

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-011



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. After receiving the applicant's completed application on November 21, 2013, the Chair docketed the case and assigned it to [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 22, 2014, 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, who received a General discharge from the Coast Guard on June 4, 2012, for illegal use of the synthetic cannabinoid compound Spice, asked the Board to upgrade his discharge from General "under honorable conditions" with reentry code RE-4 (ineligible to reenlist) to Honorable with an RE-1 (eligible to reenlist). He stated that he disagreed with the Discharge Review Board's (DRB) decision to deny relief because he wants to start a career in law enforcement or reenlist in the military and cannot do either because of this information on his DD-214.

SUMMARY OF THE RECORD

On November 23, 2010, at age 23, the applicant enlisted in the Coast Guard Delayed Entry/Enlistment Program (DEP) and remained in the Coast Guard Reserve until January 4, 2011, when he was discharged from DEP and immediately enrolled on active duty as a seaman. On January 4, 2011, he also initialed an Administrative Remarks form (Page 7) acknowledging that he had received a full explanation of the Coast Guard's Drug/Alcohol Policy and Procedure.

During the course of a drug investigation, the applicant admitted to CGIS that he had used a controlled substance analog Spice on at least one occasion between August and December 2011. On April 25, 2012, a Page 7 stating that the applicant had been involved in a drug incident was placed in the applicant's file, and he was processed for discharge. The applicant acknowledged the entry of these facts on his Page 7.

On April 27, 2012, a Page 7 was placed in the applicant's file, indicating that he was screened by a doctor for the reported drug incident. It was determined that the applicant did not meet the criteria for a deferred/no diagnosis of Substance Abusive for Spice, as per DSM IV. Base on the diagnosis, the applicant did not require any further treatment.

On May 2, 2012, a separation action was authorized, with a classification of general discharge "under honorable conditions" for misconduct in accordance with Article 1.B.17 of the Military Separations Manual, a JKK separation code, and an RE-4 reentry code (ineligible to reenlist). The applicant signed his DD-214 and was officially separated on June 4, 2012.

VIEWS OF THE COAST GUARD

On January 22, 2014, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case. The JAG argued that although the applicant stated that he disagreed with the decision of the DRB, he failed to provide the DRB or the BCMR with any compelling evidence as to why his original discharge should be changed. The JAG stated that the Coast Guard has established that the use of Spice is considered a drug incident and it should not be consumed in any way by Coast Guard members. Because the applicant admitted to using Spice on at least one occasion, he admitted to a drug incident, and his separation and reentry codes are therefore proper.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 11, 2014, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

ALCOAST 605/10, which the Coast Guard released on December 22, 2010, prohibits the wrongful use and possession of certain non-controlled substances. It reads as follows:

2. Substance abuse . . . includes the wrongful use of controlled substance analogues, products that contain synthetic cannabinoid compounds, and other non-controlled substances. . .
 - B. Products that contain synthetic cannabinoid compounds include . . . spice. . .
6. The knowing use of any . . . product that contains synthetic cannabinoid compounds . . . constitutes a drug incident under Article 20.A.2 k.1.d, Reference (B) [Personnel Manual].

Article 1.A.2.k. of COMDTINST M1000.10 defines "drug incident" as the intentional use, wrongful possession, or trafficking of drugs or a civil or military conviction for such. It notes that no civil or military conviction is necessary for a member to incur a drug incident.

Under Article 1.B.17.b.(4)(a) of the Military Separations Manual, the Commandant may separate a member for misconduct due to drug abuse as follows:

- Involvement with drugs. Any member involved in a drug incident . . . as defined in Article 1.A.2.k. . . will be processed for separation from the Coast Guard with no higher than a general discharge.

Under Article 1.B.17.e.(1), a member with fewer than eight years of total active and inactive service, and who was recommended for a general discharge for misconduct: (a) must be informed, in writing, of the reason for the recommended discharge; (b) may consult with an attorney; (c) may object to the discharge; and (d) may submit a statement in his own behalf.

Under the Separation Designator Program (SPD) Handbook, members discharged due to a drug incident may receive only an RE-4 reentry code.

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.¹ The applicant discovered the alleged error in 2012; therefore, his application is timely.
3. The Board's review of the merits of this case indicates that the applicant was properly awarded a general discharge for misconduct, in accordance with ALCOAST 605/10 and Article 1.B.17. of the Military Separations Manual, which were in effect when he incurred a drug incident by using Spice. These records are presumptively correct under 33 C.F.R. § 52.24(b),² and the applicant has submitted no evidence to show that they are erroneous or unjust. Because the record contains no evidence of error or injustice, his request cannot prevail on the merits.
4. The applicant argued that his discharge should be upgraded in the interest of justice because he is trying to start a career in law enforcement or reenlist in the military and cannot do either because of his DD-214. However, the delegate of the Secretary informed the Board on July 7, 1976, by memorandum that it "should not upgrade a discharge unless it is convinced, after having considered all the evidence ... that in light of today's standards the discharge was disproportionately severe vis-à-vis the conduct in response to which it was imposed."³ Under Article 1.B.17. of the Military Separations Manual, members who are involved in a drug incident should be discharged for misconduct with no higher than a General discharge. In addition, under the SPD Handbook, members discharged because of a drug incident may only be assigned an RE-4 reentry code. Therefore, the Board is not persuaded that the applicant's General discharge and RE-4 are unduly severe, erroneous, or unjust.
5. Based on the record before it, the Board finds that the applicant's request for correction of his general discharge and reentry code cannot prevail on the merits. Therefore, the application should be denied.

¹ 10 U.S.C. § 1552(b).

² See *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties "correctly, lawfully, and in good faith").

³ Memorandum of the General Counsel to J. Warner Mills, et al., Board for Correction of Military Records (July 7, 1976).

ORDER

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

August 22, 2014

