

UNITED STATES COAST GUARD DISCHARGE REVIEW BOARD

Docket Number: 2013-023

Discharge Issued

Character: Other Than Honorable Conditions

Narrative Reason: Triable by Court Martial

SPD/RE Code: KFS / RE4

Authority of Discharge: COMDTINST M1000.4 ART. 1.B.20

Date of Separation: 2012-11-20

DRB Decision

Character: No Change

Narrative Reason: No Change

SPD/RE Code: No Change / No Change

New Authority: No Change

Discharge Review Board Discussion and Decision:

DISCUSSION:

The applicant was discharged for Trial By Court Martial due to being an accessory in theft (after the fact), disobeying a direct order, and procuring a prostitute.

The applicant requested to be separated 'For the Good of the Service' in lieu of the Court martial (CM) proceedings and punishment. Additionally, the signed agreement was based on the applicant providing any details on the shipmate involved in an incident of stealing a woman's purse, and then the applicant drove away from the scene knowing the crime the shipmate had committed.

The Board finds no issues with propriety or equity in this case. The applicant voluntarily requested this discharge via memorandum. The applicant knowingly requested and accepted an 'Other Than Honorable' discharge. The applicant also spoke with USN counsel on the matter, but did not desire to make a statement. At face value, the Board does not find the applicant's discharge to be in error. Conversely, the Board has had an opportunity to also consider the applicant's written letter, spoken testimony, character letters, and otherwise spotless record of service.

Therefore, the board by a majority vote of (4-1) recommends an upgrade to Under Honorable Conditions for the following reasons:

The Board does not find that the applicant was fully proven to be an 'accessory' given there is no premeditated behavior demonstrated with the other shipmate that instigated the incident. The command climate (in a sensitive OUTCONUS location) prompted a harsher penalty on the applicant. Due to the future probability of similar undesirable activities by the crew, the command wanted to make an example that further actions of this nature would not be tolerated. As part of the aforementioned agreement while facing (CM) charges, the applicant had to agree to an Under Other Than Honorable discharge, and testify against the other shipmate involved. The majority Board concludes that this is not considered a serious offense. Additionally, it's an isolated incident in which the punishments and separation appear to exceed the articles violated. If the applicant proceeded with Summary Court Martial proceeding, the board has reasonable doubt (based on the aforementioned variables) that the charges against the applicant would have met all of the UCMJ elements within each article.

The applicant's respectable service record of 4 years and 9 months firmly illustrate a valued and trusted professional's body of work.

Minority Board vote of (1-4) recommends no upgrade to the Under Other Than Honorable: The applicant entered into an agreement to be provided with greater immunity in lieu of a Court Martial punishment. Within a Triable by Court Martial mechanism, the SPD code of KFS is the standard to separate individuals for the 'Good of the Service' with the Under Other Than Honorable character of service.

Final Adjudication by Assistant Commandant For Human Resources: No relief. Concur with the Minority Board. Stand as issued.

In reviewing discharges, the Board presumes regularity in the conduct of governmental affairs unless there is substantial credible evidence (to include evidence submitted by the Applicant) to rebut the presumption.