

UNITED STATES COAST GUARD DISCHARGE REVIEW BOARD

Docket Number: 2018-008

Discharge Issued

Character: Under Honorable Conditions (General)

Narrative Reason: Misconduct

SPD/RE Code: JKQ / RE4

Authority of Discharge: COMDTINST M1000.4 Art 1.B.17

Date of Separation: 2017-08-15

DRB Decision

Character: Honorable

Narrative Reason: Separation for Misc/General Reasons

SPD/RE Code: JND / RE3

New Authority: COMDTINST M1000.4 Art 1.B.8

Discharge Review Board Discussion and Decision:

DISCUSSION:

The applicant was separated due to Misconduct.

The applicant is now requesting relief for Blocks 24, 26, 27 and 28 of DD-214. The Board completed a comprehensive review of the applicant's record and the criminal charges incurred by the Applicant. The Board determined the standards in criminal cases used for discharge are based on the preponderance of the evidence. The applicant provided further evidence including their EER and Awards.

The applicant appeared before the board with an attorney. The applicant was accused of sexual assault and maintains that the allegations are false. The alleged victim did not report the allegation and admitted that it was consensual. After attending SAPR Training (2) co-workers of The applicant reported that a shipmate may have been sexually assaulted because they were consuming alcohol prior to engaging in sexual acts. The alleged victim did not testify at trial.

Due to the lapsed time, the applicant did not recall all of the events of that night during the investigation. Only after some shipmates attended training did the allegations surfaced and an investigation opened. After the trial was set the opportunity to testify was not afforded to applicant because the witness declined testimony. At that time the applicant was processed for discharge without evidence of committing a serious offense nor misconduct.

RECOMMENDATION:

- Majority Opinion:

The majority opinion (4 members) recommended that the applicant's reenlistment code be upgraded from RE-4 to RE-3 and their SPD Code be changed to JND which would reflect Miscellaneous/ General Reasons to allow eligibility for future reenlistment. They posture that mitigating issues related to the applicant's investigation and trial contributed to the excessive discharge that the applicant received. The DRB has the authority to recommend a change to the re-entry code in cases where a discharge may be improper "if an error of fact, law, procedure, or discretions was associated with the discharge" (10 U.S.C. § 1553, 33 CFR § 51.6(a)). The majority opinion is that the applicant presented documentation satisfies the "relevant considerations" standards to justify upgrading the discharge based on an error of discretion 33 CFR § 51.8(a), 51.8(b) and 51.8(d). Specifically, the applicant's quality of service for almost 3 years and capability to serve in the Coast Guard are compelling and persuasive. The assignment of a RE-3 however does not guarantee reenlistment.

- Minority Opinion:

The Dissenting opinion (1 member), recommended that the applicant's characterization of discharge remain Under Honorable Conditions and their reenlistment code remain RE-4. The Coast Guard followed proper procedures in discharging the applicant and The applicant was accurately notified of the intent to discharge.

SUMMARY:

The Board members thoroughly reviewed the applicant's record of service and all available documentation and deemed that the applicant's reason for separation and reenlistment code are appropriate and should not be changed, the applicant has not substantiated any error or inequity.

Propriety: Discharge was proper.

Equity: Discharge was not equitable.

Board Conclusion: The Board voted 4-1 to recommend relief.

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.