

UNITED STATES COAST GUARD DISCHARGE REVIEW BOARD

Docket Number: 2017-011

**Discharge Issued**

**Character:** Honorable

**Narrative Reason:** Misconduct

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

**Authority of Discharge:** COMDTINST M1000.4 1-B-17

**Date of Separation:** 2013-02-25

**DRB Decision**

**Character:** No Change

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

**SPD/RE Code:** JND / RE3

**New Authority:** No Change

**Discharge Review Board Discussion and Decision:**

**DISCUSSION:**

The applicant and their attorney appeared in person for the hearing. After a brief introduction, the Board President stated the roles and responsibilities of the Coast Guard Discharge Review Board (DRB). The applicant and their attorney were both sworn-in by the recorder. After a short discussion, the Board President asked the applicant if they would like to make a statement. The applicant's attorney thanked the DRB for their time and stated the investigation(s) in the record should not be considered because they are not equitable or relevant to the applicant's discharge. The attorney then proceeded to interview the applicant. The applicant admitted to sharing a photo of a co-worker's spouse with another co-worker and recognized that it was a wrong decision to do so. The applicant stated that their relationship with a married woman was wrong, however, the applicant was under the impression that she was separated from her husband at the time of their interaction. The applicant's attorney stated that the applicant's discharge was harsh in nature and was not consistent with the violation committed. The examples the applicant's attorney provided were: when an officer at a military installation was dismissed due to the material they posted on social media. After the officer petitioned their unit's Discharge Review Board, the non-violent social media infraction received relief based on the severity of their violations and what the Board was able to change. The applicant's attorney made the point that the applicant's case was similar and was of a non-violent social media related content. That statement was the basis for probable cause to show relief to the applicant. The applicant's attorney called attention to the other cases online in the Department of Defense Electronic Reading Room that were classified as a Commission of a Serious Offense. These cases included: misleading law enforcement on the whereabouts of a fugitive; DUI with a child in the car and hit a jogger; domestic violence, assault of a shipmate, and unauthorized access to a military base; AWOL into deserter status; altercation that involved brandishing a firearm. The applicant's attorney indicated that falling in love with someone does not compare to the offenses mentioned and should not be classified as a Commission of a Serious Offense. The applicant's attorney discussed how the applicant's offense was an offense of the heart. The applicant made a mistake, emotionally, and became infatuated.

The attorney also discussed the applicant's firearm incident. While the applicant was volunteering at the local fire department, the firearm was stored in their vehicle's glove compartment. The applicant did not remember the firearm was still in their vehicle when they reported for duty. As a consequence, the applicant did receive non-judicial punishment. The applicant explained that they did not intentionally violate the order.

The applicant's attorney communicated to the Board that the Misconduct Narrative Reason For Separation (NR) does not fit compared to NR of Separation for General/Miscellaneous Reasons. This is not a fair and just separation. The applicant's attorney stated that the applicant is not a bad person and possesses good character. The applicant's attorney referred to the character letters that described the applicant as an excellent role model and very

professional. The applicant's attorney stated that the applicant was never in trouble, never was arrested and displayed meritorious service. The applicant's attorney cited the Office of the Under Secretary of Defense memo, where Mr. Robert L. Wilkie discussed guidance to the military discharge review boards. In the memo, Mr. Wilkie explains how Military Departments operating through DRBs, have the authority to upgrade discharges to ensure fundamental fairness. The applicant's attorney asked the Board about the Coast Guard's Second Chance Program and if the applicant was eligible. After a discussion and answering a few questions for the Board, the applicant and their attorney were dismissed.

Members of the Board deliberated the case as well as policy in force. The Board reviewed the Second Chance Program policy set forth in the Military Separations, COMDTINST M1000.4. The policy applies to first-term performers and authorizes the first flag officer/SES in the chain of command of the first-term performer to waive all policy discharge authorities. The Board evaluated the applicant's discharge documents and their entire service record.

The Board has no issues with equity in this case.

On the propriety standard, the Board evaluated several facts of the case. The records show the applicant's original enlistment contract in the U. S. Coast Guard was for 6 years. The Board noted the applicant's recommendation for discharge document (memo), and addressed to CG PSC (EPM-1) states the applicant is not in their first term. The applicant is in a four-year extension to their initial contract and is therefore not eligible for the Second Chance Program. The Board determined that the applicant was not afforded their right to the Second Chance Program even though the applicant was eligible because they were still serving under their original enlistment at the time of separation. The Board reviewed 33 CFR Part 51.6 (Propriety Standard of Review) and it specifically reads a discharge may be improper if an error of fact, law, procedure, or discretion was associated with the discharge at the time of issuance which prejudiced the rights of the applicant. The Board believes there was an error during the discharge process committed by the applicant's chain of command by not allowing them to participate in the Commandant's Second Chance Program.

The applicant was notified of the intent to discharge, and the applicant was advised of the rights to an attorney. The applicant made a statement and did not object to discharge.

#### RECOMMENDATION:

The Board members thoroughly reviewed the applicant's record of service and all available documentation. The Board also heard from the applicant and their attorney. It was deemed that the applicant's separation code, reentry code and narrative reason for separation are not appropriate and should be changed. The Board found an issue with propriety based on the member having served only 5 years into their initial 6-year enlistment, by policy the applicant was eligible to be considered for the second chance program. This oversight by the applicant's Command during the counseling process may have resulted in a different outcome for the former member had they been afforded an opportunity to apply for that program. The applicant did substantiate an error or inequity based on the Narrative Reason for Separation stating Misconduct that does not align with the Honorable Character of Service which was granted. The applicant did substantiate an error or inequity based on the Narrative Reason for Separation stating Misconduct that does not align with the Honorable Character of Service which was 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.