

IN THE CASE OF: ██████████

BOARD DATE: 15 December 2023

DOCKET NUMBER: AR20230005419

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) characterization of service and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Service Records (59 pages), dated 4 September 1980 to 20 April 1992
- Service Treatment Records (17 pages), dated 4 September 1980 to 17 May 1983
- statement of support, undated

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 satisfactorily completed the Army Drug and Alcohol Prevention and Control Program (ADAPCP) and was recommended for retention. During an unannounced inspection in the barracks, a canine team "hit on" a pair of pants which were hanging on the outside of a locker. He was called into the room and shown the pair of pants. He stated they were not his. They belonged to someone of a much larger size and were located near a different bunk in a different area of the sleeping quarters. He showed the inspection team to his locker, unlocked it, and they found nothing. The inspectors told him since he was the only person in the room, the substance belonged to him. A test of the substance indicated positive for drugs. He was escorted to military police headquarters. He remains innocent to this day.
3. The applicant enlisted in the Regular Army on 6 November 1980 for a 3-year period. The highest rank he attained was specialist/E-4.
4. A DA Form 4466 (ADAPCP Client Progress Report), dated 8 March 1983, shows the applicant completed Track 1 of the program, showed progress, and was satisfactorily

released. He was recommended for retention on active duty by the ADACP Counselor and Clinical Director.

5. The applicant underwent a mental status evaluation on 29 April 1983. He was deemed mentally responsible and had the mental capacity to participate in board proceedings.

6. The applicant's unit commander initiated a bar to reenlistment on 6 May 1983 by reason of rehabilitation failure in February 1983 and April 1983, and for fighting over a radio in the barracks.

7. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 9 May 1993 for wrongfully possessing some amount of marijuana, on or about 21 April 1983, at Rivers Barracks, Federal Republic of Germany. His punishment consisted of reduction to the grade of private first class/ E-3, 30 days of extra duty, and 30 days of restriction.

8. On 10 May 1983, the applicant's immediate commander notified the applicant of his intention to initiate separation action against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 9, by reason of alcohol or drug abuse rehabilitation failure.

9. A Standard Form (SF) 93 (Report of Medical History), dated 17 May 1993, and the corresponding SF 88 (Report of Medical Examination) show the applicant reported he was in excellent health. The examining provider determined he was qualified for discharge.

10. On 25 May 1983, the applicant consulted with counsel. He was advised of the basis for the contemplated action to separate him and the rights available to him. He acknowledged his understanding and elected not to submit a statement in his own behalf.

11. Subsequently, the applicant's commander formally recommended the applicant's separation from service under the provisions of Army Regulation 635-200, Chapter 9, by reason of alcohol rehabilitation failure.

12. The separation authority approved the recommended separation action on 27 May 1983 and directed the issuance of a DD Form 257A (General Discharge Certificate).

13. Accordingly, the applicant was discharged on 14 June 1983 under the provisions of Army Regulation 635-200, Chapter 9, by reason of drug abuse - rehabilitation failure. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms his characterization of service was under honorable conditions (general), with separation

code JPC (JKK) and reenlistment code RE-3. He was credited with 2 years, 7 months, and 9 days of net active service.

14. The applicant provides the following:

a. 59 pages of service records with pertinent documents covered in the record of proceedings above.

b. 17 pages of service treatment records covering routine medical care provided from 4 September 1980 to 17 May 1983.

c. In a statement of support, the applicant's wife states, in effect, they have been married for 34 years. Throughout their marriage, the applicant has supported her both financially and emotionally. She was able to complete her bachelor's degree while raising kids. She could not have done this without his support. They have a very stable home life. They are active in their church. Her husband does not abuse alcohol or drugs, has never been involved in illegal activities or been arrested, and he has never been released from a job for disciplinary reasons. He has always worked and keeps trying to better himself. He achieved his goal of becoming a Chief Lock Operator for the

15. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 9 outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. The service of Soldiers discharged under this chapter will be characterized as honorable or under honorable conditions (general) unless the Soldier was in an entry-level status.

16. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board determined 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 and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, applicable regulatory guidance and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, record of service, the frequency and nature of the misconduct and the reason for separation. The applicant was declared an alcohol or drug rehabilitation failure. As such, his chain of command initiated separation action

against him. He was discharged and issued a general, under honorable conditions characterization of service. The Board noted the statement provided by the applicant's spouse but determined it did not outweigh the reason for which the applicant was discharged. Given the applicant's bar to reenlistment for fighting in the barracks and his subsequent NJP for wrongfully possessing marijuana, the Board determined the characterization of service (general) he received is 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 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.

X [Redacted Signature]

[Redacted Title]

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, USC, 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 15-185 (Army Board for Correction of Military Records), paragraph 2-11 states applicants do not have the right to a hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. 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 or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 9 contained the authority and outlined the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who had been referred to the ADAPCP for alcohol/drug abuse could be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there was a lack of potential for continued Army service and rehabilitation efforts were no longer practical. Nothing in this chapter prevented separation of a Soldier who had been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings was required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter would be characterized as honorable or under honorable conditions (general) unless the Soldier was in an entry-level status.

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, 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.

//NOTHING FOLLOWS//