

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2017-276**



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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 August 3, 2017, and assigned it to [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated May 11, 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, who was discharged from the Coast Guard on December 13, 2004, for misconduct due to drug abuse, asked the Board to upgrade the character of service on his DD 214<sup>1</sup> from general under honorable conditions to honorable<sup>2</sup> and to upgrade his reenlistment code from RE-4 (ineligible) to one that would allow him to enlist in the Army Reserve or National Guard. He stated that he believes that his record is in error because he never "tested positive for drugs before or currently." The applicant stated that he discovered the alleged discrepancy in his records on July 25, 2017.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on March 9, 2004, for a term of four years, and signed an acknowledgment of various Coast Guard policies and regulations, including the Coast Guard's drug policies. The acknowledgement states that he was advised that the illegal use or possession of drugs would not be tolerated and that he might be subject to a general discharge if a urine test detected the presence of illegal drugs. The applicant completed recruit training and began Operations Specialist (OS) "A" School, but the record shows that approximately two weeks before

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<sup>1</sup> A DD 214 is prepared to document a member's release or discharge from a period of active duty.

<sup>2</sup> The five authorized types of discharge were Honorable, General Under Honorable Conditions, Undesirable, Bad Conduct, and Dishonorable. Bad Conduct and Dishonorable discharges were only awarded by court-martial. Coast Guard Personnel Manual, Article 12.B.2.

the end of “A” School he was cited by the Coast Guard for a drug incident and was discharged on December 13, 2004.<sup>3</sup> His original DD 214 shows that he received a “General” Discharge pursuant to Article 12-B-18 of the Personnel Manual with a JKK<sup>4</sup> separation code, a Narrative Reason for Separation of “Misconduct (Involvement with drugs),” and a reentry code of RE-4, which made him ineligible for reenlistment.

Before applying to the BCMR, the applicant applied to the Coast Guard’s Discharge Review Board (DRB). On March 18, 2009, the DRB did not upgrade the applicant’s discharge but recommended that his DD 214 be corrected by changing the Character of Service from “General” to “Under Honorable Conditions,” and the Narrative Reason for Separation from “Misconduct (Involvement with drugs)” changed to “Misconduct.” The DRB stated that the applicant’s drug incident justified his discharge and that it was carried out in accordance with Coast Guard policy. The DRB also noted that during the applicant’s telephonic testimony, he admitted that he was discharged because he had taken Ecstasy.

On November 18, 2009, pursuant to the DRB’s findings, the Coast Guard prepared and issued a DD 215 (correction form for the DD 214) and placed it into the applicant’s record. The DD 215 shows that the Character of Service in block 24 of his DD 214 was being corrected to “Under Honorable Conditions” and the Narrative Reason for Separation in block 28 was being corrected to “Misconduct.” In forwarding the DRB’s decision to the applicant, the Coast Guard advised him that he could apply to BCMR if he was dissatisfied with the decision.

### APPLICABLE REGULATIONS

Article 12.B.18.b.(4) of the Coast Guard Personnel Manual, COMDTINST M1000.6 (series) states that 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 under honorable conditions.

Article 20.A.2.k of the manual states that a “drug incident” includes the intentional use of drugs.

The current Coast Guard Drug and Alcohol Abuse Program manual, COMDTINST M1000.10 (series), Article 1.A.2.k.(1) states that the intentional use of drugs or prescription medications to obtain a “high” contrary to their intended use constitutes a “drug incident” as determined by the Commanding Officer. A member need not be found guilty at a court-martial, civilian court, or be awarded a non-judicial punishment for conduct to be considered a drug incident.

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<sup>3</sup> His record does not contain the laboratory’s urinalysis documentation, but details about the incident are present in the records of the Discharge Review Board (DRB), which were supplied to the BCMR with the Coast Guard’s recommendation.

<sup>4</sup> The SPD Handbook states that a JKK separation code denotes an involuntary discharge for a member who “commits drug abuse, which is 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...when supported by evidence not attributed to urinalyses administered for identification of drug abusers or to a member’s volunteering for treatment under the drug identification and treatment program.”

Article 1.E. of the instructions for preparing the DD 214, COMDTINST M1900.4D, states that the phrase “Under Honorable Conditions” should be entered in block 24 of a DD 214 when a member receives a general discharge and that Block 28 of the DD 214, Narrative Reason for Separation, shall include only the narrative reason and shall not contain any additional information.

The SPD Handbook, an enclosure of COMDTINST M1900.4D, states that members discharged due to drug abuse with a JKK separation code will receive an RE-4 reentry code and “Misconduct” as their narrative reason for separation.

Article 1.K. of COMDTINST M1900.4D states that a DD 215 is used to make a correction to a DD 214 that has already been issued and distributed. Article 1.L. states that the Personnel Command

will determine and direct the reissuance of the DD Form 214 [instead of a DD 215] when the following conditions exist:

- a. The DD Form 214 cannot be corrected by the issuance of a DD Form 215.
- b. The correction would require the issuance of more than two DD Forms 215.
- c. Two DD Forms 215 have been issued and an additional correction is required.
- d. There is a change in block 24, Character of Service, on the DD Form 214.
- e. Derogatory information is cited in Item 28, Narrative Reason for Separation. [Emphasis added.]

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

On February 20, 2018, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the application is not timely. Regarding the merits, PSC noted that the SPD code and RE code on the applicant’s DD 214 are in alignment with the SPD Handbook and that the DRB also stated that there was no basis to recommend an upgrade to the discharge due to the applicant freely admitting to ingesting Ecstasy.

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

On March 20, 2018, the BCMR Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. The Chair did not receive a response.

### **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. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.<sup>5</sup>

3. 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>6</sup> The applicant received his general discharge in 2004, and the DRB issued its denial of his request to upgrade his discharge on November 18, 2009. Therefore, the Board finds that the application is untimely because it was submitted to the Board on July 25, 2017, more than seven years after the DRB issued its decision.

4. 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>7</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>8</sup>

5. The applicant did not explain his delay in seeking an upgrade of his discharge. The Board finds no evidence that anything prevented him from complaining about his character of service or reenlistment code sooner, and the Coast Guard advised the applicant that he could apply to the BCMR when it sent him the DRB’s decision in 2009.

6. A cursory review of the merits of this case indicates that the applicant’s request for an honorable discharge and a reentry code that will allow him to reenlist in the military lacks potential merit. The records show that the applicant was discharged for misconduct after using an illegal drug. These records are presumptively correct,<sup>9</sup> and the applicant has submitted nothing to rebut them. The applicant argued that his discharge should be upgraded because he has not tested positive for drugs since leaving the Coast Guard, but his post-discharge conduct alone is not a proper basis for upgrading a character of discharge, which may be based only on the member’s performance and conduct while in the Service.<sup>10</sup> Because the applicant’s requests for an honorable discharge and better reentry code cannot prevail on the merits, the Board finds no reason to excuse the untimeliness of the requests or waive the statute of limitations. His requests should therefore be denied due to their untimeliness.

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<sup>5</sup> *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

<sup>6</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>7</sup> *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

<sup>8</sup> *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

<sup>9</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).

<sup>10</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.”)

7. Although the applicant's requests for an upgraded character of discharge and reentry code should be denied based on their untimeliness, the Board's cursory review of his record has revealed a significant error in the implementation of the DRB's decision that should be corrected. The record shows that the applicant timely applied to the DRB, and the DRB ordered the Coast Guard to correct his DD 214 to show the phrase "Under Honorable Conditions" in block 24, instead of "General," and to show just "Misconduct" in block 28, instead of "Misconduct (involvement with drugs)." These corrections were required by COMDTINST M1900.4D and the SPD Handbook. And Article 1.K. of COMDTINST M1900.4D states that the Personnel Command will direct the reissuance of a DD 214, instead of making a correction by issuing a DD 215, when there is a change in block 24, Character of Service, or when block 28 includes derogatory information that is being corrected. The DRB corrected the applicant's Character of Service in block 24 and removed derogatory information—"(involvement with drugs)"—from block 28. Therefore, when the Coast Guard corrected his DD 214 pursuant to the DRB's decision in 2009, the Personnel Command should have reissued his DD 214 with the corrections incorporated, instead issuing the DD 215. Because the Personnel Command issued the correction on a DD 215, the applicant must still show his DD 214 with the derogatory information about drugs (along with the DD 215) whenever he needs to prove his military service for employment or other purposes.

8. Accordingly, although the applicant's requests to change the character of his service and his reenlistment code are being denied as untimely, the Board finds that the Coast Guard should reissue him a new DD 214 and ensure that it reflects the DRB's corrections. Block 24 (Character of Service) of the new DD 214 should be corrected from "General" to "Under Honorable Conditions," and Block 28 (Narrative Reason for Separation) should be corrected from "Misconduct (involvement with drugs)," to "Misconduct." In addition, his original DD 214 and the DD 215 issued on November 18, 2009, should be removed from his record as null and void.

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

**ORDER**

The application of former [REDACTED], USCG, to change his Narrative Reason for Separation and Reenlistment Code on his DD 214 is denied, but the Coast Guard shall issue him a new DD 214 dated December 13, 2004, with the following corrections:

- Block 24 shall be corrected to show “Under Honorable Conditions”; and
- Block 28 shall be corrected to show “Misconduct.”

His original DD 214 and the DD 215 issued on November 18, 2009, shall be removed from his record.

May 11, 2018

