

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 December 2023

DOCKET NUMBER: AR20230004224

APPLICANT REQUESTS:

- an upgrade of the character of his service from under honorable conditions (general) to honorable
- personal appearance before the Board via video or telephone.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: was a DD Form 149, Application for Correction of Military Record.

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 was young and extremely homesick at the time of his misconduct. He was given a choice to stay in the military, but he just wanted to go home. He does not regret his choice because today he has an amazing family. However, he does regret quitting. He has a growing family, and he would like to upgrade the characterization of his service so that he can apply for better benefits.
3. On 25 September 2000, the applicant enlisted in the Regular Army at approximately 18 years of age. The highest grade he held was private first class/E-3.
4. The record contains a DA Form 4856, Developmental Counseling Form, 4 June 2001, which shows the applicant tested positive for THC during a urinalysis conducted on 15 May 2001.
5. On 19 October 2001, he accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for the wrongful use of marijuana from on or about 15 April 2001 to on or about 15 May 2001; disobeying a lawful regulation to

not operate a moped without proper certification; and disobeying a lawful order from a superior commissioned officer to "not go beyond one hour off post without a DA Form 31" or words to that effect. His punishment included reduction to private/E-1.

6. The applicant's company commander informed the applicant that he was initiating action to separate him under the provisions of AR 635-200, Personnel Separations-Enlisted Personnel, paragraph 14-12c for the commission of a serious offense, with an under honorable conditions (general) characterization of service. The reason for the proposed action was his wrongful use of a controlled substance between on or about 15 April 2001 to 15 May 2001. He acknowledged receipt of the notification on 28 December 2001.

7. On 28 December 2001-

a. The applicant acknowledged he had been advised by counsel and of the rights available to him, including his right to consult with counsel prior to submitting his election of rights. He elected not to submit statements in his own behalf.

b. His company commander formally recommended the applicant be separated under the provisions of Chapter 14-12c, AR 635-200.

8. On 3 January 2002, the separation authority directed that the applicant be separated under the provisions of AR 635-200, paragraph 14-12c, and that his service be characterized as under honorable conditions (general).

9. On 17 January 2002, the applicant was discharged in accordance with the separation authority's decision. His DD Form 214, Certificate of Release or Discharge from Active Duty, shows:

- he completed 1 year, 3 months, and 23 days of net active service
- the narrative reason for separation was "Misconduct"
- his service was characterized as under honorable conditions (general)
- he received a separation code of "JKQ" and a reentry code of "3"
- he was awarded the Parachutist Badge

10. The applicant did not apply to the Army Discharge Review Board for an upgrade of his discharge.

11. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

12. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board considered the applicant's record of service, the frequency and nature of the misconduct, the reason for his separation and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors for the misconduct and the applicant provided no evidence of post-service achievements or letters of support to weigh a clemency determination. After due consideration of the case, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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.

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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 (AR) 635-200, Personnel Separations-Enlisted Personnel, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense that could result in a punitive discharge, convictions by civil authorities, desertion or absence without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel (emphasis added) or is otherwise so meritorious that any other characterization would be clearly inappropriate.

3. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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.

4. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//