

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-005

██████████
██████████

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 October 13, 2016, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 28, 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 machinist's mate (MK), asked the Board to upgrade his 1986 general discharge under honorable conditions for drug abuse to an honorable discharge.¹ He stated, "There is no error or injustice to be corrected, just a young man that made a mistake many years ago. I would like to respectfully request to have my General Discharge upgraded to Honorable."

The applicant stated that he was told by a shipmate in 1986 that "if [he] wanted to be discharged, the fastest way would be a drug offense. So that is what [he] did in order to get discharged." The applicant explained that he wanted to be discharged because when he reported for duty aboard a cutter, he was advised that he would be sent to a school for more training. While other crewmates were sent for more training, he was not. However, he had extended his enlistment to attend more training and felt that the Coast Guard had not held up its end of the bargain.

The applicant stated that after his discharge in 1986, he went back to school, was employed by a State government for eighteen years, and has been working for the Department of Veterans' Affairs for ten years.

¹ 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.

SUMMARY OF THE RECORD

On July 6, 1982, the applicant enlisted in the Coast Guard for four years at age 18. Upon enlisting, he signed a CG-3307 form ("Page 7") acknowledging that he knew that "the illegal use or possession of drugs constitutes a serious breach of discipline and will not be tolerated." Another Page 7 in the applicant's record show that during recruit training, he took a course of instruction on the Uniform Code of Military Justice and was informed of the "Coast Guard's policy concerning drug abuse and possession incident to such use and was given a full explanation of the program."

After completing recruit training, the applicant advanced from seaman recruit (pay grade E-1) to seaman apprentice (E-2) and was assigned to a cutter based in Kodiak, Alaska, on September 28, 1982. From July 13 to August 31, 1983, he completed Law Enforcement School in Texas before returning to Kodiak. On February 27, 1984, the applicant advanced to seaman (E-3). On June 6, 1984, the applicant was assigned to a LORAN station in the Midwest.

On May 5, 1985, the applicant was sent to an air station in Michigan to attend an Enlisted Education Program (EEP) School. He was required to attend EEP School to raise his scores because he wanted to qualify to attend MK "A" School. On June 13, 1985, the applicant underwent a "retest of Enlisted Battery Tests" and qualified for MK "A" School. He returned to the LORAN station the next day. On July 7, 1985, the applicant earned a Good Conduct Medal for three years of good conduct.

On October 31, 1985, the applicant extended his enlistment for two years to attend training and reported to MK "A" School at the training center in Yorktown, Virginia. On January 14, 1986, his rating was changed from seaman to fireman. On March 21, 1986, the applicant completed MK "A" School and was advanced to MK3/E-4.

On April 27, 1986, after taking leave, the applicant reported for duty aboard a cutter based in Massachusetts. On May 15, 1986, he was transferred to a new cutter that was in drydock and not yet commissioned. In June 1986, he attended five days of firefighting and damage control training.

On July 1, 1986, the applicant and a crewmate were arrested by local police. The police report states that they were observed by police sitting in the front seat of a parked car and they were "bent over to the center of the auto and appeared to be working on something." The police officers walked to each side of the car and saw the crewmate, in the driver's seat, using a driver's license to arrange a white powder on a mirror. They also saw the applicant use a rolled up twenty dollar bill as a snorting tube to inhale the white powder, at which point they knocked on the car doors and arrested both of them for possession of cocaine. On July 10, 1986, a laboratory informed the command that a urine sample taken from the applicant on July 2, 1986, had tested positive for a metabolite of cocaine.

On July 28, 1986, the applicant was informed that his command was initiating his discharge based on his "illegal possession and use of cocaine," based on a positive urinalysis result. The command stated that a general discharge for misconduct would be recommended and advised the

applicant that he had a right to legal counsel because of the recommendation for a general discharge and a right to submit a written statement. On July 30, 1986, the applicant signed a Statement Form, on which he wrote only that he did not wish to make a statement.

On August 4, 1986, the applicant signed an Acknowledgment of Rights and Benefits, stating (a) that he had been informed that he was being recommended for a general discharge for misconduct due to drug abuse, (b) that he had been afforded an opportunity to consult a lawyer, and (c) that he had been afforded a right to make a statement. On the same day, his command sent a letter to the Personnel Command requesting permission to discharge the applicant and his crewmate for drug abuse based on their arrest and the urinalysis results. The command stated that the applicant had been a hard worker with a good attitude but was fully aware of the drug abuse policy and so the command recommended a general discharge.

On August 16, 1986, the Personnel Command issued orders for the applicant to receive a general discharge under honorable conditions for misconduct due to drug abuse, pursuant to Article 12-B-18 of the Personnel Manual then in effect. The Personnel Command told the command that the applicant should acknowledge his right to counsel on a Page 7 in his record.

On September 4, 1986, the command reported to Commandant that at a hearing on August 25, 1986, a judge had deferred the applicant's and crewmate's case for a year "based on their past record and the fact that they were to be discharged from the Coast Guard."

On September 10, 1986, the applicant signed a CG-3307 acknowledging that he had declined the opportunity to consult counsel regarding his general discharge.

On September 15, 1986, the applicant received a general discharge under honorable conditions due to drug abuse with an HKK separation code and an RE-4 reenlistment code (ineligible to reenlist). The narrative reason for separation on his DD 214 is "misconduct." He had served four years, two months, and ten days on active duty. His DD 214 shows that, aside from recruit training, he had undergone a forty-hour training in first aid for first responders, fifteen weeks of MK "A" School, six weeks of EEP training, seven weeks of Law Enforcement School, and a day of civil rights training.

VIEWS OF THE COAST GUARD

On March 2, 2017, 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 signed by the Commander, Personnel Service Center (PSC).

PSC stated that the application is untimely and should not be considered by the Board beyond a cursory review because the applicant was discharged in 1986 and failed to justify his delay in seeking relief. PSC argued that the applicant was properly advised of the Coast Guard's drug policies upon enlisting and was properly discharged for misconduct in accordance with Article 12-B-18(b) of the Coast Guard Personnel Manual after he was arrested by local police for possession of cocaine and tested positive for cocaine use.

PSC stated that the applicant was notified of his command's intent to initiate a general discharge for misconduct due to his drug abuse, acknowledged this notification, and was afforded an opportunity to consult a lawyer and make a statement. However, he declined to submit a statement.

PSC recommended that the Board deny relief because the applicant has not shown that his discharge was erroneous or unjust and his only argument is that he should get a "second chance." PSC concluded that there is no justification for upgrading the applicant's discharge from general to honorable.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 1, 2017, 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 016/84, issued by the Commandant on July 30, 1984, states that "[e]ffective upon receipt, any member involved in a drug incident as defined by [the Personnel Manual] ... will be processed for separation." It notes that the policy mandating separation for drug abuse had been in effect for more than two years and had been widely publicized through recruit training and required unit indoctrination. It also notes 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.

Article 20-A-2.m. of the Personnel Manual in effect from 1984 through 1986 states that any occurrence of drug abuse constitutes a "drug incident," and Article 12-B-18.(b)(4) provides that the Commandant may discharge any member for misconduct if they have illegally used a controlled substance. Article 12-B-2.f.(2)(d) provides 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 circumstances warrant an other than honorable (OTH) discharge or the discharge is punitive (ordered by court-martial), in which case a bad conduct or dishonorable discharge could be assigned.

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.² The applicant received his general discharge in 1986, but did not submit his application until 2016. The preponderance of the evidence shows that he knew of the alleged error in his record in 1986, and his application is untimely.

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

2. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.³ 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”⁴ 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.”⁵

3. The applicant provided no explanation for his lengthy delay in submitting his application and argued only that he was a young man when he made the mistake for which he was discharged and that he desires a second chance, which is not a compelling argument.

4. A cursory review of the merits of this case shows that it lacks potential merit. The applicant’s records show that he received a general discharge for misconduct after he was arrested for possession of cocaine and a urinalysis revealed that he had used cocaine despite having been counseled about the Coast Guard’s drug policies. His claim that he used an illegal drug only to receive a quick discharge from the Coast Guard because he had been denied the training for which he had extended his enlistment is not supported by the records. His records show that on October 31, 1985, he extended his enlistment for two years to be allowed to attend MK “A” School and that he immediately attended and completed MK “A” School. The records also show that he received all due process during his discharge because he was notified of the reason for the proposed discharge, notified that his command was recommending a general discharge, and afforded an opportunity to consult counsel and to submit a statement, which he declined. These records are presumptively correct under the Board’s rules at 33 C.F.R. § 52.24(b),⁶ and the applicant has submitted nothing to rebut them. Moreover, the same policies remain in effect today under Article 1.B.17.b.(4) of the Military Separations Manual, COMDTINST M1000.4, which states that any member involved in a drug incident “will be processed for separation from the Coast Guard with no higher than a general discharge (under honorable conditions).” Therefore, the Board finds that the applicant’s request cannot prevail on the merits.

5. 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)

³ 10 U.S.C. § 1552(b).

⁴ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁵ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁶ *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.”).

ORDER

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

July 28, 2017

