

IN THE CASE OF: ██████████

BOARD DATE: 14 December 2023

DOCKET NUMBER: AR20230001396

APPLICANT REQUESTS: his narrative reason for separation be changed to a presumably more favorable reason.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

DD Form 149 (Application for Correction of Military Record), 2 February 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, in effect, he has a good record and does not want his DD 214 (Certificate of Release or Discharge from Active Duty) showing a narrative reason of misconduct – drug abuse.
3. The applicant enlisted in the Regular Army on 28 March 1978. He reenlisted on 28 September 1981 for a period of 4 years.
4. His DA Form 2-1 (Personnel Qualification Record) shows the highest rank obtained was the rank/grade of Staff Sergeant (SSG)/E-6 with a date of rank of 25 November 1983.
5. A DA Form 5248 (Report of Unfavorable Information for Security Determination), shows the applicant's collateral access was recommended for suspension due to an allegation of receiving a positive urinalysis for tetrahydrocannabinol (THC) on 20 March 1984. It additionally shows he was pending separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 (Separation for Misconduct).
6. On 21 March 1984, the applicant was notified of his commander's intention to separate him from service, under the provisions of AR 635-200, Chapter 14, for

commission of a serious offense, abuse of illegal drugs. The basis for this action was a positive urinalysis for THC on 20 March 1984.

7. The applicant consulted with counsel on 23 March 1984 and was advised of the basis for the contemplated action to separate him and of the rights available to him. He requested consideration of his case by an administrative separation board, appearance before a board, and representation by counsel. He elected to submit a statement on his own behalf. Additionally, he understood he may encounter prejudice in civilian life if a general discharge under honorable condition was issued to him.

8. A DA Form 2496 (Disposition Form), on 23 March 1984, shows the applicant was advised of the commander's intention to disqualify him from the Personnel Reliability Program (PRP) and he was able to submit a statement in his own behalf, to which on 26 March 1984, he stated, in effect, he didn't feel he should be permanently disqualified from the PRP, as he never made mistakes, he was always prepared for duty, and always at the proper place.

9. On 11 April 1984, the applicant's immediate commander initiated action for separation under the provisions of AR 635-200, Chapter 14, prior to the applicant's expiration term of service.

10. On the same date, the intermediate commander agreed with the recommendation for separation under the provisions of AR 635-200, Chapter 14.

11. A Separation Board convened on 27 August 1984 to consider administrative discharge for the applicant. Additionally, on 10 October 1984 the board reported the following findings and recommendations:

a. That the applicant did not receive appropriate counseling or rehabilitative opportunities from his chain of command.

b. There was no direct evidence that there was drug abuse and misconduct among the noncommissioned officers.

c. That there was not 100 percent urinalysis testing conducted therefore the urinalysis conducted in January 1984 was invalid. A subsequent urinalysis in February tested only "those individuals" with positive results from the January test and those not present for the January test.

d. That the applicant did commit a serious offense, abuse of an illegal drug, marijuana, and that he should be separated from the military service with issuance of an Honorable Discharge Certificate.

12. On 11 November 1984, the separation authority directed separation under the provisions of AR 635-200, Chapter 14, and the issuance of an DD Form 256A (Honorable Discharge Certificate).

13. He was discharged accordingly on 13 November 1984, under the provisions of AR 635-200, paragraph 14-12d, by reason of misconduct - drug abuse, in the grade E-6. His service was characterized as honorable. He completed 6 years, 7 months, and 16 days of net active service.

14. The applicant provided argument or evidence the Board should consider, along with the applicant's overall record, in accordance with the published equity, injustice, or clemency determination guidance

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, and published Department of Defense guidance for consideration of requests for changes to discharges. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the reason for the applicant's discharge was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

2/15/2024

X [REDACTED]

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CHAIRPERSON  
[REDACTED]

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-5-1 (SPD) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JKK" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14-12 a, b, or c due to misconduct- drug abuse.
3. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.
4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-

martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//