

UNITED STATES COAST GUARD DISCHARGE REVIEW BOARD

Docket Number: 2020-042

Discharge Issued

Character: Under Honorable Conditions (General)

Narrative Reason: Misconduct

SPD/RE Code: JKQ / RE4

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

Date of Separation: 2020-01-20

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 former member was discharged for misconduct following a CGIS investigation regarding the applicant's conduct involving another Coast Guard member. The investigation revealed the applicant made repeated inappropriate comments to their subordinate as well as numerous unwanted sexual advances. The applicant was found, based on a preponderance of evidence, to have violated Article 92 (Failure to Obey Orders) and Article 93 (Cruelty and Maltreatment) of the UCMJ. Upon conducting interviews regarding the alleged misconduct, CGIS agents discovered two additional Coast Guard victims who described inappropriate touching and behavior of a sexual nature by the applicant.

The applicant was processed for discharge for misconduct owing to the commission of a serious offense in accordance with COMDTINST M1000.4 Article 1.B.17. They were advised of the intent to discharge in a memo and advised of their right to seek counsel due to being considered for an Under Honorable Conditions Discharge. Commander, CG-PSC established under a preponderance of evidence that the applicant committed a serious offense in violating Article 92 and 93 of the UCMJ and supported their finding with the results of a CGIS investigation. The maximum penalty for the commission of a serious offense includes a punitive discharge. The applicant ultimately received a Under Honorable Conditions discharge with a narrative reason of Misconduct, an SPD code of JKQ, and a reentry code of RE4.

In accordance with 10 U.S.C. § 1553, and as a result of the applicant's claim of a mental health condition (PTSD, TBI, Military Sexual Trauma (MST), or other mental health condition), a member who is a physician, clinical psychologist, psychiatrist or clinical social worker that provides clinical care and works within the scope of clinical privileges granted by Commandant (CG-11), was present during the board. Additionally, and pursuant to § 1553, the Board reviewed the case with liberal consideration that a mental health condition, including PTSD, TBI, MST, or other mental health condition potentially contributed to the circumstances resulting in the discharge of a lesser characterization.

The review of discharge pursuant to the Kurta Memo and its other applicable regulations and guidance involves the following four questions:

MEDICAL BOARD MEMBER OPINION

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

NO. The applicant claims PTSD on their DD-293 but provides no further documentation. The Board's mental health

professional was additionally unable to locate any corroborating information on mental health visits or treatment within the military or civilian community. Without amplifying information, no mitigating nexus can be created between the applicant's claimed condition and their misconduct.

2. Did that condition exist/experience occur during military service? N/A
3. Does that condition or experience actually excuse or mitigate the discharge? N/A
4. Does that condition or experience outweigh the discharge? N/A

The Board concurs with the assessment of the mental health professional. As no mental health nexus can be determined, the Board has reviewed the case to determine whether an impropriety exists in the discharge of the applicant.

The Board finds that the applicant's claim of impropriety due to the lack of sufficient notice (30 days), is without merit. The applicant was advised of the intent to discharge in a memo and was processed for discharge, well over 30 days. In addition, the applicant's claim they were the only member of color to be "discharge under a preponderance of the evidence" is erroneous. Per COMDTINST M1000.4 Article 1.B.17.b.(3) commission of a serious offense does not require adjudication by non-judicial punishment or judicial proceedings. The offense must be established by a preponderance of the evidence. Police reports, CGIS reports, etc. may be used to make the determination that a member committed a serious offense.

A preponderance of evidence was clearly established as evident in the CGIS report and the applicant was found in violation of Article 92 and 93 of the UMCJ. Commander, PSC properly found under a preponderance of the evidence that the Applicant committed a serious offense which carries as a penalty, a punitive discharge. The Applicant was properly awarded an Under Honorable Conditions characterization in accordance with COMDTINST M1000.4 Article 1.B.2.f. The Board finds no errors of fact, law, discretion, or procedure associated with this separation, nor any relevant changes in policy made expressly retroactive to this type of discharge.

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 is appropriate and should not be changed. The applicant has not substantiated any error or inequity.

Propriety: Discharge was proper.

Equity: Discharge was equitable.

Board Conclusion: The Board voted 5-0 for NO 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.