

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230006426

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service to under honorable conditions (general). Additionally, he requests correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show a different narrative reason for separation, the corresponding separation authority, and separation program designator (SPD) code.

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

- DD Form 149 (Application for Correction of Military Record) with self-authored statement
- two letters of commendation and appreciation from Battery B, 2nd Battalion, 62nd Air Defense Artillery, dated 28 May 1981 and 15 June 1981
- DD Form 214, for the period ending 5 May 1983
- six letters of recommendation and appreciation, dated 4 January 1988 through 9 January 2014
- eight certificates of training and certification, dated 6 February 1999 through 16 November 2010

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:

a. He would like a fair assessment of his three years and seven months of honorable service. His military records were misplaced in 1983, and he was not aware he could request an appeal of his discharge.

b. 24 months of his service was overseas duty with no major infractions. His first stateside assignment was in 1982. He was assigned to the company athletic program.

While riding with several other Soldiers on the way to a game at the gym, the driver of the vehicle pulled over and parked. The military police (MP) pulled up and searched the vehicle. They found marijuana on the driver. All the Soldiers were detained and taken to the MP station, processed, and released. His punishment was extra duty and restriction for 90 days. He was still allowed to be part of the athletic program.

c. He disregarded the privilege that was given to him and broke restriction to participate in basketball games. His commander started the process to release him from active duty. He takes full responsibility for his actions. He should have made better choices. He has lived a positive and productive life since his discharge, which he credits to his time in the military.

3. The applicant enlisted in the Regular Army on 13 September 1979 for a 3-year period. After completing his initial entry training, he was awarded military occupational specialty 31M (Multichannel Communications Equipment Operator).

4. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on 6 August 1981, for operating a vehicle while drunk, on or about 30 June 1981. His punishment consisted of reduction to private first class/E-3, forfeiture of \$306.00 pay per month for two months, 30 days of extra duty, and 30 days of restriction.

5. A DA Form 1695 (Oath of Extension of Enlistment), dated 20 May 1982, shows the applicant extended his 3-year enlistment for an additional 12 months.

6. An excerpt from the Military Police (MP) Desk Blotter Report shows the military police apprehended the applicant following a traffic accident. He failed a field sobriety test and submitted to a blood alcohol test (BAT). A search revealed he was in possession of a plastic bag containing 2.12 grams of marijuana. The applicant was processed and released to his unit.

7. On 14 February 1983, the applicant's on-post driving privileges were revoked by the installation commander for a period of two months based upon his BAT result of .1547 percent (%). The applicant acknowledged receipt of the notification on 22 February 1983.

8. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 1 March 1983, for operating a vehicle while drunk and the wrongful possession of 2.12 grams, more or less, of marijuana, on or about 10 February 1983. His punishment consisted of reduction to private/E-1, forfeiture of \$275.00 pay per month for two months, 30 days of extra duty, and 30 days of restriction.

9. The applicant's commander initiated a Bar to Reenlistment on 1 March 1983. As reasons for the proposed action, the commander cited the applicant's two occasions of nonjudicial punishment for driving while drunk (2) and possession of marijuana (1). The bar was approved on 22 March 1983.

10. An excerpt from the MP Desk Blotter Report, Military Police Report Number [REDACTED], and associated documents, shows that on 17 March 1983, the MPs observed Specialist (SPC) [REDACTED] and [the applicant] sitting in a privately owned vehicle drinking beer. A marijuana cigarette was laying on the front seat. SPC [REDACTED], the driver, was apprehended for open-container and possession of marijuana. A search of [the applicant] revealed he was in possession of a plastic bag containing 2.2 grams of marijuana, for which he was apprehended. Both subjects declined to make a statement. The subjects were processed and released to their unit.

11. The applicant was notified that his on-post driving privileges were revoked for a period of two years for driving on the installation while under suspension of driving privileges. He acknowledged receipt of the notification on 21 March 1983.

12. The applicant underwent a pre-separation medical examination on 29 March 1983. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) shows the applicant was physically qualified for separation.

13. On that same date, the applicant underwent a mental status evaluation. The examining provider deemed the applicant mentally responsible and determined he had the mental capacity to participate in administrative proceedings.

14. On 13 April 1983, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c. The applicant acknowledged receipt of the proposed separation notification.

15. On the same date, the applicant consulted with counsel. He was advised of the basis for the contemplated separation action, the rights available to him, and the effect of a waiver of his rights. He elected not to submit a statement in his own behalf.

16. The applicant's immediate commander formally recommended his separation from service, under the provisions of Army Regulation 635-200, paragraph 14-12c. As reasons for the proposed action the commander stated, the applicant showed, on numerous occasions, his total disregard for military regulations by repeated instances of drunk driving, being found in possession of marijuana, and disregarding traffic regulations on post. The intermediate commander reviewed and concurred with the

recommendation, on 14 April 1983, further recommending a waiver of the rehabilitation requirements.

17. On 29 April 1983, the separation authority approved the recommended separation action and directed the issuance of a UOTHC discharge.

18. The applicant was discharged on 5 May 1983, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense. He was credited with 3 years, 7 months, and 23 days of net active service. Item 18 (Remarks) states his service was extended at the request and for the convenience of the government.

a. His DD Form 214 contains the following entries:

- Item 23 (Type of Separation) - Discharge
- Item 24 (Character of Service) - UOTHC
- Item 25 (Separation Authority) - Army Regulation 635-200, paragraph 14-12c
- Item 26 (Separation Code) - JKQ (JKH)
- Item 27 (Reentry Code) - RE-3
- Item 28 (Narrative Reason) - Misconduct – commission of a serious offense

b. He was authorized or awarded the following:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Good Conduct Medal
- Expert Marksmanship Qualification Badge with Grenade bar
- Marksman Marksmanship Qualification Badge with Rifle bar (M-16)

19. The Army Discharge Review Board (ADRB) reviewed the applicant's request for an upgrade of his UOTHC characterization of service on 1 September 1987. After careful consideration of the documents provided by the applicant, the Board determined there was nothing in the documentation that mitigated his serious acts of misconduct. The Board denied his request for relief.

20. The applicant requested a review of the ADRB's decision and an appearance before the ADRB Traveling Panel. He was notified on 9 September 1988 that a personal appearance was scheduled on 27 October 1988, in Atlanta, GA. The applicant did not appear for the scheduled hearing, and the record was returned without further action.

21. Regulatory guidance provides:

a. When an individual is discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense, "JKQ (JKH)" is the appropriate separation code.

b. When an individual is discharged under the provisions of Army Regulation 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

22. The applicant provides the following:

a. A Letter of Commendation dated 28 May 1981, and Letter of Appreciation dated 15 June 1981, from Battery B, 2nd Battalion, 62nd Air Defense Artillery, APO New York 09132, commending him for his participation and performance during the Allied Air Forces Central Europe Tactical Evaluation.

b. Six letters of recommendation and appreciation from civilian employers, dated 4 January 1988 through 9 January 2014, wherein the employers commend him for his outstanding work ethic, performance, and attitude. They further state his excellence sets him apart from others, and his positive demeanor promotes a harmonious work environment. He is a credit to his employers.

c. Eight certificates of training and certification, dated 6 February 1999 through 16 November 2010, highlight several of his post-service accomplishments to include his certification as a Commercial Driving School Instructor and Commercial Driver License Examiner.

23. The Board should consider 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, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, his bar to reenlistment, 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 found the evidence of post-service accomplishments provided by the applicant insufficient in support of a clemency determination. Based on a preponderance of the evidence, the Board determined 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.

6/27/2024

X

CHAIRPERSON

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 635-5-1 (SPD) provides the specific authorities, reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. Separation code "JKQ (JKH)" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14, Paragraph 14-12c, by reason of misconduct – commission of a serious offense.

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. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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 (UOTHC) was normally considered appropriate. However, the separation authority could direct a general discharge if such was 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.

//NOTHING FOLLOWS//