

UNITED STATES COAST GUARD DISCHARGE REVIEW BOARD  
Docket #: 2023-039

**Discharge Issued**

**Character:** Under Honorable Conditions (General)

**Narrative Reason:** Misconduct

**SPD/RE Code:** JKK / RE4

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

**Date of Separation:** 2023-10-02

**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 they feel as though they were “mis-diagnosed” while serving in the Coast Guard, resulting in them going down a bad path. The applicant states they did not get the proper help they needed and since being discharged has been diagnosed with post-traumatic stress disorder (PTSD). As a result, the Board has examined whether an inequity exists in awarding the applicant an Under Honorable Conditions (General) discharge for misconduct, considering their claims of PTSD.

**DISCUSSION:** The applicant was discharged for misconduct owing to involvement with drugs following a positive urinalysis test for THC. The applicant denied knowledge of how THC ended up in their system. A subsequent administrative investigation was conducted, and the applicant was processed for separation. Prior to the positive urinalysis test, the applicant also received non-judicial punishment (NJP) for a violation of UCMJ Article 91. The applicant was found to have visited a bar while in “A” School after being quarantined, disobeying a lawful order from a non-commissioned officer. Additionally, the applicant received a negative CG-3307 for demonstrating numerous lapses of judgement and military bearing while at “A” school. The applicant failed to comply with a direct order on two occasions and displayed a disregard of the military uniform standard on two occasions. It was also noted the applicant demonstrated a serious lack of respect towards classmates and instructors. The applicant also received a negative CG-3307 notifying them of a fault disenrollment from “A” School for a disregard to military bearing, adherence to the uniform regulations, and a disrespectful attitude towards fellow classmates and instructors.

The applicant was processed for discharge for misconduct owing to involvement with drugs in accordance with COMDTINST M1000.4 Article 1.B.17. They were advised of the intent to discharge in a memo and provided an opportunity to consult with a military lawyer due to being considered for an Under Honorable

Conditions (General) discharge. Commander, CG-PSC established under a preponderance of evidence that the applicant had illegally used a controlled substance and supported their finding with the positive urinalysis test and administrative investigation. The maximum penalty for involvement with drugs includes a punitive discharge. The applicant ultimately received an Under Honorable Conditions discharge with a narrative reason of Misconduct, a Separation Program Designator (SPD) Code of JKK, and a Reentry Code of RE4.

In accordance with 10 U.S.C. § 1553, and as a result of the applicant's claim of PTSD, a member who is a clinical psychologist that provides clinical care and works within the scope of clinical privileges granted by Commandant (CG-11), was present during the board proceedings. Additionally, and pursuant to 10 U.S.C. § 1553, the Board reviewed the case with liberal consideration that a mental health condition, including PTSD, 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.

#### MEDICAL BOARD MEMBER OPINION

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 applicants provided medical records, statements, and submitted documentation and found evidence of PTSD, anxiety and depression (civilian provider).

The behaviors surrounding and leading to their misconduct separation are consistent (substance seeking behavior). The applicant states their undiagnosed mental health conditions as exacerbated by service warrant relief to their discharge as requested.

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

YES. In addition to the member's own statements that they experienced PTSD during their service, the Board's Medical Officer reviewed the evidence submitted and found post service diagnoses of Major Depressive Disorder and Anxiety.

The behaviors surrounding and leading to their misconduct separation are consistent with the noted medical conditions. The applicant's substance seeking behavior to mitigate mental health symptoms draws a mental health nexus to misconduct.

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

YES. The applicant was separated for misconduct following a positive urinalysis for use of marijuana during service. There is an association between the applicant's mental health and substance seeking behavior.

4. Does that condition or experience outweigh the discharge?

NO. While the applicant contends misdiagnosis in service, amplifying information has not been provided that would dispel a condition as existing in service if being contested as leading to misconduct. The documentation provided by the civilian provider is without expansion, rationale or clear connection to military service for the applicant's noted behavioral health conditions.

Medical Officer unable to identify outreach for assistance while in service ahead of misconduct which aligns more closely to willful and premeditated substance use. Both Kurta and Wilkie tend to look unfavorably in granting liberal consideration for mental health conditions under such circumstances. Furthermore, the applicant's inconsistent narratives for service relief complicate the applicant's credibility as a historian. As such, the applicants discharge seems appropriate.

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 the applicant's claim of inequity due to a mental health condition is without merit. The applicant was found to have illegally used a controlled substance which amounts to a drug incident in accordance with COMDTINST M1000.4 Article 1.B.17(b)(4)(a). The applicant's conflicting stories regarding the drug incident, in addition to the additional misconduct do not support the claim of inequity.

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 illegally used a controlled substance and were subsequently separated in accordance with COMDTINST M1000.4 Article 1.B.17(b)(4).

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

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<sup>2</sup> 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.