vis the conduct in response to which it was imposed.

This instruction would not preclude a grant of clemency if the Board found forgiveness was warranted. However, although the applicant acted commendably in exerting himself to try to earn a second chance and, following his discharge, by becoming a seaman in the Merchant Marine and pursuing further education, the Board finds insufficient grounds on which to grant clemency because these positive aspects of his performance do not outweigh the seriousness of his past misconduct so as to justify upgrading his discharge to honorable. In addition, the Board notes that Coast Guard members involved in drug incidents have long been and still are awarded

general discharges. Therefore, the applicant's discharge cannot be considered disproportionately severe in light of today's standards. The Board's decision in this regard is consistent with many decisions in past cases involving marijuana use. *See, e.g.*, Final Decisions in BCMR Docket Nos. 2007-095, 2007-051, 2004-183, 2004-169, 2003-114, 2002-044, wherein the Board denied applications from applicants who had received general discharges for marijuana use.

8. The record indicates that the applicant not only smoked marijuana three times while on active duty but did so in front of other members and civilians. In addition, he drank alcohol on these occasions, in violation of a direct order and the UCMJ, even though he was underage. The Service's drug policies, which mandate no higher than general discharges for members separated for illegal drug use, had been explained to him, and he presumably knew that the interdiction of illegal drugs is one of the Coast Guard's major missions. Given these facts, the Board is not persuaded that the applicant's general discharge "under honorable conditions" for drug abuse is unjust; it simply does not shock the Board's sense of justice. *Id.*

9. Accordingly, the application should be denied for lack of merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

