

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230007987

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 17 April 2023
- self-authored statement, 17 April 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, in effect, prior to his discharge he was married. While being overseas his marriage began to diminish due to a lack of communication. From this point, he began to drink excessively, which affected his performance of duties. After he reenlisted, his marriage ended, and caused him to drink more heavily which affected his performance. His marital problems and duty performance resulted in nonjudicial punishment (NJP) of an Article 15. He was demoted and chose to leave the Army due to his lack of motivation and enthusiasm. He received an under honorable conditions (general) discharge, which he is now requesting be upgraded.
3. The applicant enlisted in the Regular Army on 28 June 1979, for a period of 3 years. He extended his 3-year enlistment on 16 March 1982. He subsequently reenlisted on 28 February 1983 for an additional 3 years.
4. A DA Form 5180-R (Urinalysis Custody and Report Record) shows the applicant tested positive for tetrahydrocannabinol (THC) on 11 April 1984.
5. The applicant received company grade NJP under the provisions of the uniform code of military justice on 9 May 1984, for failing to go to his prescribed place of duty on or

about 7 May 1984. His punishment imposed was reduction to the rank of specialist/E-4 and extra duty for 30 days.

6. On 4 June 1984, the applicant's immediate commander notified him of the intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14, paragraph 14-12c (Misconduct - Commission of a Serious Offense). He noted the separation was recommended because of the applicant's commission of a serious offense, as a result of positive uranalysis for THC.

7. On 7 June 1984, the applicant consulted with counsel and was advised of the basis for the contemplated action to separate him and of the rights available to him.

a. He waived consideration, a personal appearance, and representing counsel by an administrative separation board and understood he may encounter prejudice in civilian life.

b. He additionally elected to submit a statement in his behalf, stating in effect, he was about to have 6 years in the Army, when various personal problems aroused and caused him, to receive a failure to report. He was reduced and was working his way to big and better things when he received a positive uranalysis test. He specially said the military goes so much on the uranalysis testing and it is 75% inaccurate.

8. On 27 June 1984, the applicant's intermediate commander recommended separation prior to the expiration of his term service, under the provisions of AR 635-200, Chapter 14, based on misconduct.

9. The separation authority's approval memorandum is not available for review. However, the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 6 July 1984, under the provisions of AR 635-200, Chapter 14, for misconduct, in the grade of E-4. His service was characterized as under honorable conditions (general) with separation code JKK and reenlistment code RE-3. He was credited with 5 years and 9 days of net active service. His awards include the overseas service ribbon and the Army good conduct medal.

10. On 27 February 1989, the Army Discharge Review Board after careful consideration of his military records and all other available evidence, determined that he was properly and equitably discharged and denied his request for a change in his character and/or reason of discharge.

11. Regulatory guidance provides when an individual is discharged under the provisions of AR 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.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, 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, 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 the applicant provided no evidence of post-service achievements or letters of reference 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. The Board concurred with the corrections described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 6 July 1984 is missing important entries that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 19790628 UNTIL 19830227

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 635-5 (Personnel Separations), in effect at the time did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry.

3. AR 635-5-1 (Separation Program Designator Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JKK" is the appropriate code to assign to Soldiers separated under the provisions of AR 635-200, Chapter 14-12 a, b, or c due to misconduct- drug abuse.

4. 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 (UOTHC) was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

5. 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//