


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-053


SNSK (former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on April 7, 2021, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated March 31, 2023, 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 Seaman Storekeeper (SNSK/E-3) who received a general discharge under honorable conditions from the Coast Guard on February 24, 2006, for illegal use of cocaine, asked the Board to upgrade his discharge to honorable.¹

The applicant argued that his character of service should be upgraded because he suffered from mental health issues. Specifically, he argued that he has been diagnosed with post-traumatic stress disorder (PTSD). To support his request, the applicant provided medical records from the Department of Veterans Affairs (VA). Relevant records are included in the Summary of the Record below.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 18, 2003.

¹ There are five types of discharge: three administrative and two punitive. The three administrative discharges are honorable, general under honorable conditions, and under other than honorable (OTH) conditions. The two punitive discharges may be awarded only as part of the sentence of a conviction by a special or general court-martial. A special court-martial may award a bad conduct discharge (BCD), and a general court-martial may award a BCD or a dishonorable discharge.

On September 9, 2005, the applicant was subject to a urinalysis. Two weeks later, on September 27, 2005, the urinalysis results revealed that the applicant had tested positive for cocaine metabolites. A confirmatory test revealed that the applicant's urine contained Benzoyllecgonine, a metabolite of cocaine. At the time, the Department of Defense's cutoff for Benzoyllecgonine was 100 nanograms per milliliter (ng/mL). The metabolite identified by the confirmatory test revealed a level of 620 ng/mL.

On November 10, 2005, the applicant was notified that his Commanding Officer (CO) had initiated action to discharge him from the Coast Guard pursuant to Article 12.B.18. of the Coast Guard Personnel Manual. The CO cited the applicant's wrongful use of cocaine as the reason. The applicant was notified that he could not receive higher than a general discharge. The applicant was further notified that if he was awarded a general discharge, he could expect to encounter prejudice in civilian life.

On November 28, 2005, the applicant acknowledged receipt of the notification for discharge and did not object. He indicated that he waived his right to consult with a lawyer. The applicant also indicated that he waived his right to submit a statement.

On January 10, 2006, the applicant's CO sent the Enlisted Personnel Management Division of the Personnel Service Center a memorandum in which he recommended that the applicant be discharged from the Coast Guard. The CO stated that on September 9, 2005, the applicant had tested positive for cocaine during a random urinalysis. The CO stated that the applicant's behavior was unacceptable. The CO concluded by stating that although the applicant's performance marks supported an honorable discharge, Coast Guard policy required that he receive no higher than a general discharge.

On February 24, 2006, the applicant was discharged for misconduct in accordance with Article 12.B.18. of the Coast Guard Personnel Manual. His DD-214 shows "general" as the character of discharge; "misconduct" as the narrative reason for separation; JKK (misconduct) as his separation code; and RE-4 (ineligible for reenlistment) as his reenlistment code.

On May 20, 2020, the applicant had a psychiatric appointment at the VA. The applicant's chief complaint was that he was running low on medication. He described his mood as "pretty good" and denied any symptoms of depression or anxiety. Regarding the applicant's medication, he had been prescribed Bupropion for depression, Melatonin for sleep, and Gabapentin for anxiety. The applicant had been taking Naltrexone, but was recently ordered to stop taking it since he was able to maintain sobriety without it. According to the applicant, he had not used opioids or cocaine in more than three years. Further, he had not used alcohol in more than a year. The medical provider reviewed the following with the applicant: positive coping skills, stress management, interpersonal communication skills, and good sleep hygiene. The applicant was diagnosed as follows:

Major Depressive Disorder, recurrent, mild
Generalized Anxiety Disorder
Opioid Use Disorder, in sustained remission.
Stimulant (Cocaine) Use Disorder, in sustained remission
Alcohol Use Disorder, in sustained remission.

On July 23, 2020, the applicant had a psychiatric appointment. His chief complaint was that he was “more stressed.” The applicant stated that he and his wife had recently had another baby. He stated that his wife was very critical of him. He reported that he was having trouble sleeping because of his new baby and the conflict with his wife. The applicant also reported that he got angry often, but that meditation helped him to calm down. The applicant stated that he was taking his medication as prescribed, but that he did not think the medication was helping as much as it had in the past. He also stated that he had used marijuana to help treat his anxiety. The applicant stated that although he was sober, he had thoughts about using cocaine again. The applicant was diagnosed with Generalized Anxiety Disorder. His treatment plan included continuing Gabapentin and Melatonin, while also trying Ambien for insomnia. The applicant was also diagnosed with Major Depressive Disorder. His treatment plan included continuing Bupropion. Finally, the applicant was diagnosed with Opioid Use Disorder. His treatment plan included continuing to monitor him while he stopped using Naltrexone.

VIEWS OF THE COAST GUARD

On October 26, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the applicant’s application is not timely. Regarding the merits of the case, PSC argued that the applicant failed to show that the Coast Guard committed an error or injustice regarding his discharge. PSC stated that the Coast Guard has a zero tolerance policy on the illegal use or possession of drugs. According to Article 12.B.18. of the Coast Guard Personnel Manual, any member involved in a drug incident will be processed for separation from the Coast Guard with no higher than a general discharge.

The JAG acknowledged that the applicant’s request should be assessed under the Coast Guard’s Liberal Consideration guidance since he alleged that he suffered from mental health issues. However, the JAG argued that the applicant’s discharge should not be upgraded. The JAG stated that according to the applicant’s VA records, he received mental health treatment from August 2019 through August 2020. The JAG argued that while the applicant’s records show that he was diagnosed with Major Depressive Disorder and Generalized Anxiety Disorder, there is no evidence that shows that these diagnoses were service connected or that he was diagnosed with a mental health condition while in the service.

The JAG also argued that the applicant failed to prove that the Coast Guard committed an error or injustice. The JAG stated that the applicant was properly awarded a general discharge after testing positive for cocaine at over six times the cutoff threshold for cocaine metabolites on a drug urinalysis screening test. First, the JAG argued that the applicant did not contest the positive urinalysis. Next, the JAG argued that the applicant’s command was required to discharge him with no greater than a general discharge.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 24, 2022, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Article 12.B.18.b.(4) of the Personnel Manual then in effect states that any enlisted member "involved in a drug incident" would be discharged for misconduct with "no higher than a general discharge."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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 the alleged error or injustice.² The applicant was discharged in 2006 and received and signed his DD-214 showing a general discharge. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in 2006, and the application is untimely. However, the Board may excuse the untimeliness of an application if it is in the interest of justice to do so,³ and the Board will excuse the untimeliness in this case because the applicant's request falls under the Board's "liberal consideration" guidance since the applicant is challenging his type of discharge based in part on an alleged mental health problem.⁴ Therefore, the Board waives the statute of limitations in this case.
3. The applicant alleged that his general discharge is erroneous and unjust because a mental health condition caused or contributed to the behavior that resulted in the discharge. 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 the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ 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."⁶ And under the "liberal consideration" guidance, when deciding whether to upgrade the discharge of a veteran based on an alleged mental health condition, the Board must liberally consider the evidence, including the applicant's claims, and decide whether

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

³ 10 U.S.C. § 1552(b).

⁴ DHS Office of the General Counsel, "Guidance to the Board for Correction of Military Records of the Coast Guard Regarding Requests by Veterans for Modification of their Discharges Based on Claims of Post-Traumatic Stress Disorder, Traumatic Brain Injury, Other Mental Health Conditions, Sexual Assault, or Sexual Harassment" (signed by the Principal Deputy General Counsel as the delegate of the Secretary, June 20, 2018).

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

the preponderance of the evidence shows that the veteran had mental health condition(s) while in the Service that could excuse the veteran's misconduct; whether the mental health condition(s) actually excused the misconduct that adversely affected the discharge; and, if not, whether the mental health conditions outweigh the misconduct or otherwise warrant upgrading the veteran's discharge.⁷

4. The applicant alleged that his character of service should be upgraded because he suffered from mental health issues, particularly PTSD, while in the Coast Guard and it caused the misconduct that led to his general discharge. The applicant provided no documentation to show that he has been diagnosed with PTSD. Instead, the applicant demonstrated that he was diagnosed by the VA with Major Depressive Disorder and Generalized Anxiety Disorder in May 2020. However, the documents provided by the applicant are insufficient to demonstrate that he suffered from a mental health condition while he was in the Coast Guard more than fourteen years before his diagnosis. Further, the applicant's military records do not indicate that he suffered from a mental health condition while in the Coast Guard. Therefore, the applicant has not shown by a preponderance of the evidence that he suffered from a mental health condition while on active duty that could excuse his misconduct.

5. Accordingly, the Board finds that the applicant has not proven by preponderance of the evidence that his general discharge is erroneous or unjust. No relief is warranted.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁷ *Id.*

ORDER

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

March 31, 2023

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