

UNITED STATES COAST GUARD DISCHARGE REVIEW BOARD
Docket #: 2022-028

Discharge Issued

Character: Under Honorable Conditions (General)

Narrative Reason: Misconduct

SPD/RE Code: JKQ / RE4

Authority of Discharge: COMDTINST M1000.4

Date of Separation: 2017-08-21

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's counsel states the following issues with the former member's discharge. As it pertains to impropriety, counsel states that the applicant was found innocent of all charges in a civilian court and that the discharge the applicant received was too harsh. As it pertains to inequity, counsel states that the applicant had an outstanding service record and is deserving of an honorable discharge based on the strength of the applicant's character and work ethic, as attested by those with whom the applicant served with.

DISCUSSION: The applicant was discharged for the commission of a serious military or civilian offense. The former member was counseled for being 1 hour and 15 minutes late to work which was documented on CG-3307.

The applicant received a negative CG-3307 for an alcohol related incident for a domestic disturbance with their girlfriend, who was also a service member. Following the incident, the applicant's girlfriend was escorted off base by security and the incident was referred to CGIS for investigation. The applicant was referred to alcohol screening.

The applicant was counseled in reference to an unaccompanied guest in their room. Due to the applicant's previous alcohol related incident, the applicant sought counseling and completed the American Society for Addiction treatment.

The applicant received NJP and was found guilty of violating UCMJ Article 134 (Drunk and Disorderly) and was sentenced to a reduction in paygrade to E-3.

Shortly after, the applicant was arrested by civilian police after their girlfriend accused them of assault. The command was able to have the applicant released from jail the day after the incident. The applicant was later acquitted of all charges in civilian court. No evidence of acquittal was provided.

The applicant was counseled for being late to work which was documented via CG-3307.

The applicant was arrested again for an altercation at a convention center. Following the altercation, the applicant received a second alcohol incident.

The applicant received a second NJP. The applicant was charged with UCMJ Article 86 (Unauthorized Absence), Article 92 (Failure to Obey Order or Regulation), and Article 134 (Disorderly Conduct: Drunkenness). The applicant was awarded 14 days restriction, reduction to pay grade E-3 (suspended 3 months), and 14 days of extra duty.

The applicant's Enlisted Employee Reviews (EER) were consistently below average except for their first year of service.

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. The applicant was 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 86, 92, and 134 UCMJ and supported their finding with the results of NJP and police reports. 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.

The Board finds that the applicant's claim that being separated for misconduct was improper due to their acquittal for assault in a civilian court is without merit. In accordance with COMDTINST M1000.4 Article 1.B.17.b.(3), which deals with separations for misconduct, "an acquittal or finding of not guilty at a judicial proceeding or not holding non-judicial punishment proceeding does not prohibit proceedings under this provision." In addition, and per COMDTINST M1000.4 Article 1.B.17(b)(3)(c), Commission of a Serious Offense will be the basis for separation for all members receiving an alcohol incident that involves serious misconduct (including but limited to: domestic violence, hazing, drunken operation of a vehicle, or other misconduct that meets the definition of a serious offense). Commander, PSC properly found under a preponderance of the evidence that the applicant violated UCMJ Article 86, 92, and 134 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 Separation Program Designator (SPD) code, reentry code, and narrative were all properly awarded in accordance with the SPD Handbook. 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.

Additionally, the Board finds that the applicant's claim that an Under Honorable Conditions characterization of service was inequitable is also without merit. The applicant claims that their outstanding service record is deserving of an Honorable discharge. The Board reviewed the applicant's service record and evidence submitted, along with the regulations under which the applicant was discharged and found that an Under Honorable Conditions characterization is fairly justified for members

found to have received two alcohol incidents and committed violations of UCMJ Article 86, 92, and 134 and were subsequently separated in accordance with COMDTINST M1000.4 Art. 1.B.17.b.(3). COMDTINST M1000.4 Article 1.b.2.f(2)(b)(2) allows Commander-PSC-EPM-1 to issue an under honorable discharge when they feel the individual's overall military record or the severity of the incident merits such. The Board concurs with EPM's assessment that an under honorable discharge is warranted. The characterization, authority, and narrative for this discharge is consistent with the procedural and substantive requirements of regulation and is within the discretion of the separation authority. Ultimately, the discharge issued met the standard and precedent for similar cases, was in accordance with prior and current separation policy, and was within the discretion of the separation authority.

RECOMMENDATION: The Board members thoroughly reviewed the applicant's record of service and all available documentation. The Board deemed that the applicant's character of service, 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 equitable.

Board Conclusion: The Board voted 4-0 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.18 to COMDTINST M1000.4 Art 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.