

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 May 2024

DOCKET NUMBER: AR20230008201

APPLICANT REQUESTS: his under honorable conditions (general) discharge be upgraded to honorable.

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)
- Email
- Character Letters (three)
- Senator Letter
- Privacy Release Form
- Army Review Board Agency Response Letter

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 is applying for Department of Veterans Affairs (VA) benefits.
3. The applicant enlisted in the Regular Army on 7 May 2001 for 4 years. His military occupational specialty was 92Y (Supply Specialist).
4. A Criminal Investigation Division Report of Investigation shows on 7 January 2002, an investigation was initiated based upon Sergeant [REDACTED] who related the applicant was positive for cocaine during a command directed urinalysis. There was probable cause to believe the applicant committed the offenses of false swearing and wrongful use of a controlled substance and provided a sworn statement he knew to be false, when he denied he consumed cocaine.
5. A Drug Testing Form dated 24 January 2002, shows a positive cocaine result with the applicant's social security number.

6. In his sworn statement, dated 29 January 2002, the applicant stated he did not knowingly use cocaine and that since he has been enlisted, he has not knowingly used any substances.

7. The applicant was counseled on 31 January 2002 regarding his positive urinalysis test results on 29 January 2002.

8. Court martial charges were preferred against the applicant on 8 March 2002 for violation of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with:

- wrongful use of cocaine between on or about 3 January 2002 and on or about 7 January 2002
- in a sworn statement, wrongfully and unlawfully make under lawful oath a false statement that he did not knowingly use cocaine and that he had no knowledge of how he tested positive for cocaine use, which statement he did not then believe to be true on or about 29 January 2002

9. Supporting statements from unit personnel attest to the applicant being professional, dedicated, honest, and a hard worker who is trustworthy, courteous, and respectful. He takes pride in his appearance and gets the job done.

10. The applicant consulted with legal counsel on 18 March 2002, and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a under honorable conditions (general) discharge and the procedures and rights that were available to him.

a. After consulting with legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, in for the good of the service, lieu of trial by court-martial. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the VA, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life because of an under honorable conditions (general) discharge.

b. He elected to submit statements in his own behalf. He requested suspension of the discharge for a period of six months in order to prove that he should be allowed to remain in service. He is married with two children. He realizes he made a mistake and accepts full responsibility for his actions. Over Christmas leave he evidently made an ill-fated judgment by using cocaine. At the time of usage, he was very intoxicated and not completely aware of his actions. A good portion of the evening is still unclear. The

abuse of alcohol has encouraged him to seek counseling in addition to the command directed enrollment in Alcohol and Drug Abuse Prevention and Control. He is a good Soldier. Several statements from his noncommissioned officers attest to his being a good Soldier. No disciplinary or adverse actions except for negative counseling for being late. His conduct and performance have been nothing short of excellent. Other Soldiers use and were given nonjudicial punishment but remained in the unit. Not an excuse just put things in perspective. This is his first time, and he was not given a second chance. He did not want to face going to jail. He learned his lesson and would never engage in conduct like this again and begged for one last chance to rehabilitate himself before being discharged. He pleaded for an under honorable conditions (general) discharge.

11. The applicant's commander recommended approval of his request for discharge for the good of the service-in lieu of trial by court-martial on 20 March 2002. He further recommended a under honorable conditions (general) discharge. His chain of command recommended a general discharge.

12. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 28 March 2002. He directed the applicant's characterization of service as under honorable conditions (general).

13. The applicant was discharged on 19 April 2002. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. His service was characterized as under honorable conditions (general). He completed 11 months and 13 days of net active service.

14. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

15. The applicant provides:

a. A copy of his DD Form 214.

b. Character letters that attest to the applicant being an asset to any organization, married with children and dedication to his family and community. He delivered food and goods coast to coast during the pandemic, he is an over the road truck driver. He volunteers at the church preparing meals to feed the less fortunate. He is self-aware and responsible, accountable, sensible, dependable and an outstanding provider for his family. He gives back to the community. His life reflects the status as an honorable person. He is a diligent worker who is dependable and takes pride in serving as a role model. Providing for his family has been challenging recently because of the physical challenges the applicant has been experiencing. His inability to work consistently as he

desires, he realized he has to pursue assistance to help with his financial responsibilities. He is hardworking, honest, and competent.

c. Senator [REDACTED] letter, dated 2 May 2023, shows she has known the applicant his entire life including when he began his career in the Army in 1999. Due to his family care needs, he left military service to return home to care for and support his son in 2001. The applicant is dependable, responsible, reliable, and diligent. He is a good person who works hard. He is an upstanding citizen who has not had any issues (legal or otherwise) over the past ten years.

d. He sought congressional assistance.

16. On 11 July 2003, 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 of his discharge.

17. In reaching its determination, the Board can consider the applicant's petition and service 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, 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 achievements or letters of reference the applicant insufficient in support of a clemency determination. The Board noted that Soldiers discharged under the provisions of AR 635-200, Chapter 10, normally have their service characterized as under other than honorable conditions, but in this case the applicant's command made an exception and assigned him the more favorable characterization of under honorable conditions (general). 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.

9/16/2024

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. AR 635-200, Personnel Separations, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. When a Soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply. Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

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 10 of that regulation provides that a Soldier who has committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier or where required, after referral, until final action by the court-martial convening authority.

3. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (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//