

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-072



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 application upon receipt of the applicant's completed application on February 20, 2013, and subsequently prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated December 13, 2013, 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 record by removing "fraudulent entry into military service, drug abuse" as the narrative reason for his discharge from the Coast Guard.

The applicant enlisted in the Coast Guard on March 17, 2008, and was discharged on April 11, 2008, with a general discharge under honorable conditions, by reason of fraudulent entry into military service, drug abuse, with the corresponding JDT¹ separation code and an RE-4 (not eligible to reenlist) reenlistment code.²

Upon reporting for recruit training, the applicant's urine tested positive for marijuana³ and he was discharged. He asserted that his positive drug test was erroneous because a post-discharge hair follicle test was negative for illegal drugs. He argued that his negative hair follicle test proved that he did not use drugs prior to beginning recruit training.

¹ According to the Separation Program Designator (SPD) Handbook, the JDT separation code denotes fraudulent entry into the military service, drug abuse.

² The Discharge Review Board (DRB) changed the applicant's reenlistment code to RE-3.

³ Although, the urinalysis documentation is not in the applicant's record that was provided to the Board, the applicant stated on his DRB application that he tested positive for marijuana.

Prior to filing his application with the Board, the applicant exhausted his administrative remedies by filing an application with the Discharge Review Board (DRB). The DRB changed the applicant's reenlistment code to RE-3 (eligible for reenlistment with waiver) due to a change in policy with regard to the assignment of reenlistment codes. The DRB noted that ALCOAST 125/10 permits the assignment of an RE-3 reenlistment code (with no associated misconduct or urinalysis tampering) in cases where recruits are discharged after testing positive for illegal recruit training. The DRB stated that the applicant's character of discharge, separation code, and narrative reason for separation are valid.

The DRB noted the applicant's negative post-discharge hair follicle test, but stated that the hair follicle test conducted one month post-discharge from the Coast Guard does not negate the results of the positive urinalysis, which was basis for his discharge. The DRB stated that the applicant was advised prior to entering the Coast Guard that he would undergo a urinalysis upon reporting to basic training, and that his illegal drug use was contrary to the values and mission of the Coast Guard.

VIEWS OF THE COAST GUARD

On July 18, 2013, the Judge Advocate General (JAG) submitted the views of the Coast Guard recommending that the Board deny relief in accordance with a memorandum from the Commander, Personnel Service Center (PSC). PSC asserted that the application was untimely.

PSC stated that Article 12.B.18.b.4.a. of the Personnel Manual states that members found to be involved with drugs will be processed with no higher than a general discharge. The regulation also required new inductees to sign an administrative remarks page (page 7) entry acknowledging that the presence of drugs in their bodies is grounds for a general discharge due to misconduct, which the applicant signed. PSC stated that after the applicant began recruit training, his urine tested positive for illegal drugs. He was discharged under honorable conditions by reason of fraudulent entry into the military, drug abuse.

PSC noted that the DRB reviewed the applicant's request for a change in the narrative reason for his separation and reenlistment code. The DRB changed the RE-4 reenlistment code to RE-3, because of a recent change in Coast Guard policy that allowed for the assignment of an RE-3 reenlistment code for members discharged because of a positive urinalysis at recruit training. PSC concluded the memorandum as follows:

The applicant alleges he did not use drugs prior to basic training, but failed a urinalysis upon reporting to Cape May. The applicant provided the findings of a hair sample drug test taken by a private laboratory upon his return home which came back negative. However, the hair follicle test conducted over one-month post discharge from the Coast Guard does not negate the results of the positive urinalysis that was grounds for his discharge . . . Commanding Officer, Training Center Cape May is delegated final discharge authority for members assigned to recruit training in specific cases of drug use before enlistment. The applicant acknowledged, through signature, that the presence of drugs in his body would be grounds for a general discharge for misconduct.

APPLICANT'S REPOSENSE TO THE VIEWS OF THE COAST GUARD

On July 24, 2013, the BCMR mailed a copy of the views of the Coast Guard to the applicant for a reply. The BCMR did not receive a reply from the applicant.

APPLICABLE REGULATIONS

Coast Guard Personnel Manual

Article 12.B.18.b.4.a. of the Coast Guard 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 [an administrative remarks page [page 7] entry acknowledging the presence of drugs in their bodies is grounds for a general discharge for misconduct.

Article 12.B.18.b.5. states that a member may be discharged for procuring a fraudulent enlistment, induction, or period of active service through any material misrepresentation, omission, or concealment which, if known at the time might have resulted in rejection.

Article 20.A.2.k. of the Personnel Manual defines a drug incident as the intentional use of drugs, wrongful possession of, or trafficking in drugs, among other situations, as determined by the CO.

Article 20.C.2.a.6.b. states that recruits will be tested within three days after reporting to Training Center Cape May, NJ.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction of this case pursuant to section 1552 of title 10 United States Code.

2. 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 or within three years of the issuance of a DRB decision. See *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994). The DRB issued its decision on

February 5, 2011, and the applicant filed his application with the Board on January 29, 2013. Therefore, his BCMR application is timely.

3. The Board begins its analysis in every case presuming administrative regularity on the part of the Coast Guard and the applicant bears the burden of proving the existence of the error or injustice by a preponderance of the evidence. 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.” *See* 33 C.F.R. § 52.24(b).

4. Article 20.C.2.a.6.b. of the Personnel Manual requires recruits to be tested for drugs within three days of reporting to Training Center Cape May, NJ. Upon reporting to recruit training, the applicant was tested for drugs. His urine tested positive for the wrongful use of marijuana and he was discharged from the Coast Guard. Article 12.B.18.b.4.a. of the Personnel Manual makes clear that 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.” Further, the regulation gives the Commanding officer, Cape May the authority to discharge recruits whose urine test positive for drug use before enlistment, as evidence by a positive urinalysis. The applicant was aware of the Coast Guard’s policy on illegal drugs and was informed that he would be tested upon reporting to recruit training. He signed an administrative remarks page (page 7) dated March 17, 2008, advising him about the policy.

5. The applicant’s argument that his negative post-service hair follicle test proves that he did not use illegal drugs prior to reporting to recruit training is not persuasive because there was an approximately one-month period between the applicant’s discharge and the date on which his hair sample was collected for testing (and an even longer period between the time his urine was collected and the date on which he provided hair samples). Any evidence of illegal drugs could have left his body by the time his hair sample was collected. In addition, the regulation requires testing for illegal drugs through the collection and testing of urine and not hair follicles. Further the applicant produced no evidence that the Coast Guard’s method of testing for illegal drugs is unreliable; nor did he submit evidence that there were any quality control problems with the laboratory used to analyze his urine.

6. The applicant has provided insufficient evidence to prove that his discharge due to a positive urinalysis was in error or unjust. Nor is the narrative reason for separation listed on his DD 214 incorrect. However, upon review of the Separation Program Designator Handbook, the applicant could also have received “misconduct” as the narrative reason for his discharge, with HKK (misconduct/drug abuse) as the separation code, instead of fraudulent entry into military service, drug abuse, with the JDT separation code. In any event, the applicant was discharged due to a positive test for illegal drug use and it is appropriate that his DD 214 accurately reflect the reason for his discharge.

7. As the applicant has not requested that the narrative reason for his discharge be changed to “misconduct” with the HKK separation code, the Board will not direct it. If the applicant submits a subsequent application requesting that his narrative reason for separation be

changed to “misconduct” with the corresponding separation HKK separation code within 180 days from the date of this decision, the Board will grant further consideration of his application.

8. Accordingly, his application should be denied.

ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

December 13, 2013

Date

