

UNITED STATES COAST GUARD DISCHARGE REVIEW BOARD
Docket #: 2022-045

Discharge Issued

Character: Under Honorable Conditions (General)

Narrative Reason: Miscellaneous / General Reasons

SPD/RE Code: KND / RE4

Authority of Discharge: COMDTINST M1000.4 Article 1.B.12

Date of Separation: 2019-08-08

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:

ISSUES: The applicant seeks an upgrade to their discharge character of service from Under Honorable Conditions (General) to Honorable. The applicant states that upon completion of their service, they were diagnosed with a service-connected traumatic brain injury (TBI). The applicant states they were discharged for “unjustifiable” reasons and unfairly issued an Under Honorable Conditions (General) discharge after they were found not guilty by a special court martial. The applicant also claims they were denied an administrative review board. The applicant marked post-traumatic stress disorder (PTSD) and TBI as a condition related to their discharge.

DISCUSSION: The applicant was discharged following the expiration of their enlistment after being found ineligible and not receiving a positive command recommendation for reenlistment/extension. Following an administrative investigation and Coast Guard Investigative Service (CGIS) investigation, the applicant was charged with three specifications of violating UCMJ Article 128 (assault consummated by a battery) and found not guilty on all charges at a special court martial.

The applicant was discharged following the expiration of their enlistment and in accordance with COMDTINST M1000.4 Article 1.B.12. A reenlistment interview was conducted where it was determined the applicant did not receive a positive command recommendation for reenlistment/extension, citing a violation of UCMJ Article 128. The applicant was notified of their ineligibility to reenlist during a reenlistment interview. The applicant was counseled and refused to sign the CG-3307 documenting their reenlistment ineligibility. Commander, CG-PSC established the applicant should be discharged with a Under Honorable Conditions (General) characterization based upon the preponderance of evidence that they violated UCMJ Article 128. The applicant was allowed to be separated in lieu of orders (SILO) without the opportunity to re-enlist and ultimately received a Under Honorable Conditions (General) discharge with a narrative reason of Separation for Miscellaneous/General Reasons, and Separation Program Designator (SPD) Code of KND, and a Re-Entry 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 and TBI), 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 10 U.S.C. § 1553, the Board reviewed the case with liberal consideration that a mental health condition, including PTSD and TBI potentially contributed to the circumstances resulting in the discharge of 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 a mental health condition or experience. 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.

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

YES. The Board's Medical Officer was unable to locate any information surrounding any mental health issues during the applicant's service period referenced. Applicant provided VA records supporting a 70% service-connected disability though without clarity as to the causation – or clear connection of a behavioral health condition to service.

In review of the provided medical records, applicant appears to have sought treatment post service for the asserted medical conditions as indicated in form DD293 including depression though without service connection for the conditions as asserted in the applicant's statement. Conditions can be liberally accepted in line with Wilkie and Kurta Memorandum.

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

YES. The applicant was diagnosed post-service however the applicant provided VA records of a service-connect condition, though unspecific as to what the condition is.

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

NO. The Board's Medical Officer found no nexus between the asserted conditions and the discharge.

4. Does that condition or experience outweigh the discharge?

NO. The condition, as asserted by the applicant, does not outweigh the discharge.

The Board concurs with the assessment of the mental health professional and finds that applicant's discharge was 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 outlined 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 Board finds that the applicant's claim of impropriety due to being denied an administrative review board is unfounded. Per COMDTINST M1000.2 Article 1.E.2(e), members who do not meet the eligibility criteria to reenlist are not entitled to a reenlistment board, even if they have eight or more years of total service.

The Board finds the applicant's claim of inequity that they were unfairly issued an Under Honorable Conditions (General) discharge after they were found not guilty by a special court martial is also without merit. A reenlistment interview was conducted in accordance with COMDTINST M1000.4 Article 1.B.5.b and the applicant did not receive a positive recommendation from the command to reenlist. The applicant was counseled properly in accordance with COMDTINST M1000.4 Article 1.B.4(b)(1) and found not eligible for reenlistment in accordance with COMDTINST M1000.2 Article 1.E.2(e). Per COMDTINST M1000.2 Article 1.E.2(e)(1), commission of a serious offense does not require adjudication by non-judicial or judicial proceedings. A commanding officer may remain convinced that credible evidence establishes, by a preponderance of the evidence, that the member has committed a serious offense. In these circumstances, if warranted by the particular facts of the case, Commander (CG PSC-EPM) may determine that a serious offense has been committed, even without a judicial adjudication, and deny the member the opportunity to reenlist. The Board reviewed the applicant's record and evidence submitted, along with the regulations under which the applicant was discharged and found that an Under Honorable Conditions (General) characterization is fairly justified for members found to have committed misconduct and subsequently not received a positive endorsement for reenlistment. The applicant was properly separated in accordance with COMDTINST M1000.4 Article 1.B.12.

The Board finds no error of fact, law, discretion, or policy in this discharge. 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

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.