

IN THE CASE OF: ██████████

BOARD DATE: 14 March 2024

DOCKET NUMBER: AR20230008537

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement

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:

a. He was discharged for the use of marijuana. He was 21 years old, and he was home on leave when he decided to smoke pot with some friends due to his stressful career in the military. He had been in the military for at least four years, had deployed to Turkey, and he needed some time away. He did not plan on smoking pot, but he was young, and he regrets the decision to this day.

b. He is not denying the charges. He was in a rough spot in his life. He was under a lot of stress, because he had accumulated a lot of bills during his few years in the service. He was never really taught how to manage money and he went in the service when he was 17 years of age. These things along with too many drinks at a party led him to use the substance. He has led a clean life since that point. No drugs and no problems with the law. He is proud of his time and accomplishments in the military and would have liked to retire from the military.

3. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 17 February 1987. The highest rank/grade he held was specialist (SPC)/E-4.

b. He received counseling for the following:

- 18 October 1990 – Initial counseling welcoming him to the unit and informing him of his duties.
- 1 November 1990 – Monthly counseling.
- 20 December 1990 – Monthly counseling.
- 12 August 1991 – During duty he was not where he was supposed to be.
- 12 August 1991 – He came to work with unpolished boots.
- 12 August 1991 – Departed work area without the consent of his chain of command.
- 14 August 1991 – Sitting in the maintenance section talking and not cleaning up during the time allotted for cleanup. Intercom was unplugged.
- 5 September 1991 – Failed to show up for physical training (PT) formation.
- 12 September 1991 – Absent from company PT formation.

c. A Urinalysis Custody and Report Record, dated 5 September 1991, shows the applicant's urine specimen, collected on 26 August 1991, tested positive for Tetrahydrocannabinol (THC) and Cocaine.

d. DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), shows the applicant was flagged on 18 September 1991 for adverse action, positive urinalysis.

e. The applicant underwent a mental status evaluation on 22 September 1991 for the purpose of separation. The evaluation shows the applicant had the mental capacity to understand and participate in proceedings.

f. On 25 September 1991, the applicant underwent a medical examination for the purpose of being chaptered out of the Army.

g. He accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) on 30 September 1991 for wrongfully using some amount of cocaine. His punishment included reduction to the rank/grade of (PVT)/E-1, extra duty for 15 days, and 30 days restriction to the limits of the company area, place of duty, dining facility, medical facility, and place of worship.

h. On 3 October 1991, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14, paragraph 14-12c (2), by reason of use of illegal drugs, positive urinalysis for cocaine

and marijuana. The commander informed the applicant that he was recommending he receive a general, under honorable conditions discharge, and he explained his rights.

i. On 7 October 1991, the applicant acknowledged receipt of his commander's separation notification. The applicant acknowledged he was advised by his consulting counsel of the basis for the contemplated action to separate him for serious act of misconduct under AR 635-200, Chapter 14-12c (2), and its effects; of the rights available to him. He understood the following:

1) He understood that if he had less than 6 years of total active and Reserve military service at the time of separation, he was not entitled to have his case heard by an administrative separation board.

2) He elected not to submit statements in his own behalf.

3) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him and as a result of issuance of a discharge that was less than honorable.

4) He understood that, if he received a general, under honorable conditions discharge he may make application to the Army Discharge Review Board (ARBA) or the ABCMR for upgrading; however, an act of consideration by either board did not imply that his discharge would be upgraded.

5) He understood that up until the date the separation authority approves the separation, he may withdraw the waiver of any rights.

6) He understood that he would be ineligible to apply for enlistment in the United States Army for a period of two years after discharge.

j. On 24 October 1991, the applicant's immediate commander formally initiated separation under the provisions of AR 635-200, chapter 14, paragraph 14-12c (2) and recommended he receive a general, under honorable conditions discharge.

k. On 25 October 1991, the applicant's intermediate commander recommended approval and recommended he not be transferred to the Individual Ready Reserve (IRR).

l. On 28 October 1991, the separation authority approved the recommended discharge and directed the applicant be issued a general, under honorable conditions discharge. He noted the applicant showed no potential for further service under conditions of full mobilization under combat conditions and was therefore unsuitable for transfer to the IRR. The request for a waiver of the rehabilitation requirements in

accordance with AR 635-200, chapter 1, paragraph 1-18, was approved. He also noted that the applicant forfeited all educational benefits due to his failure to complete the minimum amount of time in his initial enlistment.

m. The applicant was discharged on 8 November 1991. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c (2), by reason of misconduct – abuse of illegal drugs. His service was characterized as under honorable conditions (general). He completed 4 years, 8 months, and 22 days of net active service during the covered period. Additionally, his DD Form 214 shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):
  - Army Service Ribbon
  - National Defense Service Medal
  - Sharpshooter Qualification Badge with rifle bar (M-16)
  - Sharpshooter Qualification Badge with hand grenade bar
  - Army Achievement Medal
  - Parachutist Badge
  - Army Commendation Medal (1 oak leaf cluster)
- Item 18 (Remarks): Continuous Honorable Active Service from 17 February 1987 – 19 June 1989; Immediate Reenlistment This Period: 17 February 1987 – 19 June 1989

4. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

5. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

#### 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.

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.

6/25/2024

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, 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 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

b. 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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexuality, security reasons, and for the good of the service.

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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

4. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//