

a. Charge I, violating Article 92 of the UCMJ, by violating a lawful general regulation on or about 11 February 1973 by having in his possession one gram, more or less, of methamphetamine.

b. Charge II, violating Article 134 of the UCMJ, by wrongfully having in his possession one gram, more or less, of marihuana in the hashish form on or about 11 February 1973.

c. He plead guilty and was found guilty. He was sentenced to confinement at hard labor for 40 days, performance of hard labor without confinement for 20 days after completion of the 40 days confinement, reduction to the grade of private (PVT)/E-1 and forfeiture of \$200.00 pay per month for 6 months. The sentence was approved on 21 March 1973.

6. The applicant was examined by a psychiatrist on 2 May 1973, and he was found to have no disqualifying mental defects sufficient to warrant disposition through medical channels. The examining psychiatrist noted his personality was characterized by immaturity, poor judgement, and irresponsibility. He recommended separation under the provisions of Army Regulation (AR) 635-200, Chapter 13 (Separation for Unfitness or Unsuitability), for character and behavior disorder.

7. The applicant's commander notified him of his intent to initiate administrative separation action under the provisions of AR 635-200, Chapter 13, by reason of unsuitability.

8. On 29 May 1973, the applicant acknowledged he was advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance under AR 635-200, Chapter 13, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights.

a. He waived consideration of his case by an administrative separation Board. He elected not to submit statements in his own behalf.

b. He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him. He further understood that, as the result of issuance of a discharge under other than honorable conditions, he may be ineligible for many or all benefits as a veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life.

9. The applicant's immediate commander formally recommended his separation under the provisions of AR 635-200, Chapter 13. The commander noted, the applicant was unsuitable for service due to his diagnosed character and behavior disorder.

10. On 29 May 1973, the applicant's intermediate commander also recommended approval of the applicant's separation under AR 635-200, Chapter 13.

11. On the same date, the separation authority approved the recommendation for discharge under the provisions of Army Regulation 635-200, Chapter 13, waived the rehabilitative transfer requirement, and directed the issuance of a DD Form 257A (General Discharge Certificate).

12. The applicant was discharged on 7 June 1973, under the provisions of AR 635-200, Chapter 13. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his service was characterized as under honorable conditions (general), with separation program number 264 and reentry code RE-3. He was credited with 1 year, 2 months, and 12 days of net active service with 23 days lost from 20 March 1973 thru 12 April 1973.

13. Soldiers may be separated under the provision of Army Regulation 635-200, Chapter 13 when it is determined that they are unqualified for further military service because of unfitness or unsuitability.

14. 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. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to support the applicant's contention for upgrade. The applicant provided no post service achievements or character letters of support attesting to his honorable conduct for the Board to weigh a clemency determination.

2. The Board determined the applicant was discharged for unsatisfactory performance and was provided an under honorable conditions (General) characterization of service. The Board determined the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an honorable discharge. Based on this, the Board denied relief.

3. 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.

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.

2/22/2024

X [REDACTED]

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 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 13 of this regulation provides for separation due to unsatisfactory performance when, in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

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

c. 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.

3. 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//