

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-118

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 Chair docketed the case after receiving the application on April 23, 2014, 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, date January 23, 2015, 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 upgrade his 1971 under honorable conditions discharge to an honorable discharge.¹ The applicant stated that he “did not know there is a difference in general under Honorable and just Honorable.”

In support of correction, the applicant stated that the record is in error or unjust because he was “to [sic] young—immature.” The applicant offered only a copy of his discharge form DD 214 in support of the application.

SUMMARY OF THE RECORD

The applicant enlisted in the United States Coast Guard at age 17 on September 4, 1970, under a four-year contract. He completed recruit training and reported for duty aboard a cutter as a seaman apprentice (SA/E-2) on November 25, 1970.

¹ The five authorized types of discharge are Honorable, General Under Honorable Conditions (note that General, General Under Honorable Conditions, and Under Honorable Conditions are synonymous), Under Other than Honorable Conditions (previously known as an Undesirable discharge), Bad Conduct, and Dishonorable. Bad conduct and dishonorable discharges are only awarded by court-martial. Coast Guard Personnel Manual, COMDTINST M1000.4, Chapter 1.B.2.c.

On May 16, 1971, the applicant went AWOL (absent without leave) after his cutter's movement was announced. He missed the sailing of his vessel on May 17, 1971 and was absent eight days. He returned under his own volition and was punished at mast on June 1, 1971, and sentenced to a 23-day restriction to the Coast Guard Base [REDACTED] and forfeiture of \$65 per month for a period of one month. A form CG-3307 ("Page 7") in his record dated June 1, 1971, shows that he was orally counseled about "specific deficiencies" and advised that further misconduct could result in an Undesirable discharge for unfitness.

A medical entry dated May 26, 1971, states that the applicant reported that he had gone AWOL three times and "wants out of the Guard." The applicant told the examiner that he only joined the Coast Guard because he had dropped out of high school and his father wanted him out of the house. In addition, he reported that he had started using drugs after joining the Coast Guard and was using all of the different drugs available to relieve his tension.

On June 15, 1971, the applicant underwent a psychiatric evaluation where he admitted to heavy drug use as well as suicidal thoughts. The psychiatrist reported that "he [the applicant] doesn't seem to care weather [sic] he gets a BCD [Bad Conduct Discharge], etc." According to the psychiatric report, the applicant reported being "stoned most all the time" and attributed his drug use to ongoing pressure and harassment he was suffering during his enlistment. (No further details of this harassment appear in the record.) The psychiatrist concluded that the applicant would "be of no use to the service" and "do whatever in acting out to push to where he will have to be discharged."

On June 15, 1971, the applicant's commanding officer (CO) notified him in writing that he was recommending the applicant for a discharge for unfitness under Article 12-B-12 of the Personnel Manual due to his abuse of "Speed, Pot and LSD." He noted that the Commandant would determine what type of discharge the applicant would receive and that the applicant could submit a written statement on his own behalf for consideration. The applicant acknowledged receipt of the notification and indicated that he did not desire to submit a statement.

On June 18, 1971, the applicant was examined for lower abdominal pain at USPHS Hospital, [REDACTED] where he again reported to physicians his drug use. He specifically reported using marijuana, mescaline,² and "STP."³ His pain abated, and he was proclaimed fit for duty at that time.

On June 28, 1971, the Commanding Officer of the Coast Guard Base Seattle messaged the Commandant (PS) and requested authority to discharge applicant based on unfitness due to drug use. The message specifically named "speed," "pot," and "LSD."

² Mescaline is the naturally occurring hallucinogenic compound found in the Peyote Cactus and various other plant species. *Mescaline*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/mescaline> (Accessed Jan 20, 2015).

³ "STP" is slang for a type of psychedelic amphetamine. *STP*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/stp> (Accessed Jan 20, 2015).

On July 7, 1971, the applicant was reprimanded at mast for violating Article 134 of the Uniform Code of Military Conduct (UCMJ) for “Nuisance Committing.”⁴ No other details of this misconduct appear in the record.

On July 27, 1971, the Commandant authorized the applicant’s general discharge under honorable conditions pursuant to Article 12-B-12 of the Coast Guard Personnel Manual. Surrender of the applicant’s uniform was also directed.

On July 30, 1971, the applicant was discharged for reasons of unfitness pursuant to Article 12-B-12 of the Personnel Manual. He had served just over ten months of his four-year contract. His discharge form DD 214 shows that he was issued a DD Form 257CG, “General Discharge” certificate.

APPLICABLE REGULATIONS

Article 12-B-12 of the Coast Guard Personnel Manual in effect at the time of applicant’s discharge characterizes unfitness as including “Drug addiction, habituation, or the unauthorized use or possession of narcotics...hallucinogens, and other similar known harmful or habit forming drugs and/or chemicals.” This section also authorizes discharge for these acts with an undesirable, general, or honorable discharge.

Article 1.B.17.b.4. of the current Military Separations Manual, COMDTINST M1000.4, states that “Any member involved in a drug incident or the illegal, wrongful, or improper sale, transfer, manufacture, or introduction onto a military installation...will be processed for separation from the Coast Guard with no higher than a general discharge.”

VIEWS OF THE COAST GUARD

On August 27, 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 adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC), noting a slight exception.

PSC pointed out that the application is untimely since the applicant was discharged in 1971 and that the application contained no justification as to why it was late.

PSC cited various correspondences between the Commandant (PS) and the Commanding Officer, USCG Base [REDACTED] [REDACTED] to illustrate the applicant’s self-admitted drug use. PSC further noted that the applicant’s DD 214 shows an “under honorable conditions” discharge.

⁴ “Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.” 10 U.S.C. § 934, Art. 134 (UCMJ § 134).

PSC finally claimed that Article 12.B.18.b.4. of the Coast Guard Personnel Manual in effect in 1971 stated that Coast Guard members “involved in a drug incident...will be processed for separation from the Coast Guard with not higher than a General Discharge.”

The JAG pointed out that PSC had cited a more recent version of PERSMAN, COMDINST M1006.A (series), which was not in effect during the applicant’s enlistment. According to the JAG, the 1967 Personnel Manual is the applicable version. The JAG stated that under Section 12-B-12 of the 1967 Personnel Manual, there is no requirement for a less than honorable discharge in the instances of drug involvement. Despite this, the JAG said that “there is no evidence that the characterization of service as General Under Honorable Conditions was in error or created an injustice.”

The JAG, in concurrence with the PSC, recommended denial of the application.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 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.

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.⁵ The record shows that the applicant received his DD 214 showing a discharge “under honorable conditions” and a “General Discharge” certificate in 1971. Therefore, the preponderance of the evidence shows that he knew that he had received a general discharge in 1971, and his application is untimely.
3. Under 10 U.S.C. § 1552(b), the Board may excuse the untimeliness of an application 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 to determine 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.”⁶
4. The applicant has stated as justification for delay that he “did not know there is a difference in general under honorable and just honorable.” However, the record shows that he was issued a “General Discharge” certificate upon leaving the Coast Guard. Therefore, the

⁵ 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

⁶ *Allen v. Card*, 799 F. Supp. 158, 164-65 (D.D.C. 1992); *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

Board finds that the preponderance of the evidence shows that, while he may have forgotten the difference in the interim, he knew in 1971 that he had not received an honorable discharge.

5. The Board's review of the merits shows [REDACTED] the application must fail. The applicant received a general discharge under honorable conditions in July of 1971, specifically for the admitted use of illicit drugs. He was discharged in accordance with Article 12-B-12 of the Coast Guard Personnel Manual in effect at the time, which did not preclude a general discharge based on drug use. The applicant was notified of his pending discharge and elected not to object or to submit a statement on his own behalf. The District Commander cited Article 12-B-12 when he recommended the applicant's discharge. The Commandant authorized a general discharge under honorable conditions referencing the same. These actions are presumptively correct,⁷ and the applicant has submitted no evidence of error.

6. In the absence of error, the Board must consider whether an injustice exists to warrant correction of a military record.⁸ The applicant relied on his age and immaturity at the time of his discharge as evidence of the alleged injustice. Although the applicant was very young at the time of his military service, the Board is not persuaded that it was unjust for the Commandant to award a general discharge to someone who served only about ten months and who repeatedly abused drugs, went AWOL, and caused nuisance for his command during that short period. His military records support the reason for and character of his discharge.

7. Based on the record before it, the Board finds that the applicant's request for correction of his general discharge for unfitness cannot prevail on the merits. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations. The applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

[REDACTED]

⁷ 33 C.F.R. § 52.24(b); 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.").

⁸ See *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (defining "injustice" as "treatment by the military authorities that shocks the sense of justice but is not technically illegal").

ORDER

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

January 23, 2015

