

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2023

DOCKET NUMBER: AR20230006018

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) characterization of service, and an appearance before the Board via video, telephone or in person.

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

- DD Form 149 (Application for Correction of Military Record)
- Buddy Statement from A.A.W., 3 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, that while serving in the Army, he saw and learned many things that have helped him. He made many lifelong friends, and he is forever grateful. He acknowledges that he made a massive mistake while serving his country, profoundly regrets his actions, and feels he deserves a second chance.
3. The applicant enlisted in the Regular Army on 11 June 2002, for 4 years. The highest rank/grade he held was private/E-2.
4. On 26 May 2004, the applicant's command was notified he tested positive for Tetrahydrocannabinol (THC), as a result of a command urinalysis conducted on 18 May 2004.
5. On 28 May 2004, he accepted non-judicial punishment under Article 15, of the Uniform Code of Military Justice, for between on or about 19 April and 18 May 2004, wrongfully use marijuana. His punishment was reduction to private/E-1 (PV1), forfeiture of \$597.00 pay per month for one month, extra duty and restriction for 45 days.

6. On 9 June and 10 June 2004, the applicant completed a medical examination and underwent a complete mental status evaluation as part of his consideration for discharge due to his misconduct. His mental status evaluation noted, he met retention requirements, was mentally responsible, and had the mental capacity to understand and participate in the proceedings.

7. On an undisclosed date, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14 (Separation for Misconduct), paragraph 14-12c, for commission of a serious offense. On the same day, the applicant acknowledged receipt of his commander's notification.

8. On 28 June 2004:

a. He acknowledged receipt of his commander's notification.

b. He was advised by his consulting counsel of the basis for the contemplated action to separate him for his positive urinalysis under AR 635-200, paragraph 14-12c and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He understood that because he would have less than six years active and/or reserve military service at the time of his separation, he would not be entitled to have his case considered by an administrative separation board.

(1) He understood he may expect to encounter substantial prejudice in civilian life if his service was characterized as general, under honorable conditions.

(2) He understood that if he received a general discharge certificate, he may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, he realized that an act of consideration by either board does not imply that his discharge would be upgraded.

(3) He elected not to submit a statement on his own behalf.

9. On 29 June and 1 July 2004, the applicant's immediate and intermediate commanders recommended his separation from the service, under the provisions of AR 635-200, paragraph 14-12c, and recommended the issuance of a general discharge.

10. On 9 July 2004, the separation authority approved the chain of command's recommendation and directed the applicant be discharged with a under honorable conditions (general) character of service.

11. On 9 August 2004, the applicant was discharged under the provisions of paragraph 14-12c of AR 635-200, by reason of misconduct, with an under honorable conditions (general) characterization of service in the grade of E-1. He received a separation code of "JKQ" and reentry code "3." His DD Form 214 (Certificate of Release or Discharge from Active Duty) contains the following entries:

a. He completed 2 years, 1 month, and 29 days of net active service during the period covered.

b. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows:

- Army Achievement Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Army Aviator Badge

12. The applicant provides a buddy statement from A.A.W., which states he is close friends with the applicant and wholeheartedly vouches for his excellent character. He has never seen him lose his temper or exhibit amoral or negative behaviors during the time he has known the applicant.

a. The applicant confessed to him the lack of judgment he showed when he used marijuana while in the Army and expressed remorse and regret. He acknowledged and fully understands his lack of judgment has hurt his life and compromised his ability to complete his military service.

b. Since his separation from the Army, the applicant has shown a steadfast and unwavering demeanor in moving past his mistakes constructively and successfully. As a civilian, he has created a time of personal and professional growth. He got married, started a family, is actively involved in the community, and was ordained a deacon in his church.

c. He believes the applicant is an upstanding citizen, a proactive member of the community who has never broken any laws and has always been mindful of other people's need for space, quiet, assistance, and privacy. He is confident that the applicant's in-service marijuana use was an outlier incident that does not reflect his true character and hopes that the board will grant the applicant relief.

13. There is no indication the applicant petitioned to the ADRB for an upgrade of his discharge within that Boards 15-year Statute of limitations.

14. Regulatory guidance in effect at the time provided a discharge under other than honorable conditions was normally considered appropriate for Soldier's discharged under the provisions of AR 635-200, Chapter 14. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

15. The Board should consider the applicant's argument and evidence, along with the overall record, 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, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant was discharged from active duty due to misconduct – commission of a serious offense with a general discharge, completing nearly 2 years and 2 months of his enlistment. The applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, 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 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 15-185 (ABCMR) states 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.

3. Army Regulation 635-200, sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

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//