


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-049


DC3 (former)

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the applicant's completed application and military records on December 13, 2018, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated March 20, 2020, 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 under honorable conditions from the Coast Guard on February 28, 1994, for illegal use of amphetamines and/or methamphetamines, asked the Board to upgrade his discharge to an honorable discharge. He explained, "I served my country honorably for several years. then I made a mistake as a young man that cost me my military career. There was no error by the military. I am asking for the upgrade so I can continue to upgrade my life." He stated that it is in the interest of justice for the Board to consider his request, despite its untimeliness, because "I am attempting to improve the quality of life with military background."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard at age 20 on March 5, 1990. Upon enlisting, he signed a form acknowledging 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.

After completing recruit training, the applicant was initially assigned to a Base. Administrative entries in the applicant's record show that on October 28, 1991, he was

counseled for being absent from duty for a day and that on November 9, 1991, he was counseled about failing to obey orders. He was advised that further disobedience would result in non-judicial punishment (NJP).

The applicant attended “A” School to earn a rating from March 22 to June 18, 1993. Upon graduation, he advanced to E-4 and was assigned to a cutter. On September 23, 1993, the applicant was “reprimanded” for repeatedly being late to work during the prior five weeks. On September 27 and 30, 1993, he was counseled about receiving very poor marks on his performance evaluation because he had not shown willingness to work as a team, had not tried to get along with his coworkers, consistently took breaks while others were still working, showed no concern for how his actions affected others, showed little support for his chief’s decisions, frequently complained that he was tired of working in the middle of the day, and would “stand around with his hands in his pockets” unless expressly directed to do a specific task.

On January 18, 1994, a random urinalysis was held for the crew of the cutter. On January 27, 1994, the command was informed that the applicant’s urine had tested positive for “AMP/METHAMP” (amphetamine and/or methamphetamine).

On February 1, 1994, the applicant’s command notified him that he was being recommended for discharge due to the results of the urinalysis. The command was recommending a general discharge for misconduct. The applicant was advised that he had a right to object to the discharge and to submit a statement.

On February 4, 1994, the applicant submitted a statement objecting to his discharge. He stated that he the urine samples must have been mishandled because he was “not a drug abuser.” His command forwarded this statement to the Personnel Command with a recommendation that that he receive a general discharge for misconduct due to drug abuse.

On February 18, 1994, the applicant’s command forwarded to the Personnel Command documentation showing that the applicant had received legal counsel regarding his pending discharge.

On February 26, 1994, the Personnel Command directed the applicant’s command to discharge him for misconduct due to drug abuse pursuant to Article 12-B-18 of the Personnel Manual then in effect with a general discharge under honorable conditions.

On February 28, 1994, the applicant received a general discharge under honorable conditions for misconduct. The separation code on his DD 214, JKK, denotes a discharge due to drug abuse, but the narrative reason for separation is “MISCONDUCT.”

VIEWS OF THE COAST GUARD

On June 12, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant’s request.

The JAG noted that the application was not timely filed and that the applicant had not justified his long delay in filing his application. The JAG further noted that there is no evidence that the Coast Guard erred in discharging the applicant for drug abuse and that the applicant admitted that the Coast Guard had committed no error in discharging him. Nor did the applicant show how his general discharge was unjust.

The JAG concluded that the applicant's general discharge was proper under the 1994 Personnel Manual and that he not shown that his general discharge constitutes an error or injustice.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 24, 2019, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within thirty days. No response was received by the Board.

APPLICABLE LAW

Under Article 12-B-18.b.(4) of the Personnel Manual in effect in 1994, when the applicant was discharged, the Commandant was authorized to separate a member for misconduct due to drug abuse as follows:

Involvement with drugs. Any member involved in a drug incident as defined in article 20-A-2h., ... will be processed for separation from the Coast Guard with no higher than a General Discharge.

Under Article 12-B-18, a member with less than eight years of active service who was being recommended for a general discharge under honorable conditions for misconduct was entitled to—

- (a) be informed of the reason for the recommended discharge,
- (b) consult an attorney,
- (c) object to the discharge, and
- (d) 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.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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 or injustice in his record.¹ The preponderance of the evidence shows that the applicant was aware that he had received a general discharge in 1994. He did not submit his application until 2018, and so 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.”² 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.”³ Pursuant to these directions, the Board finds as follows:

a. The applicant stated that he wants to improve his life based on his military service but did not provide a compelling justification for his delay in challenging his general discharge.

b. A cursory review of the merits of this case indicates 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 amphetamines and/or methamphetamines. The record shows that the applicant received all due process provided under Article 12-B-18 of the Personnel Manual.

4. Accordingly, the Board will not excuse the untimeliness of the applicant’s request or waive the statute of limitations under 10 U.S.C. § 1552(b). The applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹ 10 U.S.C. § 1552; 33 C.F.R. § 52.22.

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).

ORDER

The application of former DC3 [REDACTED] USCG, for correction of his military record is denied.

March 20, 2020

