

IN THE CASE OF: ██████████

BOARD DATE: 14 February 2024

DOCKET NUMBER: AR20230007349

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 1 September 1983
- Memorandum, Department of the Army, Office of the Deputy Chief of Staff for Personnel, 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, following his discharge he received a letter from the Department of the Army which stated erroneous urinalysis testing was conducted. The Surgeon General of the Army conducted an investigation as to the validity of the urinalysis testing and concluded that the positive urinalysis tests were not legally supportable for use in disciplinary or administrative actions.
3. The applicant enlisted in the Regular Army on 3 October 1980 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 26B (Weapons Support Radar Repairer). The highest rank/grade he attained was specialist/E-4.
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice, on 6 April 1983, for failure to obey a lawful order, by driving on Fort Sill after driving privileges were revoked, on or about 28 March 1983.

His punishment consisted of reduction to private first class/E-3, forfeiture of \$100.00 pay, 14 days of extra duty, and 14 days of restriction.

5. A memorandum from the Fort Sill Community Counseling Center, Fort Sill, MO, dated 15 July 1983, shows the applicant was referred and enrolled in the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP), by reason of investigation/apprehension. The memorandum also notes the applicant failed to show for five scheduled sessions and had three incidents of positive urinalyses for tetrahydrocannabinol (THC). A meeting between the ADACP counselor and the unit commander determined no further rehabilitation efforts were practical, and the applicant was cleared for any administrative action pending.

6. The applicant underwent a pre-separation medical examination on 1 August 1983. The relevant Standard Form 88 (Report of Medical Examination) shows the applicant reported being in good health and was deemed physically qualified for separation.

7. The applicant underwent a mental status evaluation on 5 August 1983. The examining provider psychiatrically cleared the applicant for any administrative action deemed appropriate by the command.

8. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice, on 15 August 1983, for the wrongful use of marijuana, between on or about 13 June and 23 June 1983. His punishment consisted of reduction to E-3, forfeiture of \$200.00 pay per month for two months, 30 days of extra duty, and 30 days of restriction.

9. On 22 August 1983, the applicant's immediate commander notified the applicant of his intent to initiate action to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 9 (Drug Abuse - Rehabilitation Failure). As specific reasons for the action, the commander noted the applicant received three positive urinalysis and was declared an ADAPCP failure. The applicant acknowledged receipt.

10. On that same date, the immediate commander formally recommended separation action against the applicant under the provisions of Army Regulation 635-200, Chapter 9, by reason of alcohol and other drug abuse rehabilitation failure.

11. On 26 August 1983, the applicant was advised of the basis for the proposed separation action, his available rights, and the effects of waiving those rights. He declined counsel and elected not to submit a statement in his own behalf.

12. The separation authority approved the recommended separation action on

29 August 1983 and further directed the issuance of an under honorable conditions (general) discharge certificate.

13. The applicant was discharged on 1 September 1983, under the provisions of Army Regulation 635-200, Chapter 9, by reason of drug abuse rehabilitation failure. His DD Form 214 confirms his service was characterized as under honorable conditions (general), with separation code JPC and reenlistment code RE-3. He was credited with 2 years, 10 months, and 29 days of net active service.

14. The applicant provides a copy of an undated memorandum received from the Department of the Army, Office of the Deputy Chief of Staff for Personnel, Washington, DC, which states in pertinent part:

a. In September 1983, the Department of the Army became concerned that selected urinalysis tests results from the Fort Meade drug testing laboratory did not meet legal and scientific standards for use in disciplinary and administrative actions. On 24 October 1983, The Surgeon General of the Army directed a review of operations and procedures at all Army and Air Force drug testing laboratories. The panel rendered its report on 12 December 1983.

b. The report concluded the testing procedures were adequate to identify drug abuse and found no significant evidence of false positives. However, the panel found that a percentage of previously reported positive urinalyses were not scientifically or legally supportable for use in disciplinary or administrative actions.

c. Based on the panel's findings, a team of chemists and attorneys reviewed all available records of reported positive urinalysis results from 27 April 1982 through 31 October 1983, by each Army drug testing laboratory.

d. A review of [the applicant's] positive urinalysis test revealed that it did not meet all scientific or legal requirements for use in disciplinary or administrative actions. The applicant was encouraged to apply to the ABCMR if he believed any action was taken against him based upon this positive urinalysis test result.

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. 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 overcome the misconduct. Evidence shows the applicant failed to show for five scheduled sessions and had three incidents of positive urinalyses for tetrahydrocannabinol (THC). The Board noted that his ADACP counselor and the unit commander determined no further rehabilitation efforts were practical. The Board found no error or injustice for clemency consideration,

2. The Board found the applicant was discharged by reason of drug abuse rehabilitation failure and was provided an under honorable conditions (General) characterization of service. The Board agreed that 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. Therefore, the Board agreed that the applicant's discharge characterization is appropriate and 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:

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.

3/29/2024

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 15-185 (ABCMR), 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 Service 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//