

**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. 2016-033**

  
SR/E-1 (former)

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**FINAL DECISION**

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. After receiving the completed application and military records on December 12, 2015, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 22, 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, who received a general discharge from the Coast Guard on August 23, 1985, for illegal use of cocaine, asked the Board to upgrade his discharge characterization from "general" to "honorable." The applicant stated that he got caught the only time he used drugs while in the military. He was a young man who made a bad decision and refused treatment at the time, which he has deeply regretted. However, since the early 1990s, he has sought treatment and been in recovery, gotten married, raised a family, and been gainfully employed as a truck driver for more than twenty years. Based on the better choices he has made since his discharge, he is requesting the upgrade. He stated that he was very proud to serve his country and is very ashamed of his general discharge.

The applicant stated that he discovered the error and injustice in his record on August 1, 2015. He explained that he is "trying to bring closure for [him]self and [his] family to this embarrassing incident." He has a terminal illness, myasthenia gravis, which has disabled him, and he wants to "clear the wreckage" before he passes. In support of these allegations, the applicant submitted the following:

- A letter from the State Police Department dated September 8, 2015, shows that the applicant had submitted his fingerprint card to get a copy of his criminal history record and that the department's technical search showed that he had no criminal history.

- A letter from an Addictions Recovery Center dated September 14, 2015, states that the applicant was admitted to the program on April 10, 1992, and successfully completed Level III residential treatment on May 22, 1992.
- The Executive Director of a recovery program wrote a letter dated October 6, 2015, stating that the applicant had been his sponsor when he sought treatment for alcoholism in 2010 and that choosing the applicant was one of the best decisions he has made to be able to live a life of sobriety. He recommended that the applicant's discharge be upgraded to honorable.
- A friend who has known the applicant for twenty-four years stated that the applicant is an upstanding citizen, involved in his community, and always ready to help others. He stated that the applicant has been clean and sober for twenty-four years and is married with kids and grandkids.
- The applicant's former employer stated that the applicant worked for him as a truck driver from 1993 to 1998 and was a model employee and team player. The applicant has helped other truck drivers with substance abuse problems and is an asset to the community.
- The applicant's sister stated that as a child, the applicant was left on his own a lot and fell in with a rough, drug-using crowd. He failed at school and joined the Coast Guard, which he loved. His discharge was a great disappointment, and he fell in with his old crowd. However, after about nine months, he asked his sister (his parents had died) for assistance in straightening out, went into treatment, and "came out a new man." His sister asked the Board to consider that he was very young at the time, immature, and made one mistake, but has become sober, married, raised children, and serves as a role model. She asked the Board to upgrade his discharge.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 30, 1984, at age 20. On the day he enlisted, the applicant signed a CG-3307 Administrative Remarks form ("Page 7") acknowledging that "I have been advised that the illegal use or possession of drugs constitutes a serious breach of discipline which will not be tolerated. Also illegal drug use or possession is counter to esprit de corps, mission performance and jeopardizes safety. No member will possess or distribute illegal drugs or drug paraphernalia."

On February 9, 1984, during recruit training at USCG Training Center Cape May, the applicant signed a Page 7 acknowledging that he was given a full explanation of the Coast Guard's Drug and Alcohol Abuse Program by the Command Drug and Alcohol Representative (CDAR), in compliance with the Personnel Manual, COMDINST M1000.6.

On April 20, 1984, upon completing recruit training, the applicant advanced to seaman apprentice and signed a Page 7 acknowledging that "During training the provisions of Article 8-B-1 (Art 137 UCMJ) COMDTINST CG PERSMAN were complied with and a course of instruction in the code of conduct for members of the U.S. Armed Forces was conducted in accordance with Article 2-C, COMDTINST M1500.10 Coast Guard Training & Education Manual."

After completing recruit training, the applicant was assigned to the icebreaker USCGC [REDACTED]. During a random urinalysis on June 20, 1985, the applicant's urine tested positive for cocaine and rescreening by gas chromatography/mass spectrometry confirmed the result.

On July 11, 1985, the applicant was punished at mast by the commanding officer (CO) of the Polar Star. He was reduced in rate to E-1 and restricted with extra duties for thirty days.

On July 15, 1985, the CO advised the applicant that he was initiating his general discharge for misconduct due to drug abuse because he had violated Article 92 of the Uniform Code of Military Justice (UCMJ) by using cocaine. The CO noted that the applicant had a right to consult an attorney, to object to the discharge, and to submit a statement on his own behalf. The applicant acknowledged this notification in writing, acknowledged that the general discharge might cause prejudice in civilian life, waived his right to an attorney, waived his right to submit a statement, and indicated that he did not object to being discharged.

On July 23, 1985, the applicant's CO submitted a recommendation that the applicant receive a general discharge due to his use of cocaine. The District Commander endorsed the recommendation and recommended approval. On August 2, 1985, the Personnel Command issued orders for the applicant to receive a general discharge by reason of misconduct due to drug abuse in accordance with Article 12-B-18 of the Personnel Manual then in effect.

On August 23, 1985, the applicant received a general discharge from the Coast Guard, under Article 12-B-18 of COMDINST M1000.6. He had served one year, six months, and twenty-four days on active duty.

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

On May 20, 2016, the Judge Advocate General of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. In so doing, he adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC stated that the application is untimely, as the applicant was discharged in 1985, and did not justify his delay in applying to the Board. Regarding the applicant's request, PSC stated that the applicant has not shown that his discharge was unjust or contrary to policy, and his post-discharge conduct should not affect the characterization of his military service. Therefore, PSC recommended denying relief.

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

On June 1, 2016, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to submit a written response within thirty days. No response was received.

## APPLICABLE LAW AND REGULATIONS

Under Article 12-B-18.b.(4) of the Personnel Manual in effect in 1985, the Commandant could separate a member for misconduct due to “drug abuse” as follows:

Drug abuse. The illegal, wrongful, or improper use, possession, sale transfer, or introduction on a military installation of any narcotic substance, intoxicating inhaled substance, marijuana, or controlled substance, as established by 21 U.S.C. 812. Any member involved in a drug incident will be separated from the Coast Guard with no higher than a general discharge. However, in truly exceptional situations, commanding officers may recommend retention of members E-3 and below involved in only a single drug incident.

Under Article 12-B-18.e.(1), a member with less than eight years of active service who was being recommended for a general discharge for misconduct was entitled to (a) be informed of the reasons for the recommended discharge, (b) consult an attorney, and (c) submit a statement in his own behalf.

These regulations remain essentially the same under Article 1.B.17. of the current Coast Guard Military Separations Manual, COMDTINST M1000.4, except there is now no provision regarding recommending retention of members E-3 and below in exceptional situations.

## 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 or within three years of a decision of the Discharge Review Board (DRB), which has a 15-year statute of limitations.<sup>1</sup> The applicant was discharged in 1985, and so the DRB’s jurisdiction expired in 2000. The record shows that he was informed of the reason for his discharge and the character of his discharge in 1985. Therefore, his application is untimely.
3. Pursuant to 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.”<sup>2</sup> 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.”<sup>3</sup>

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<sup>1</sup> 10 U.S.C. § 1552; 33 C.F.R. § 52.22; *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994).

<sup>2</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

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

4. The applicant did not explain or justify his long delay in seeking an upgrade of his discharge, and a cursory review of the merits of this case indicates that his claim cannot prevail. The records show that the applicant was properly awarded a general discharge for misconduct, in accordance with Article 12-B-18 of the Personnel Manual then in effect, after his urine tested positive for cocaine use. His record shows that he received due process as provided in Article 12-B-18.e.(1) of the Personnel Manual. These records are presumptively correct under 33 C.F.R. § 52.24(b),<sup>4</sup> and although the applicant submitted evidence showing that his post-discharge life has been commendable, he submitted nothing to cast doubt on the general character of his discharge from the Coast Guard.

5. The Board notes that the applicant was 21 years old when he committed the offense for which he was discharged, and his evidence indicates that he has become an upstanding member of his community since his discharge. However, his post-discharge conduct is not evidence that the Coast Guard committed an error or injustice in awarding him a general discharge in 1985. In this regard, the Board notes that 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.”<sup>5</sup> Under Article 1.B.17. of the Military Separations Manual in effect today, COMDTINST M1000.4, members whose urine tests positive for cocaine are discharged for misconduct with no better than a general discharge. Therefore, the Board is not persuaded that the applicant’s general discharge for misconduct is disproportionately severe in light of current standards.

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

**(ORDER AND SIGNATURES NEXT PAGE)**

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<sup>4</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>5</sup> 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 SR [REDACTED], USCG, for correction of his military record is denied.

September 22, 2016

