

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-055


SNBM (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 15, 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 11, 2022, 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 Boatswain's Mate (SNBM/E-3) who received a general discharge under honorable conditions from the Coast Guard on June 26, 1987, for illegal use of cannabinoids, asked the Board to correct his record by upgrading his character of discharge to honorable.¹

The applicant stated that after he enlisted, he was assigned to a cutter. He stated that his years aboard the cutter were memorable and that he served with pride. Sometime during his enlistment, he sustained an injury that required surgery to reattach his retina. The applicant alleged that as a result of this injury, he fell into a deep depression and demonstrated uncharacteristic behavior. However, the applicant stated that at the time, he did not know what was wrong with him. This behavior eventually led to his discharge. The applicant stated that it was not until after his discharge that he started to attend counseling. Through counseling, the applicant identified the source of his depression. The applicant argued that the Coast Guard failed to recognize his problems and so his depression went untreated while he was in the Service.

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

The applicant stated that he submitted his application with the intention of repairing the past. Since his discharge, he has worked to maintain a productive and meaningful life. Specifically, he stated that he is sober. The applicant asked the Board to grant his request because his discharge has haunted him. He stated that the Coast Guard was very important to him and he wants his discharge to reflect his pride in serving his country.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on April 16, 1984. He ultimately selected the Boatswain's Mate rating.

On October 15, 1986, the applicant received a letter from his Commanding Officer (CO). The CO stated that on September 30, 1986, the applicant had provided a sample for a drug urinalysis test in support of the Commandant's policy on eliminating illicit drug use within the Coast Guard. The applicant was notified that his sample tested positive for THC, a metabolite of marijuana. The CO stated that while this result did not reach the level set for discharge from the Coast Guard, it indicated that the applicant could be conducting a lifestyle that endangers his health and is incompatible with the Commandant's policy on drug abuse. As such, the CO ordered that the applicant be retested by drug urinalysis at least weekly until his test results were negative. Further, the CO ordered that the applicant be subjected to random drug urinalysis tests during a period of six months. The CO concluded by stating that while he intended to rid the Coast Guard of illicit drug users, he wished to provide the applicant every opportunity to demonstrate that he did not fall into that category of members.

On January 8, 1987, the applicant received an Administrative Remarks form ("Page 7") documenting his alcohol incident as a result of his arrest for driving under the influence of alcohol on December 13, 1986. The applicant was recommended to attend an inpatient alcohol treatment program.

On March 16, 1987, the applicant provided a sample for a drug urinalysis test. His test results showed that he was positive for cannabinoids.

On March 23, 1987, the applicant received nonjudicial punishment (NJP) for being absent with leave² and for failing to submit to medical treatment.³ He was found to have left an alcohol rehabilitation center without authorization on February 24, 1987. The applicant was sentenced to restriction to his station and extra duties for fourteen days.

On April 6, 1987, the applicant was notified that his CO had initiated action for his discharge. The CO cited the applicant's positive urinalysis for cannabinoids as the reason and stated that the applicant's character of service warrants a general discharge. The applicant was notified that he had the opportunity to make a written statement and that he could consult with a lawyer.

² Article 86, UCMJ.

³ Article 92, UCMJ.

That same day, the applicant acknowledged his CO's notification to discharge him for reasons of misconduct. He indicated that he did not want to make a written statement and that he did not want to consult with a lawyer. Finally, he indicated that he understood that if he was awarded a general discharge, he could expect to encounter prejudice in civilian life.

Also on April 6, 1987, the applicant's CO sent a memorandum to the Commandant in which he recommended that the applicant be discharged for reasons of misconduct. The CO stated that a drug urinalysis screening test was conducted on a sample provided by the applicant and that the sample tested positive for cannabinoids. The CO stated that the applicant had been a willing worker and a highly competent boatswain's mate. However, the CO stated that the applicant's personal behavior and disregard for military authority made his presence in the Coast Guard unacceptable. The CO recommended that the applicant receive a general discharge.

On April 9, 1987, the applicant received NJP for the wrongful use of a controlled substance, cannabinoids,⁴ as detected in a urinalysis conducted on March 16, 1987. The applicant was sentenced to a reduction to pay grade E-3.

On April 20, 1987, the applicant was notified by the Commander of his Group that he was being discharged from the Coast Guard. The Commander cited the applicant's positive drug urinalysis as the reason. The applicant was further notified that the Commander recommended that he receive a general discharge.

That same day, the applicant acknowledged notification of his discharge. He did not object to his discharge and waived his right to submit a statement.

On April 22, 1987, the applicant wrote a statement objecting to a general discharge. To support his objection, he stated that he did not smoke marijuana. Further, the applicant stated that his service had been more than exceptional. He requested an honorable discharge.

On April 24, 1987, the Commander of the applicant's Group sent a memorandum to the Commandant in which he recommended that the applicant be discharged due to misconduct. To support his recommendation, the Commander cited the applicant's urinalysis screening test in which he tested positive for cannabinoids. He stated that the applicant's use of illicit drugs demonstrated a poor example and showed an unwillingness to adhere to Coast Guard standards. He recommended that the applicant receive a general discharge.

On June 26, 1987, the applicant was discharged in accordance with Article 12.B.18. of the Coast Guard Personnel Manual. His DD-214 shows "under honorable conditions" as the character of service; "misconduct" as the narrative reason for separation; RE-4 (ineligible for reenlistment) as his reenlistment code; and HKK (drug abuse) as his separation code. The applicant signed his DD-214.

⁴ Article 112a, UCMJ.

VIEWS OF THE COAST GUARD

On September 23, 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 stated that the application was not timely filed. Regarding the merits of the case, PSC argued that the applicant failed to show that an error or injustice occurred regarding his character of discharge. PSC stated that the applicant was discharged due to drug abuse. According to Article 12.B.18. of the Coast Guard Personnel Manual in effect at the time of the applicant's discharge, any member involved in a drug incident was processed for separation from the Coast Guard with no higher than a general discharge.

The JAG argued that the liberal consideration policy is inapplicable to the applicant's request. The JAG stated that the applicant failed to show any evidence to support his allegation that he suffered from a head injury or that he was experiencing a mental health condition while he was in the Coast Guard. The JAG argued that it is impossible to determine whether the applicant is qualified for liberal consideration without such medical evidence.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 4, 2021, 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 in effect in 1987, COMDTINST M1000.6, states that the Commandant could separate a member for misconduct due to drug abuse as follows:

Drug Abuse. 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, as established by 21 U.S.C. § 812. Any member involved in a drug incident will be processed for separation from the Coast Guard with no higher than a general discharge.

Article 1.B.17.b.4. of the Military Separations Manual in effect today, COMDTINST M1000.4, 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.

On July 7, 1976, the General Counsel for the Department of Transportation issued a memorandum setting the policy of the Board regarding the effect of post-service conduct on records corrections. The memorandum states that "the Board should not upgrade discharges solely on the basis of post-service conduct." This policy has not been reversed and remains binding on the Board.

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.⁵ The applicant was discharged in 1987 and received and signed his DD-214 showing a general discharge at the time. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in 1987, 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,⁶ 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.⁷ 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—depression—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.⁸ 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."⁹ 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 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.¹⁰
4. The applicant alleged that his character of discharge should be upgraded because he suffered from depression while in the Coast Guard and that caused the misconduct that led to his general discharge. However, the applicant failed to demonstrate that he was diagnosed with depression. Specifically, the applicant did not provide any evidence that he suffered from

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

⁶ 10 U.S.C. § 1552(b).

⁷ 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).

⁸ 33 C.F.R. § 52.24(b).

⁹ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

¹⁰ *Id.*

depression while he was in the Coast Guard. Further, the applicant's military records do not indicate that he suffered from a mental health condition while in the Service. But even if the applicant had proven that he suffered from depression while in the Coast Guard, he did not explain how depression excused his use of marijuana. The Coast Guard is a law enforcement agency and does not tolerate the use of illegal drugs. 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. The applicant insinuated that his character of discharge should be upgraded based on his post-service conduct. The applicant stated that since his discharge, he has worked to live a productive life. Specifically, the applicant cited that he is sober and that he has attended counseling. However, the delegate of the Secretary informed the Board on July 7, 1976, by memorandum that "the Board should not upgrade discharges solely on the basis of post-service conduct."¹¹

6. 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)

¹¹ Memorandum of the General Counsel to J. Warner Mills, et al., Board for Correction of Military Records (July 7, 1976).

ORDER

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

March 11, 2022

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