

IN THE CASE OF: ██████████

BOARD DATE: 13 March 2024

DOCKET NUMBER: AR20230007524

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded.

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

- DD Form 149 (Application for Correction of Military Record)
- Service Documents
- Service Certificates
- Photo
- DD Form 214 (certificate of Release or Discharge from Active Duty)

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 he later found out he was directed to the wrong lawyer but was ashamed to come forward. At the time he felt that he had let his country, himself, and his family down. He was not granted any dental care before being released. Additionally, he indicates pay/allowance and performance/evaluations/derogatory information are related to his request.
3. The applicant enlisted in the Regular Army on 9 June 1975 for three years. His military occupational specialty was 16R (Vulcan Crewmember) and 16H (Air Defense Artillery Operations and intelligence Assistant). His highest rank held was staff sergeant/E-6. The available record is void of his DD Form 214 for this period of honorable service.
4. He reenlisted in the Regular Army on 13 April 1978 and 13 January 1982.

5. The applicant served in Germany from 31 October 1975 through 29 May 1978. He served in Korea from 26 January 1980 through 13 January 1981, and in Germany from 16 July 1982 through 5 July 1985.
6. The applicant received multiple awards and certificates during his service.
7. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 6 December 1985, for wrongful use of some amount of marijuana between on or about 21 September 1985 and on or about 2 October 1985; his punishment consisted of reduction to sergeant/E-5, forfeiture of \$581.00 pay and extra duty.
8. On 30 July 1987, he accepted NJP under Article 15 of the UCMJ for wrongful use of some amount of marijuana between on or about 27 May 1987 and on or about 5 June 1987; his punishment consisted of reduction to sergeant/E-5, forfeiture of \$500.00 and extra duty.
9. The applicant underwent a mental status evaluation on 6 August 1987, which shows he had the mental capacity to understand and participate in the proceedings, he was mentally responsible, and met retention requirements.
10. The applicant's immediate commander notified him on 21 August 1987 of his intent to initiate action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 14, for misconduct-abuse of illegal drugs. The applicant had received two Article 15s for use of marijuana. His commander recommended he receive an UOTHC discharge. The applicant acknowledged receipt of the notification on the same date.
11. The applicant consulted with legal counsel on 21 August 1987 and was advised of the basis for his separation and the procedures and rights that were available to him. He requested consideration of his case by a board of officers, and he requested personal appearance before an administrative separation board.
 - a. He requested representation by counsel, and he acknowledged that he may expect to encounter substantial prejudice in civilian life and that he may be ineligible for many or all benefits as a veteran under both Federal and State law.
 - b. He elected not to submit statements in his own behalf.
12. The applicant's immediate commander formally recommended the applicant be processed for separation on 21 August 1987. The specific reason was the second time offense for abuse of illegal drugs and positive tetrahydrocannabinol (THC).

13. On 8 September 1987, the applicant was notified of a board date of 24 September 1987. The applicant requested a delay in the board until his defense counsel Captain/CPT [REDACTED] returned from an exercise on or about 3 November 1987. CPT [REDACTED] had established an attorney-client relationship with the applicant and the applicant wished to retain CPT [REDACTED] to represent him in this matter. Assignment of another attorney at this point would be inappropriate. Request the board be delayed a reasonable time to allow CPT [REDACTED] to return and be prepared to adequately represent his client.

14. His chain of command recommended approval of the discharge recommendation and the issuance of an UOTHC discharge. On 2 October 1985 the applicant received a command directed urinalysis for which he was found positive for THC. He was notified of administrative separation procedures on 3 January 1986. He then requested to have his chapter action reviewed by a board of officers. On 12 May 1986, the applicant appeared before the permanent chapter elimination board. The board recommended; he be retained on active duty. The occurrence of incidents of drug abuse, by Noncommissioned Officer's (NCOs) presents impediments to unit readiness and moral of Soldiers and their family members.

15. An Enlisted Evaluation Report, covering the period February 1987 through November 1987, shows the applicant performed his duties as a squad leader very well during duty hours however, his off-duty performance was marred by the use of marijuana, and he tested positive on a urinalysis administered in July 1987. His rater and endorser's evaluation were do not promote.

16. On 20 November 1987 a board of officers met and found the applicant's service was undesirable for further retention in military service because of frequent incidents of discreditable nature and an exhibited patterns of misconduct that are prejudicial to good order and discipline of the service. They also found that rehabilitation was not deemed possible at this time. And recommended the applicant be issued an UOTHC discharge.

17. By memorandum, dated 8 December 1987, the applicant appealed the decision made by the board of officers. He had twenty-four officers and NCOs testify to the caliber of Soldier he was. He did not smoke marijuana in August 1985 and would continue to stand on that statement until he died; however, he smoked during May 1987. His wife's grandfather died during that month. The unit was practicing for the Vulcan drill. His wife and kids went to the funeral and did not return. He could not believe this was happening and he was heavily drinking one day, and he used marijuana once. Even though he was feeling down his squad and he completed in the Vulcan competition and came in second place out of twenty-four squads in the battalion. He is a Soldier who loves this country and the U.S. Army. He thinks the board decision to give him an UOTHC discharge was not what he deserved. He asked the board to

allow him to serve until his expiration term of service. Consider his 13 years of service. He had been a perfect Soldier.

18. By memorandum, dated 8 December 1987, the applicant's counsel reiterates the above and that the applicant was an outstanding Soldier.

19. The separation authority approved the recommended discharge action, under the provisions of AR 635-200, Chapter 14, on 10 December 1987 and directed that the applicant be furnished an UOTHC discharge and reduced to the lowest enlisted rank.

20. A Periodic Medical Examination, dated 17 December 1987, shows the applicant underwent a medical examination in conjunction with Chapter 14 on or about 6 August 1987 and to the best of his knowledge there had been no significant change in his medical conditions since the accomplishment of that medical examination.

21. The applicant was discharged on 7 January 1988, in the rank of private/E-1. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 14, for misconduct-drug abuse, with Separation Code JKK and Reenlistment Code 3 and 3C. His service was characterized as UOTHC. He completed 9 years, 8 months, and 25 days of net active service this period. His awards include the: Army Commendation Medal with one oak leaf cluster, Army Achievement Medal, Army Good Conduct Medal with 3 bronze loops, NCO Professional Development Ribbon number 2, Army Service Ribbon, and Overseas Service Ribbon numeral 2.

22. Soldiers are subject to separation under the provisions AR 635-200, Chapter 14, for misconduct. A discharge UOTHC is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the overall record.

23. The applicant provides a copy of his DD Form 214, service documents, a photo, and certificates discussed above.

24. On 29 December 1988, the Army Discharge Review Board determined the applicant was properly and equitably discharged and denied his request for a change in the character and/or reason for his discharge.

25. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 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 record, the Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct. Under liberal consideration the Board found the applicant's two periods of honorable service and his prior job performance, there is sufficient evidence that merits an upgrade of the applicant's characterization of service to under honorable conditions (general). The Board found his narrative reason and restoration of the applicant's rank to SGT/E-5 was not warranted based on his unit giving him every opportunity for rehabilitation.

2. Additionally, during deliberation the Board determined the applicant had a two prior periods of honorable service which is not currently reflected on his DD Form 214 for the period ending 7 January 1988, and recommended that change be completed to more accurately show his periods of honorable service. Based on this, the Board granted relief to upgrade his character of service to a general discharge and add his continuous honorable service to his DD Form 214.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing his DD Form 214 for the period ending 7 July 1988 to show:

- Item 24 (Character of Service) Under Honorable Conditions (General)

and amend in:

- Item 18 (Remarks)
 - SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
 - CONTINUOUS HONORABLE ACTIVE SERVICE FROM 750609 UNTIL 820112

3/19/2024

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.

ADMINISTRATIVE NOTE(S): N/A

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. AR 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 was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

3. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards Discharge Review Boards and Boards for Correction of Military/Naval Records Service (BCM/NR) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//