

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-175



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 completed application on July 29, 2016, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated June 8, 2017, 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, a former member of the Coast Guard who was discharged after 18 days of recruit training in 2000, asked the Board to correct his DD Form 214 by upgrading his character of separation and his reentry code. The applicant's DD-214 currently shows a general discharge "Under Honorable Conditions" with an RE-4 reentry code, which denotes that he is not recommended for reentry into the military. He requested that he receive an uncharacterized discharge and an RE-3 reentry code, which allows a veteran to reenlist if a recruiter is able to get a waiver from the Recruiting Command.

The applicant stated that he entered the Coast Guard in 2000 when he was "young and dumb" over 15 years ago. He argued that he is a family man now, and that he is married with three children. He stated that he comes from a family of military members, and he would like to enter the Army to prove his "love for this land." He therefore asked that the Board grant his request and upgrade his discharge and reentry code. Regarding the delay in his application, he stated that he "had no clue of the damage this code had," presumably until he tried to re-enter the military.

SUMMARY OF THE RECORD

The applicant entered the Coast Guard on August 8, 2000, at age 18, after signing a four-year service contract. On the applicant's enlistment document, he answered "No" to the question

“Have you ever tried or used or possessed any narcotic...depressant...stimulant, hallucinogen...or cannabis...or any mind-altering substance...or anabolic steroid, except as prescribed by a licensed physician?” Also on August 8, 2000, he received and signed a CG-3307 (“Page 7”) which states the following:

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 use, possess, or distribute illegal drugs or drug paraphernalia. I also understand that upon reporting to Recruit Training, I will be tested by urinalysis for the presence of illegal Drugs. If my urine test detects the presence of illegal drugs, I will be subject to an immediate general discharge by reason of misconduct. By signing below I am certifying I have not knowingly ingested any illegal drug for at least the last 60 days.

On August 25, 2000, the applicant received and signed a Page 7 which states the following:

Awarded general discharge this date in accordance with Personnel Manual, COMDTINST M1000.6A, 12-B-18. Member identified as a user of an illegal substance as evidenced by a positive urinalysis test conducted upon arrival to training center Cape May.

00AUG25: Discharged from active duty without immediate reenlistment this date by reason of misconduct. Assigned re-entry code (RE-4). Member provided certificate of release or discharge from active duty form (DD-214) and other separation documents as required.

Also on August 25, 2000, the applicant received and signed his DD-214. It states that he entered active duty on August 8, 2000, and separated on August 25, 2000. His type of separation states Discharged, the character of service is Under Honorable Conditions, and his reentry code is RE-4. The separation code is JDT, which according to the Separation Program Designator Handbook, denotes an involuntary discharge for “fraudulent entry into the military – drug abuse,” and the narrative reason for separation on his DD-214 is “Misconduct.”

VIEWS OF THE COAST GUARD

On January 6, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended 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).

PSC recommended that the Board deny relief because the applicant has not proven by a preponderance of the evidence that there is any error or injustice in his military record. PSC stated that the application is untimely, and that the applicant provided no explanation for his delay in filing the application. PSC argued that the applicant was identified as a user of an illegal substance by a urinalysis test at the Cape May Training Center after having been advised via a Page 7 that he would be subject to immediate general discharge by reason of misconduct if an illegal drug was detected. Therefore, PSC stated that the Coast Guard correctly discharged the applicant in accordance with policy in COMDTINST M1000.6A, and no relief is warranted.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 10, 2017, the Board sent a copy of the Coast Guard's advisory opinion to the applicant and invited a response within 30 days. No response was received.

APPLICABLE REGULATIONS

Article 12.B.18.b.4. of COMDTINST M1000.6A, the Personnel Manual in effect in August 2000, a member may be discharged for misconduct by reason of involvement with drugs. The manual states:

Any member involved in a drug incident or the illegal, wrongful, or improper sale, transfer, manufacture, or introduction onto a 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 sign a CG-3307 entry acknowledging the presence of drugs in their bodies is grounds for a general discharge for misconduct.

Article 12.B.20.a. authorizes the commanding officer (CO) of the training center to award "uncharacterized" discharges for most members who are separated due to conduct or performance issues or for failing to meet standards if they have less than 180 days of active service.

The Personnel Manual was revised in 2010 to state that "Commanding Officer, Training Center Cape May, when compelling circumstances exist, has the authority to award an uncharacterized discharge for service during boot camp in cases involving drug incidents." This provision did not exist in 2000. In 2000, there was only an Article 12.B.20.b., without any subsections, which stated "Only Commander...and Commanding Officer, Training Center Cape May have final authority to discharge a member under this Article." This same provision remains in effect and appears today in Article 12.B.20.b.1. of the Military Separations Manual.

ALCOAST 125/10, issued by the Commandant on March 18, 2010, states that the default reentry code for a member being discharged with a JDT separation code is now RE-3 and that the RE-4 code "is prescribed by the separation approval authority only in cases with associated in-service misconduct (e.g., tampering with drug/alcohol test)."

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 submission 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, or reasonably should have discovered, the alleged error or injustice. The applicant was discharged from the Coast Guard in 2000, and he signed the Page 7 awarding him a general discharge and his DD-214. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in 2000, and his application is untimely.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.¹ 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 the delay and the potential merits of the claim based on a cursory review”² 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.”³

4. The applicant asked the Board to correct his military record by upgrading his character of discharge and reentry code on his DD-214 and alleged that they are unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant’s military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁴ 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.”⁵

5. Upon enlisting on August 8, 2000, the applicant denied ever having used illegal substances. The applicant’s urinalysis test conducted upon his arrival at recruit training, however, was positive, indicating illicit drug use. Recruits whose urine tests positive for drugs as a result of drug use that they concealed upon their enlistment could be discharged by the CO of the Training Center for fraudulent enlistment under Article 12.B.20. of the Personnel Manual then in effect. The applicant does not now claim that the test was erroneous; instead, he states that in the interest of justice the Board should grant his request because he was “young and dumb” at the time and he is a family man now. Therefore, the Board finds that the applicant has failed to prove by a preponderance of the evidence that the Coast Guard committed an error in finding that he intentionally used illicit drugs and falsely claimed to be “drug free” to ensure his enlistment.

6. The Board notes, however, that since the applicant’s discharge Coast Guard policies have changed. Since 2010 and under Article 12.B.20.b.1. of the current Military Separations Manual, the CO of the Training Center may award an uncharacterized discharge “for service during boot camp in cases involving drug incidents” when compelling circumstances are present. In addition, ALCOAST 125/10 states that the default reentry code for a member discharged with a JDT separation code for a positive urinalysis upon entering recruit training is RE-3 when there is no in-service misconduct since the recruit used the illegal drug prior to entry. Therefore, although the applicant has not proven any error in his record given the policies in effect in 2000, in light of his age at the time and in accordance with Coast Guard policy currently

¹ 10 U.S.C. § 1552(b).

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

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

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

in place, the Board finds that his record should be corrected in the interest of justice to show that he received an uncharacterized discharge and an RE-3 reentry code.⁶

7. Accordingly, the applicant's DD-214 should be corrected. Specifically, the Coast Guard will correct block 24 to show that he received an uncharacterized discharge and block 27 to show a reentry code of RE-3. These corrections should be made by preparing a new DD-214.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁶ This decision is consistent with the Board's decision in two prior cases, Docket No. 2011-060 and Docket No. 2009-252.

ORDER

The application of former [REDACTED], for correction of his military record is granted as follows:

The Coast Guard shall issue him a new DD-214 incorporating the following corrections:

- Block 24 shall show an uncharacterized discharge; and
- Block 27 shall show an RE-3 reentry code.

The following notation may be made in Block 18 of the DD-214: “Action taken pursuant to order of the BCMR.”

June 8, 2017

