

UNITED STATES COAST GUARD DISCHARGE REVIEW BOARD
Docket #: 2020-049

Discharge Issued

Character: Under Honorable Conditions (General)

Narrative Reason: Misconduct

SPD/RE Code: JKQ / RE4

Authority of Discharge: COMDTINST M1000.4 Article 1.B.11

Date of Separation: 2019-03-26

DRB Decision

Character: No Change

Narrative Reason: No Change

SPD/RE Code: No Change / No Change

New Authority: COMDTINST M1000.4 Art 1.B.17

Discharge Review Board Discussion and Decision:

ISSUES: The applicant is requesting relief to their discharge characterization from Under Honorable Conditions to Honorable. The applicant states that their discharge of misconduct does not accurately reflect their mental health challenges at the time of their discharge. The applicant claimed PTSD, TBI, and other mental health conditions on their application. The applicant received a 70% VA Disability rating though it does not directly specify the reason why. The applicant does not directly claim an impropriety or inequity however, the Board has examined whether an inequity exists in awarding the applicant an Under Honorable Conditions discharge, considering their mental health claims.

DISCUSSION: The applicant was discharged for misconduct due to a commission of a serious offense. The applicant received NJP for Article 107 (False Official Statements) and Article 134 (Wearing Unauthorized Insignia, Decoration, Ribbon, Device, or lapel button) and was subsequently found to be in violation of both. The applicant made false statements to Coast Guard personnel about their prior service in the Army and wore unauthorized medals and ribbons on several occasions, including boot camp graduation, specifically an Army Commendation Medal, an Army Achievement Medal, an Army Good Conduct Medal, and a National Defense Medal with bronze star. Additionally, the applicant wore a service stripe on their service dress blue uniform indicating they had served 4 years in the Army when they had only served 3 months and 1 day. The applicant posted multiple photographs on social media of them wearing the unauthorized ribbons. The applicant received 45 days restriction, 30 days of which were vacated and remained suspended for three months following the NJP. The applicant failed to report for duty at their ordered time. When asked for a reason why, the applicant again made false statements as to their whereabouts. The command noted that since reporting to their first unit, the applicant demonstrated a troubling level of dishonest and dishonorable behavior, repeatedly violating the UCMJ and deceiving the chain of command. The applicant was involuntarily separated from the Army for performance and conduct before completing boot camp.

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?

YES. In the provided documentation, applicant does appear to have been service connected by the Department of Veterans Affairs at a 70%. A comp and pen evaluation concluded: "There is a strong familial pattern in personality disorders. The Veteran's personality disorder cannot be attributed to the military. Veteran's personality shows a strong external locus of control, stress intolerance, Autistic Spectrum disorder features and dependent features."

Additionally, a preponderance of evidence indicates significant symptoms of PTSD caused by index trauma in the Army and exacerbated by treatment in CG training. In review of page 19/65, it appears the evaluator opined that he did not meet full diagnostic criteria for PTSD at time of evaluation. However, this evaluator is narrowly defined criterion A 'index trauma' and does not appear to be counting "being treated poorly in the Coast Guard" nor their army experience noted below as a trauma. Such evidence reasonably supports meeting Criterion A and following criteria for a diagnosis of PTSD. All symptoms do not have to arise immediately after a trauma to reasonably be attributed to it. Given the description in the evaluation indicating low mood as a result of trauma resulting from "treatment during basic training in the Coast Guard" criterion D of the diagnosis would be met: Negative alterations in cognitions and mood, and negative emotional state.

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

YES. Providing full liberal consideration to the applicant's narrative statement and evidence, it is accepted that the condition existed during and was aggravated by service. As noted above he had an index trauma from time in the Army and during CG training "The applicant reports their superior officers behaved the same way. When asked how he was discriminated against or treated in a hostile manner he reported being yelled at on a daily basis. However, further questioning revealed that he was getting yelled at for "not getting the hang of it" and not remembering things."

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

YES (in mitigation). Per C&P evaluation, applicant was diagnosed with Unspecified Personality Disorder ICD code: F60.9.

As evaluator notes: "This is the veteran's primary diagnosis and accounts for the majority of their impairment. Personality Disorders have a biological basis and are often influenced by early childhood

environments. A personality disorder is an enduring pattern of thinking, feeling, and behaving that deviates markedly from expectations of the individual's culture. There is a strong familial pattern in personality disorders. The Veteran's personality disorder cannot be attributed to the military. Veteran's personality shows a strong external locus of control, stress intolerance, Autistic Spectrum disorder features and dependent features.”

Applicant stated on VA intake regarding circumstances of CG discharge he was “not aware of what influenced this behavior. He is worried about a lifelong “self-defeating” behaviors”. Given their thorough and full diagnostic workup, applicant suffers from personality and likely autism spectrum disorders which are lifelong and clearly lead to lapses of judgment and socially appropriate behaviors thereby providing explanation for and mitigating the misconduct.

4. Does that condition or experience outweigh the discharge?

NO. As noted above. While the conduct may have been planned, that does not indicate that planning was logical or not influenced by poor judgement. As noted above applicant suffers from personality and likely autism spectrum disorders which are lifelong and clearly lead to lapses of judgment and socially appropriate behaviors thereby providing explanation for and mitigating the misconduct. Nevertheless, I would recommend no change to discharge characterization as applicant’s service nevertheless failed to meet standards of acceptable conduct and performance of duty.

The Board concurs with the assessment of the mental health professional and finds that applicant’s discharge was proper and equitable even when considering the Kurta Memo and in the lens of liberal consideration. The applicant’s actions, as noted above, do not fit the criteria outline in the Kurta Memo. In accordance with the Kurta Memo, premeditated misconduct is not generally excused by a mental health condition. Additionally, in some cases the severity of the misconduct does not outweigh any mitigation from the asserted mental health condition. In this case, The Board finds the condition that may have reasonably existed at the time of misconduct does not excuse or mitigate the discharge.

The applicant was processed for discharge for misconduct owing to the commission of a serious offense in accordance with COMDTINST M1000.4. 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 Articles 107 and 134 of the UCMJ and supported their finding with the results of NJP. The maximum penalty for Article 107 includes a punitive discharge, as required to constitute a serious offense under COMDTINST M1000.4 Ch. 1.B.17. 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.

The Board finds no material error of fact, law, discretion, or policy in this discharge. Although there was a clerical error in Block 25 of the Applicant’s DD-214 (listing Ch. 1.B.11 rather than the correct Ch. 1.B.17, this clerical error does not entitle the applicant to relief under 33 C.F.R. §51.7. There have been no relevant policy changes since the date of discharge that are unique to this case. The discharge of the applicant was justified and consistent with the standards of discipline. The Board finds no issues concerning the propriety or equity of the 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

ADMINISTRATIVE CORRECTION: The Board does recommend an administrative correction to Block 25 of the DD-214 for separation authority to be administratively corrected from COMDTINST M1000.4 Article 1.B.11 to COMDTINST M1000.4 Article 1.B.17 which is the correct authority for a discharge by reason of misconduct.

² 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.