

UNITED STATES COAST GUARD DISCHARGE REVIEW BOARD

Docket Number: 2013-027

**Discharge Issued**

**Character:** Under Honorable Conditions (General)

**Narrative Reason:** Misconduct

**SPD/RE Code:** JKQ / RE4

**Authority of Discharge:** 12.B.18

**Date of Separation:** 2004-01-02

**DRB Decision**

**Character:** Honorable

**Narrative Reason:** Separation for Misc/General Reasons

**SPD/RE Code:** JND / RE1

**New Authority:** COMDTINST M1000.4 Art 1.B.12

**Discharge Review Board Discussion and Decision:**

**DISCUSSION:**

The applicant's complete record was available for review. The Separation package was not available. However, the Board found sufficient information in electronic records and documents submitted by the applicant to adjudicate the case. The applicant was discharged for Misconduct due to failure to comply with requirement to receive the Anthrax vaccine. The applicant had received the initial anthrax shot, thereafter the applicant was ordered to receive the remaining (mandated) injections, but refused the vaccine. As a result of the non-compliant actions, the applicant received NJP for the Article 92 violation-failure to obey order or regulation, in the refusal to receive the vaccine. The command quickly moved to separate the member for Misconduct in the next 30-day window. At the time of the discharge, the applicant's record shows notification of the intent to discharge. The applicant waived the right to consult with an attorney and waived the right to make a statement.

**PROPRIETY:**

The Majority Board vote (3-2) finds no issues with propriety in this case. The applicant was duly notified of the requirement to receive the vaccine, was taken to Captain's mast for the refusal, and continued to refuse to comply with orders. At Captain's mast, the applicant was specifically found to have violated Article 92 of the Uniform Code of Military Justice. Furthermore, the board sought current-day input from internal stakeholders, and other services Discharge Review Boards on similar cases of Anthrax refusals in this time period-- in which all entities concurred that the former member was at-fault and was properly processed for separation. The Majority board recommends partial relief on the applicant's Character of Service, based on the post-policy issued in ALCOAST 562/08. The applicant's character of service currently reads as 'General' which is no longer a valid option. Therefore, the board recommends that the character of service be amended to Under Honorable Conditions.

The Minority Board vote (2-3) notes that the separation orders were authorized by PSC (EPM). Per ALCOAST 568/03 released, the Coast Guard directed a temporary stop on Anthrax injections based on a civil action filed against the mandatory immunizations. In spite of the new legal opposition to remove the injections without member's consent, the applicant was officially separated for discharge when no final ruling was made to determine if the immunizations should be a required medical treatment for all military service members, i.e., a condition-of-employment. Later, ALCOAST 008/04 ordered the resumption of Anthrax immunizations based off the Food and Drug Administration's ruling that the vaccinations were 'safe', although not completely necessary for service members to carry out their duties.

**EQUITY:**

The Majority Board (3-2) finds no issues with equity in this case. Coast Guard policy authorizes discharge due to

misconduct for personnel who refuse required medical treatment/vaccination. It is noted that the applicant served during the armed forces mandate for all active duty and SELRES members to maintain the standard Anthrax Vaccine Dosing Schedule in accordance with the Anthrax Vaccine Immunization Program (AVIP). This window of time commenced until an injunction was placed on the mandatory vaccinations (by U.S. District Court for the District of Columbia).

The Minority Board (2-3) concludes that the Narrative Reason (of Misconduct) for separation issued to the member was flawed and lacked a substantial basis to terminate the applicant's employment. While the applicant was still a member of the USCG, and the immunizations were called into question (and halted), the applicant was still separated by this questionable mechanism. Furthermore, the Secretary of Defense memo halted the immunizations again. And, ALCOAST 254/05 stated the following: "The Coast Guard may resume Anthrax vaccinations for personnel assigned to designated commands but only under the condition that personnel scheduled to receive the Anthrax vaccination may ACCEPT or REFUSE the vaccination. Personnel refusing the vaccination will not be punished. No Disciplinary action or adverse personnel action will be taken. Personnel will not be processed for separation and there will be no penalty or loss of entitlement for refusing the Anthrax vaccination. Personnel who refuse the Anthrax vaccination remain deployable." At the very minimum, the post-policy rulings of optional Anthrax vaccinations deem that the applicant's election was not an act of Misconduct.

Propriety: Discharge was proper.

Equity: Discharge was equitable.

Board Conclusion: The Majority Board (3-2) recommends no relief to the applicant's Separation code, Narrative Reason for Separation, Separation Authority, or Reentry code.

The Majority Board (3-2) recommends partial relief on the applicant's Character of Service to Under Honorable Conditions. Per ALCOAST 562/08, the General Discharge is no longer valid.

The Minority Board (2-3) recommends the following changes:

Character of Service: Honorable

SPD code: JND

Narrative Reason: Separation for Miscellaneous/General Reasons

RE code: RE-3

Separation Authority: COMDTINST M1000.4, Article 1.B.12 (legacy Personnel Manual 12.B.12)

General Law review/endorsement recommends the following changes:

Character of Service: Honorable

SPD code: JND

Narrative Reason: Separation for Miscellaneous/General Reasons

RE code: RE-1

Separation Authority: COMDTINST M1000.4, Article 1.B.12 (legacy Personnel Manual 12.B.12)

Final Adjudication by Assistant Commandant For Human Resources: Concurs with General Law review and endorsement. Relief is granted.

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.