


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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2015-116**

  
SR (former)

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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 after receiving the applicant's completed application on June 5, 2015, and assigned it to staff member  to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 8, 2016, 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 1984<sup>1</sup> general discharge under honorable conditions for drug abuse to an honorable discharge.<sup>2</sup> He stated that he was an alcoholic and an addict at the time he was discharged but that he has been "clean and sober for more than 21 years" and simply wants forgiveness.

The applicant stated that he discovered the error in his record in 1984, and he argued that it is in the interest of justice for the Board to excuse his delay in applying for correction because his life "has changed for the best."

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on September 29, 1981. On April 30, 1982, he signed a Page 7 acknowledging that he was aware of the Coast Guard's drug use policies and that if he was caught using or possessing illegal drugs then he could face disciplinary action and discharge. His military records show that on February 7, 1983, the applicant participated in a

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<sup>1</sup> On his application, the applicant indicated that he was discharged in 1984 and discovered the alleged errors in his record in 1984 as well. However, his military record shows that he was discharged on February 27, 1985.

<sup>2</sup> The five authorized types of discharge are Honorable, General Under Honorable Conditions, Under Other than Honorable Conditions, Bad Conduct, and Dishonorable. Bad conduct and dishonorable discharges are only awarded by court-martial. Personnel Manual, Article 12.B.2.c.

random urinalysis which detected cocaine in his urine. As a result of this positive urinalysis, the applicant was punished at mast on March 22, 1983. His non-judicial punishment (NJP) consisted of a reduction from pay grade E-2 to E-1 and restriction to base for 14 days.

On January 25, 1985, the applicant was once again punished at mast for wrongfully using marijuana and methamphetamines. On March 22, 1983, he was reduced to pay grade E-1, ordered to forfeit \$200.00 per month for one month, and to pay \$100.00 per month, the latter of which was suspended for six months.

On January 29, 1985, the District Commander notified the applicant by memorandum that he was recommending that the applicant be separated with a general discharge for misconduct under Article 12-B-18 of the Personnel Manual because of his use of marijuana and methamphetamine, as proven at the January 25, 1985, Captain's Mast. The Commander told the applicant that he had the right to submit a written statement and to consult with a lawyer. The applicant acknowledged the discharge notification and indicated that he did not desire to make a written statement or consult with a lawyer.

On February 4, 1985, the District Commander asked the Commandant to discharge the applicant for misconduct. The Commander noted that the applicant was counseled on the Coast Guard's drug abuse policy on April 30, 1982, and again on March 8, 1983, and that on March 15, 1983, he was evaluated by a Command Alcohol Abuse Counselor and was subsequently recommended for the Naval Alcohol Safety Action Program, which he completed on April 29, 1983. The Commander noted that despite repeated counseling about the Coast Guard's drug abuse policies, the applicant had been involved in two drug-related incidents resulting in NJP and had received NJP twice in the prior six months for other violations of the Uniform Code of Military Justice.

On February 14, 1985, the Commandant ordered the applicant's command to discharge him with a general discharge for misconduct due to drug abuse in accordance with Article 12-B-18 of the Personnel Manual. The applicant was discharged on February 27, 1985, pursuant to this order. His DD 214, which he signed, shows that he was discharged "under honorable conditions" (a general discharge) because of "misconduct" with an HKK separation code, which denotes drug abuse, and an RE-4 (ineligible for reenlistment) reentry code.

### **VIEWS OF THE COAST GUARD**

On October 19, 2015, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum, dated September 8, 2015, signed by the Commander, Personnel Service Center (PSC).

PSC stated that the application is untimely and should not be considered by the Board because the applicant was discharged in 1985 but did not submit his application to the BCMR until 2015. PSC argued that the applicant was properly discharged for misconduct in accordance with Article 12-B-18(b) of the Coast Guard Personnel Manual after he tested positive for drug use, and that his alleged sobriety over the past 20 years has no bearing on his violation of Coast

Guard policy during his service. Finally, PSC argued that notwithstanding the untimeliness, relief should be denied because the applicant's discharge was proper and aligns with current Coast Guard standards.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On October 20, 2015, 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**

Article 12-B-18.A.2.m. of the Personnel Manual in effect in 1984 stated that any occurrence of drug abuse constituted a "drug incident," and Article 12.B.18(b)(4) stated that the Commandant could discharge any member for misconduct if they used illegal drugs. Article 20-B-2.b.(1) authorized "administrative inspections" in the form of random or all-unit urinalyses. Article 20-B-3.c.(1) provided that after one "drug incident," a petty officer could be discharged or retained in the Service, depending upon his overall performance and conduct and completion of screening and treatment. Article 12-B-2.f.(2) provided that a "general discharge will be issued ... [w]hen a member has been identified as either a user, possessor, or distributor of illegal drugs or paraphernalia" unless the discharge was not administrative but punitive (by court-martial), in which case a bad conduct or dishonorable discharge could be assigned.

ALCOAST 016/84, issued by the Commandant on July 30, 1984, stated that "[e]ffective upon receipt, any member involved in a drug incident as defined by [the Personnel Manual] ... will be processed for separation." It noted that the then-current drug policy had been in effect for more than two years and had been widely publicized through recruit training and required unit indoctrination. It stated that in the Service's attempt to rid itself of anyone who abused drugs, more than 700 members had received general discharges due to drug abuse since April 1982.

### **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. An application to the Board must be filed within three years after the applicant discovers the alleged error in his record.<sup>3</sup> The applicant received the general discharge on February 27, 1985, but did not submit his application until 2015. The preponderance of the evidence shows that he knew of the alleged error in his record in 1985, and his application is untimely.

2. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.<sup>4</sup> In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for

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<sup>3</sup> 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

<sup>4</sup> 10 U.S.C. § 1552(b).

the delay and the potential merits of the claim based on a cursory review”<sup>5</sup> to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted 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.”<sup>6</sup>

3. Regarding the lengthy delay in submitting his application, the applicant argued that it is in the interest of justice for the Board to excuse his delay in applying for correction because his life “has changed for the best.” The Board notes that his request does not depend upon an allegation of error but on a claim that his general discharge is now unjust based upon the passage of time and his post-service conduct.

4. A cursory review of the merits of this case shows that it lacks potential merit. The record shows that the applicant received a general discharge after urinalyses revealed that he twice used illegal drugs while on active duty despite counseling and discipline. There has been no change in this policy to date, and the District Commander’s determination that the applicant had abused drugs and the resultant general discharge are presumptively correct under the Board’s rules at 33 C.F.R. § 52.24(b).<sup>7</sup> The applicant was afforded the same due process that members with less than eight years of service who are involved in a “drug incident” receive today (notification of the proposed discharge and the opportunity to consult a lawyer, to object to the discharge, and to submit a written statement),<sup>8</sup> and he did not object to the proposed general discharge. Moreover, although the applicant argued that his discharge should be upgraded because he has been clean and sober for the past 20 years, his post-discharge conduct alone is not a proper basis for upgrading the character of his discharge, which is properly based on the character of his service and reason for discharge.<sup>9</sup> Therefore, the Board finds that the applicant’s claim cannot prevail on the merits.

5. The Board has also considered the applicant’s argument in light of prior decisions such as BCMR Docket No. 2005-107, which consider whether, under the totality of the circumstances, clemency should be exercised to remove injustice with respect to a past discharge, even if (as here) it is neither disproportionately severe compared to the misconduct nor clearly inconsistent with today’s standards. While the applicant’s representation that he has been clean and sober for more than 21 years is commendable, it is not a circumstance that justifies an exercise of clemency to upgrade the applicant’s 1984 discharge for drug abuse.

6. Accordingly, the Board will not excuse the application’s untimeliness or waive the statute of limitations. The applicant’s request should be denied.

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<sup>5</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>6</sup> *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

<sup>7</sup> *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.”).

<sup>8</sup> Personnel Manual, Article 12.B.18.

<sup>9</sup> *See* Memorandum of the General Counsel to J. Warner Mills, *et al.*, Board for Correction of Military Records (July 8, 1976) (instructing the Board with respect to upgrading discharges that it should not upgrade them based on the veterans’ post-discharge conduct alone and “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.”)

**ORDER**

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

April 8, 2016

