

UNITED STATES COAST GUARD DISCHARGE REVIEW BOARD

Docket Number: 2020-034

**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:** 2016-12-15

**DRB Decision**

**Character:** Honorable

**Narrative Reason:** Condition, Not a Disability

**SPD/RE Code:** JFV / No Change

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

**Discharge Review Board Discussion and Decision:**

**DISCUSSION:**

The Applicant was processed for discharge for Misconduct owing to Commission of a Serious Offense IAW COMDTINST M1000.4 Art. 1.B.17.

They were advised of intent to discharge by memo and advised of their right to seek counsel due to being recommended for an Under Honorable Conditions Discharge. Commander, CG-PSC established under a preponderance of the evidence that the Applicant violated Article 92 as well as Article 86 and supported their finding with evidence that the applicant voluntarily absented, without authority, for a period of one week. The maximum penalty for UCMJ Article 86 includes punitive discharge. The Applicant ultimately received an Under Honorable Conditions discharge with a narrative reason of Misconduct, an SPD code of JKQ, and a Reentry code of RE-4.

In accordance with 10 U.S.C. § 1553, and as a result of the applicant's notation on their application referencing military sexual trauma (MST), a member who is a Licensed Clinical Social Worker providing clinical care and working within the scope of clinical privileges granted by Commandant (CG-11), was a present voting member during the board proceedings. Additionally, and pursuant to 10 USC 1553(d)(1)(b), the Board reviewed the case with liberal consideration acknowledging that a mental health condition, specifically related to (MST) may have contributed to the circumstances leading to the applicant's discharge under a lesser characterization.

Liberal consideration of a case permits the Coast Guard to waive the statute of limitations, reconsider past events even without new evidence, and carefully consider all evidence, including evidence from outside the applicant's service record and changes in performance or conduct commonly associated with the mental health condition or experience of military sexual trauma. Liberal consideration does not mandate an upgrade to an applicant's discharge.

In review of the applicant's discharge pursuant to the Kurta Memo and its applicable regulations and guidance, The Board utilized the following four questions in its analysis of the case: (1) Did the veteran have a condition or experience that may excuse or mitigate the discharge? (2) Did that condition exist/experience occur during military service? (3) Does that condition or experience excuse or mitigate the discharge? and (4) Does that condition or experience outweigh the discharge? The Kurta Memo emphasizes that liberal consideration must be given to conditions and experiences that may have mitigated misconduct, particularly in cases involving mental health conditions, traumatic brain injury, sexual assault, or other trauma. Accordingly, the Board applied these principles, along with all relevant Coast Guard policies in review of this discharge.

Board Medical Officer Analysis and Opinions

1. Did the veteran have a condition or experience that may excuse or mitigate the discharge?

Yes – The Board's Medical Officer, also a voting member, reviewed the applicant's provided medical records, statements, and submitted documentation and found evidence of PTSD (as a result of MST) which can potentially mitigate or excuse misconduct leading to separation. The applicant states their depression led them to engage in the misconduct for which they were ultimately separated. The applicant was assigned a disability rating by the Veteran's Affairs (VA) post service for service-connected mental health conditions, including PTSD due to MST and their rating was later upgraded.

2. Did that condition exist/experience occur during military service?

YES - In addition to the member's own statements that they experienced MST their period of service, The Board's Medical Office reviewed the evidence submitted of a VA diagnosis of PTSD (MST). The behaviors surrounding and leading to their misconduct separation are consistent with MST. The applicant's circumstances therefore draw a mental health nexus. The applicant provided VA documentation stating service connection to their PTSD (MST) as evidence that the conditions occurred and existed during their military service. The applicant's service record also contains numerous CG-3307's that detail instances of disobeying orders, being late, substandard performance of duties, and difficulty maintaining healthy reciprocating relationships. These instances of misconduct, including the one the applicant was discharged for, served as additional evidence in line with the applicant having an underlying mental health condition resulting from MST while serving on active duty.

3. Does that condition or experience excuse or mitigate the discharge?

YES – The applicant was separated with a General Discharge following a one-week period of Absence without Leave (AWOL). There is an association between PTSD (MST) and this kind of avoidant behavior.

4. Does that condition or experience outweigh the discharge?

YES – A mental health condition caused by the applicant's MST while on active duty would outweigh their General Discharge. Pursuant to the Military Separations, COMDTINST 1000.4 paragraph 1.B.2.f, a General discharge is appropriate for drug cases and where performance is so substandard that CG-EPM-1 directs a General discharge. In most cases involving Convenience of the Government for the reason of Condition, Not a Disability, an Honorable Discharge is appropriate. The applicant's infractions were in line with an underlying mental health condition and should be considered with more weight than the misconduct causing their discharge.

The Board examined the applicant's separation under COMDTINST M1000.4 Art. 1.B.17 for Commission of a Serious Offense and applied liberal consideration based off the applicant's claim being a victim of Military Sexual Trauma and concluded that there is substantive doubt that under current policy and procedures the applicant would have received the same discharge characterization under COMDTINST M1000.4B Chapter 2, which requires consideration of service related mental health conditions and their potential contribution to a member's separation. The Board found that the applicant's discharge failed to equitably account for the service-related mental health conditions caused by MST. Applying the guidance in 10 U.S.C. § 1553 regarding liberal consideration for cases involving behavioral health conditions tied to MST, The Board recognized that the applicant's military experiences and resulting mental health conditions were substantial contributing factors in the events leading to their discharge. As a result, the Board recommends an upgrade to the applicant's discharge characterization from Under Honorable Conditions to Honorable. The Board also recommends the discharge authority be changed to COMDTINST M1000.4 Article 1.B.12 with a narrative of Convenience of the Government for the reason of Condition, Not a Disability and the corresponding SPD code of JFV as defined by 1.B.12.

**RECOMMENDATION:** The Board members thoroughly reviewed the applicant's record of service and all available documentation. The Board deemed that the applicant's discharge characterization, authority, narrative, and SPD code are no longer appropriate and should be changed. The applicant has sustained inequity.

Propriety: Discharge was proper.

Equity: Discharge is not equitable.

Board Conclusion: The Board voted 4-0 for 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.

