

**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. 2017-165**



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**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 May 4, 2017, 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, dated April 27, 2018, 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 2014 general discharge under honorable conditions for misconduct (drug abuse) to an honorable discharge.<sup>1</sup> He stated that it was unjust for the Coast Guard to discharge him for failing a drug test after his 14 years of unblemished service because his general discharge will forever carry a negative label, impact future employment, and add to the hardship that he has already endured because of the incident. He also asserted that his actions and moral character had never been questioned before he made that single error in judgment. The applicant stated that he is requesting the upgrade of his discharge so that he can go on with the rest of his life without the burden of having his moral fortitude questioned, which he argued will always and forever be one of his strongest attributes.

In support of his application, the applicant submitted two letters of recommendation. The first letter, dated April 23, 2014, is from a chief warrant officer, who wrote that he had known the applicant for the past year and could thoroughly vouch for his character and abilities. The second letter, dated April 22, 2014, is from the principal owner of a maritime training, security and consulting group, who wrote that he has known the applicant since 2007 and finds him to have the highest moral character and to be one of the finest boat drivers he has ever worked with.

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<sup>1</sup> The five authorized types of discharge are Honorable, General Under Honorable Conditions, Under Other than Honorable Conditions (OTH), Bad Conduct, and Dishonorable. Bad conduct and dishonorable discharges are only awarded by court-martial. Military Separations Manual, COMDTINST M1000.4.

## SUMMARY OF THE RECORD

On September 12, 1999, the applicant enlisted in the Coast Guard Reserve under the Delayed Entry Program and signed a Page 7 on September 12, 1999, acknowledging that he had been advised that the illegal use or possession of drugs constitutes a serious breach of discipline; that the possession or use of illegal drugs was prohibited; and that he would be subject to a general discharge if his urinalysis test was positive. He began serving on active duty on May 2, 2000.

On February 21, 2014, a random urinalysis was conducted at the applicant's unit and his urine tested positive for THC, a metabolite of marijuana.

On March 20, 2014, an Investigating Officer (IO) who had investigated the applicant's drug use informed the applicant's Commanding Officer (CO) that the applicant had tested positive for THC on February 21, 2014; that he had been read his rights and interviewed; and that he had signed a written statement admitting to having smoked marijuana at a concert in ██████████ on February 15, 2014. The IO recommended that the applicant be processed for separation from the Coast Guard.

On March 20, 2014, the applicant's CO notified him on a Page 7<sup>2</sup> that he had initiated his discharge for drug abuse because of the urinalysis result. The CO noted on the Page 7 that the applicant had provided a statement to the IO and had admitted to using marijuana on February 15, 2014, while attending a concert. The applicant acknowledged the notification.

On March 24, 2014, the applicant's CO formally notified him by letter that he had initiated action to separate him from the Coast Guard pursuant to the Article 1.B.17.b.4 of COMDTINST M1000.4, the Military Separations Manual. The applicant was given notice of his rights, including his right to counsel, to submit a statement objecting to the discharge, and to a hearing before an administrative discharge board (ADB). The CO noted that under the rules, the most favorable characterization of service that could be approved was general under honorable conditions and the least favorable characterization was under other than honorable conditions (OTH), which he could receive either if the ADB recommended an OTH or if the applicant waived his right to an ADB.

On March 25, 2014, the applicant formally acknowledged the CO's notification. He acknowledged that receiving a general discharge might deprive him of some veterans' rights and that an OTH discharge might deprive him of many or all of his rights as a veteran. He acknowledged that with either type of discharge, he might encounter prejudice. The applicant waived his right to consult counsel, waived his right to submit a statement, and waived his right to an ADB on condition that he receive a general discharge instead of an OTH discharge.

Also on March 25, 2014, the applicant's CO asked the Commandant to discharge the applicant for misconduct. The CO noted the applicant's positive urinalysis result and what actions had been taken, including informing the applicant of his rights regarding his discharge. The CO

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<sup>2</sup> A Page 7 (CG-3307 or Administrative Remarks) documents any counseling that is provided to a service member as well as any other noteworthy events that occur in a member's military career.

stated that the applicant had conditionally waived his right to an ADB on condition that he receive a general discharge under honorable conditions.

On March 28, 2014, the Commandant, via the Commander, PSC, ordered the applicant's command to discharge him with a general discharge under honorable conditions for misconduct due to drug abuse in accordance with Article 1-B-17 of the Military Separations Manual. The Commandant instructed that the applicant be given an HKK separation code (drug abuse) and that his narrative reason for separation be "misconduct."

On April 9, 2014, a Page 7 was placed in the applicant's record to document that he had been screened and determined to be drug abusive but that he did not want to receive treatment. It also stated that he would be processed for separation from the Coast Guard.

On May 1, 2014, the applicant was discharged pursuant to the Commandant's March 28, 2014, letter. His DD 214, which he signed, shows that he was discharged "under honorable conditions" (a general discharge) because of "misconduct" in accordance with Article 1.B.17. of the Military Separations Manual, with a HKK separation code and an RE-4 (ineligible for reenlistment) reentry code. He had served exactly 14 years on active duty in the Coast Guard.

Before applying to the BCMR, the applicant applied to the Coast Guard's Discharge Review Board (DRB) and requested to have his general discharge under honorable conditions upgraded to honorable. On July 16, 2015, the DRB denied the applicant's request. The DRB stated that the applicant's general discharge by reason of misconduct was equitable and consistent with the Coast Guard's zero tolerance for drug abuse.

### **APPLICABLE REGULATIONS**

Article 1.A.2.k.(1) of COMDTINST M1000.10, the Coast Guard Drug and Alcohol Abuse Program Manual, states that the intentional use of drugs constitutes a "drug incident as determined by the commanding officer."

Article 3.A.2. of this manual states that commanding officers shall initiate an investigation into a possible drug incident, as defined in Article 1.A.2.k. of the Manual, following receipt of a positive confirmed urinalysis result or any other evidence of drug abuse.

Article 1.B.17. of the Military Separations Manual, COMDTINST M1000.4, governs discharges for misconduct. Article 1.B.17.B.(4)(a) states the following:

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, as defined in Article 1.A.2.k. of reference (h), Coast Guard Drug and Alcohol Abuse Program, COMDTINST M1000.10 (series), will be processed for separation from the Coast Guard with no higher than a general discharge.

## VIEWS OF THE COAST GUARD

On October 17, 2017, the Judge Advocate General of the Coast Guard adopted the findings and analysis in a memorandum prepared by the Personnel Service Center (PSC) and recommended that the Board deny relief in this case. PSC argued that the applicant was properly discharged after his urine tested positive for marijuana use. PSC noted that the applicant submitted no evidence to support his assertion that the Coast Guard committed an error or injustice during the discharge process.

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

On November 21, 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.

## 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 receiving a decision from the DRB.<sup>3</sup> The applicant received his general discharge in 2014 and the DRB issued its denial of his request to upgrade his discharge on July 16, 2015. Therefore, his application is timely.
3. The applicant alleged that his general discharge is unjust because he served 14 years in the Coast Guard before one lapse in judgment caused him to be discharged for misconduct. 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.<sup>4</sup> 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."<sup>5</sup>
4. The record shows that following a random urinalysis at the applicant's unit on February 21, 2014, his urine tested positive for THC, a metabolite of marijuana. His CO initiated an investigation in accordance with Article 3.A.2. of COMDTINST M1000.10. After being read his rights, the applicant admitted to the IO that he had smoked marijuana while attending a concert on February 15, 2014. The record also shows that on March 24, 2014, the CO formally notified the applicant of his pending discharge and of his right to counsel, to submit a statement, and to a hearing before an ADB. The applicant acknowledged the notification and waived his right to

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

<sup>4</sup> 33 C.F.R. § 52.24(b).

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

counsel, waived his right to submit a statement, and waived his right to an ADB on condition that PSC authorize a general discharge instead of an OTH discharge.

5. The Board finds that the applicant received all due process under the Coast Guard Drug and Alcohol Abuse Program Manual and the Military Separations Manual. The records documenting his discharge are presumptively correct under 33 C.F.R. § 52.24(b), and the applicant has submitted nothing to rebut them. The records show that he was properly separated with a general discharge for drug abuse in accordance with Article 1.B.17. of the Military Separations Manual.

6. The applicant submitted two letters of recommendation praising his character and work and argued that his discharge should be upgraded in the interest of justice because he served 14 years with nary a blemish on his record. The Board is not persuaded that the applicant's service proves that a general discharge under honorable conditions following drug abuse is unjust, especially because Coast Guard members risk their lives on a daily basis to try to stop the flow of illegal drugs. Moreover, the delegate of the Secretary advised the Board in 1976 that when exercising its equitable authority, the Board "should not upgrade a discharge unless it is convinced ... 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>6</sup> This direction to the Board is still in effect, and the Coast Guard's policies regarding illegal drug use have not changed since 2014. The Military Separations Manual continues to allow no higher than a general discharge to anyone discharged for drug abuse. Therefore, the Board finds that the applicant has failed to prove by a preponderance of the evidence that his general discharge for drug abuse constitutes an error or injustice in his record.

7. The applicant's request for an honorable discharge should be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>6</sup> See Memorandum of the General Counsel to J. Warner Mills, *et al.*, Board for Correction of Military Records (July 8, 1976).

**ORDER**

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

April 27, 2018

