

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 March 2024

DOCKET NUMBER: AR20230008644

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge to an honorable discharge

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), January 2000 to January 2002

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 enough time has passed since his discharge.
3. Review of the applicant's service records shows:
 - a. He enlisted in the Regular Army on 11 January 2000. He completed training and was awarded military occupations specialty (MOS) 95B, Military Police.
 - b. He was promoted to private first class (PFC)/E-3. He was assigned to 118th Military Police Company, Fort Bragg, NC.
 - c. On 26 March 2001, he participated in a unit urinalysis and his urine sample tested positive for THC/Marijuana.
 - d. On 19 April 2001, he received nonjudicial punishment under Article 15 of the Uniform Code of Military Justice for twice wrongfully using marijuana, between 28 and 29 December 2000, and between 1 and 26 March 2001. His punishment included reductant to private/E-1.

e. On 9 August 2001, he was convicted by a summary court-martial of wrongfully using marijuana between 15 May and 14 June 2001. The court sentenced him to forfeiture of pay and confinement for 1 month.

f. On 20 August 2001, the convening authority approved the sentence and ordered it executed but suspended the execution of forfeiture of pay until 5 February 2002.

g. On 23 September 2001, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him in accordance with Army Regulation (AR) 635-200 (Personnel Separations; now called Active Duty Enlisted Separation), paragraph 14-12c, for misconduct - commission of a serious offense. The commander recommended an under other than honorable conditions discharge. The specific reasons: On 9 August 2001, he was tried and convicted at a Summary Court-Martial for the use of marijuana, further he received a Field Grade Article 15 for Wrongful Use of a Controlled Substance, marijuana.

h. The applicant acknowledged receipt of the commander's intent to separate him and subsequently consulted with legal counsel. He was advised of the basis for the contemplated separation for misconduct, the type of discharge he could receive and its effect on further enlistment or reenlistment, the possible effects of this discharge, and of the procedures/rights that were available to him. He did not qualify for an administrative board because he had less than 6 years of total service. He further indicated that he understood:

- He could expect to encounter substantial prejudice in civilian life if a general discharge was issued to him
- He could be ineligible for many or all benefits as a veteran under Federal and State laws as a result of the issuance of an under other than honorable conditions discharge
- He could submit a person statement but elected not to do so

i. In his statement, the applicant highlighted his military service, including scoring 290 on my APFT and qualifying expert on all of his assigned weapons. He was a stellar soldier, earned an early promotion to E-2, and eagerly accepted the responsibilities with such a promotion. He continued scoring high on all his physical training tests and continued qualifying expert in the weaponry field. With the exception of being late once, there was no stopping his progression to the next rank.

(1) In November of 2000, he earned yet another early promotion to PFC and accepted the great responsibility as a driver for team. In the field, we went on numerous missions and performed exceptionally well as a team. Also, when he took over Post Support cycle, he performed extremely well enforcing law and order as a Military Police Officer. His uniform was always pressed and boots always highly shined.

He looked like a professional soldier and displayed the standards for other soldiers to follow. He knows what he did was wrong and unacceptable as a soldier and a Military Police Officer.

(2) Since January 5, 2001, he was relieved of duty and was placed under an administrative flag. He received a Field Grade Article 15 and was reduced in grade to PVT, lost two thirds pay per month for 2 months, served 45 days extra duty and 45 days restriction. Throughout the ordeal, he maintained a positive attitude and continued to perform diligently and professionally as a soldier. On August 9, 2001, he received a summary court martial and was sentenced to 30 days confinement and loss of 1 month pay (suspended). He served his time at Quantico, VA. He was released 5 days early due to good conduct. Upon return to his unit, he was referred to and enrolled in the Substance Abuse and Rehabilitation System. Since his enrollment, he has learned a great deal about his decisions and how they can affect him throughout his entire life.

(3) He made some poor decisions and mistakes in his life and has learned from them. His decisions made him who he is today, and he needs to build off of them. He does not believe he deserves an Other Than Honorable Discharge, as it will greatly reduce his chances to make a life for himself, and his future family. His chain of command, up to company commander, recommended a General Discharge. His company is aware of his abilities as a soldier and a person, and he feels that is why the company commander recommended a General Discharge.

(4) He requests consideration for a General Discharge. He put his heart into this organization and feels that he has already paid for his mistakes in judgment by the punishment he received.

j. After the applicant's acknowledgement, the applicant's immediate commander formally initiated separation action against him in accordance with AR 635-200, paragraph 14-12c, for misconduct - commission of a serious offense. His company commander recommended a general discharge. His intermediate and senior commanders recommended an under other than honorable conditions discharge.

k. On 17 December 2001, the separation authority approved the applicant's discharge from the Army and ordered him discharged under the provisions of chapter 14-12c of AR 635-200, by reason of misconduct - commission of a serious offense and directed his service be under other than honorable conditions. On 15 January 2002, the applicant was discharged accordingly.

l. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under AR 635-200, chapter 14-12c, by reason of misconduct - commission of a serious offense with an under other than honorable conditions (Separation Code JKK, Reentry Code 4). He completed 2 years and 5 days of active

service. His DD Form 214 shows he was awarded or authorized: Army Service Ribbon, and Expert Marksmanship Badge with Rifle Bar.

m. There is no indication the applicant has requested review of his administrative discharge by the Army Discharge Review Board.

4. By regulation, Soldiers are subject to separation under the provisions of paragraph 14-12c of AR 635-200 for a commission of a serious offense. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

5. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request for an upgrade of his characterization of service from under other than honorable conditions to honorable, his statement, evidence the applicant provides, evidence in the service record, the applicable Army Regulations, Statutory guidance, and the published Department of Defense guidance for consideration of discharge upgrade requests based upon clemency, and found relief was not warranted.

2. The applicant's record outlines a history of misconduct including Field Grade Nonjudicial Punishment under the provisions of Article 15, UCMJ and a Summary Court-Martial conviction for the wrongful use of marijuana, before being ultimately discharged under AR 635-200, chapter 14-12c, by reason of misconduct - commission of a serious offense with an under other than honorable conditions character of service.

3. The applicant contends his discharge should be upgraded because enough time has passed since his discharge but does not provide any other evidence in support of his request, such as statements of support showing his character, or evidence of post service accomplishments upon which the Board can apply a clemency consideration.

4. The evidence of record indicates the applicant's reason for discharge and the characterization of service are appropriate based the reason for his discharge.

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.

██████████

██████████ ██████████

██████████
████████████████████

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 (Active Duty Enlisted Administrative Separations) set forth the basic authority for the separation of enlisted personnel. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific

categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. 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 appropriate for a Soldier discharged under this chapter.

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.

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 (BCM/NRs) 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. 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 based on equity, injustice, or clemency grounds, BCM/NRs 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. 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//