

UNITED STATES COAST GUARD DISCHARGE REVIEW BOARD
Docket #: 2024-062

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: 2010-09-20

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:

ISSUES: The applicant seeks an upgrade to their discharge character of service from Under Honorable Conditions (General) to Honorable. In addition, the applicant is requesting a change to their separation code and narrative reason for separation. The applicant states they were awarded a 70% disability rating for post-traumatic stress disorder (PTSD) related to military sexual trauma (MST) that occurred during their time in service. The Board has examined whether an inequity exists in awarding the applicant an Under Honorable Conditions (General) discharge for misconduct considering their mental health claims.

DISCUSSION: The applicant was discharged for misconduct following a Coast Guard Investigative Services (CGIS) investigation for alleged drug use. The applicant admitted to obtaining and using prescription pain medication (Percocet) for which they were not prescribed. The applicant would additionally provide prescription pain medication to other members of the unit. During the CGIS interview, the applicant also indicated they had solicited other members to see if they could obtain more pain medication. The applicant stated they had searched websites seeking out additional ways to purchase pain medication. Following the investigation, the applicant was processed for discharge due to an involvement with drugs.

The applicant was processed for discharge for misconduct owing to involvement with drugs and 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 (General) discharge. Commander, CG-PSC established under a preponderance of evidence that the applicant had illegally used a controlled substance and supported their findings with the results of the CGIS investigation. The maximum penalty for involvement with drugs includes a punitive discharge. The applicant ultimately received a Under Honorable Conditions (General) discharge with a narrative reason of Misconduct, a Separation 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 a military sexual trauma (MST), post-traumatic stress disorder (PTSD), and other mental health condition, 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 § 1553, the Board reviewed the case with liberal consideration that a mental health condition (MST, PTSD, and other mental health condition), 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 the mental health condition or experience of military sexual trauma. Liberal consideration does not mandate an upgrade to an applicant's discharge.

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. As asserted by applicant in submitted DD293 form. Applicant checks on the form PTSD, Other Mental Health and Sexual Harassment/Assault. Applicant has provided post service evidence from the Department of Veterans Affairs noting a service connected rating for PTSD. MST does not appear to clearly be the rating reason as reviewed for the PTSD condition though is fully accepted by the board as claimed. In service records support a Substance Use Disorder.

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

YES. As noted above. Applicant is service connected by the Department of Veterans Affairs for PTSD.

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

PARTIALLY- Applying liberal consideration, there is an association between the applicants MST/PTSD and independent drug seeking use and behavior. However, legally/ or illegally attaining and distributing drugs is not accepted fully for mitigation given its associated and inherent danger– even when liberal consideration is applied. Distribution of controlled substances does not align with the sequelae of any of the applicant's mental health conditions. The applicant's ability to rationalize right vs. wrong and willfully plan additionally draw a level of premeditation in which draw negative favor by both Kurta & Wilkie memos in the case.

4. Does that condition or experience outweigh the discharge?

NO. Liberally considering the evidence in the case, some of the applicant's behavior can draw a mental health nexus mediating the discharge though not in full. The applicants MST/PTSD experience in the case would have impacted the applicant's social and occupational desire to function in the environment before her as exhibited which can be accepted as the reasoning for pursuit of self-medicating through substance.

However, the distribution of controlled substances cannot be fully correlated to any of the applicant's behavioral conditions claim.

The Board concurs with the assessment of the mental health professional and finds that the 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 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 unfounded. The applicant was the subject of a CGIS investigation and found to be using and distributing a controlled substance, which amounts to a drug incident. COMDTINST M1000.4 Article 1.B.17(b)(4)(a) prescribes no higher than an Under Honorable Conditions (General) discharge for members found to be involved in a drug incident. The Board reviewed the applicant's record and evidence submitted, along with the regulations under which the applicant was discharged. The Board found that an Under Honorable Conditions (General) discharge characterization and narrative reason of Misconduct is fairly justified for members found to have been involved in a drug incident and were subsequently separated in accordance with COMDTINST M1000.4 Article 1.B.17(b)(4). In addition, a Separation Program Designator (SPD) Code of JKK is the correct corresponding code for member's discharged for misconduct and was properly awarded as such.

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, separation code, and narrative reason 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 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.