

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2024

DOCKET NUMBER: AR20230008856

APPLICANT REQUESTS:

- reconsideration of his previous request to upgrade his general, under honorable conditions discharge
- change of separation code and narrative reason for separation

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

DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190015525 on 21 April 2020.
2. The applicant states he was raised in a divided home without a father-figure present. He was the product of teen pregnancy, and his mother was all he had. While stationed in Germany, his mother informed him that she was diagnosed with breast cancer. Until the news of his mother's cancer diagnosis, he had a good military record. After his mother's passing, he did not know how to cope and began self-medicating.
3. A review of the applicant's service record shows:
 - a. He enlisted in the regular Army on 2 October 1984.
 - b. On 7 November 1985, he accepted nonjudicial punishment for violating the Uniform Code of Military Justice (UCMJ) by wrongfully using marijuana between on or about 11 August 1985 and on or about 20 August 1985. His punishment included reduction to private/E-2, forfeiture of \$162.00, and extra duty and restriction for 14 days.
 - c. On 7 November 1985, his immediate commander notified him of his proposed action to initiate separation in accordance with paragraph 13-2 of Army Regulation (AR) 635-200 (Enlisted Personnel – Personnel Separations) for unsatisfactory performance. The specific reasons cited were numerous counseling, nonjudicial punishment for the

use of marijuana, and expressed interest in being separated from the service. The applicant acknowledged receipt of the intent to separate.

d. After consulting with counsel on 7 November 1985, he waived his right to a board of officers, a personal appearance before the board, and to submit a statement on his behalf. He also acknowledged:

- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he would be ineligible to apply for enlistment in the United States Army for a period of two years after discharge

e. The immediate commander recommended approval of the separation and recommended the issuance of a General Discharge Certificate and stated that the applicant did not have the potential to be retained in the Individual Ready Reserve.

f. On 8 November 1985, the separation authority approved separation in accordance with AR 635-200, chapter 13, and issued a General Discharge Certificate.

g. On 25 November 1985, he was discharged from active duty in accordance with Chapter 13 of AR 635-200 with an under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 1 month, and 24 days of active service. It also shows in:

- item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon and Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)
- items 26 (Separation Code): JHJ and 27 (Reenlistment Code) 3/3C
- item 28 (Narrative Reason for Separation): Unsatisfactory Performance

h. The applicant applied to the Army Discharge Review Board (ADRB) for a review of his discharge. On 13 May 1987, the ADRB, after careful consideration of his military records and all other available evidence, determined he was properly and equitably discharge and denied the applicant's request.

i. On 27 October 2019, the applicant applied to the ABCMR to upgrade his characterization of service from under honorable conditions to honorable.

j. On 21 April 2020, after review of the application and all evidence, the Board denied the applicant's request. The Board found insufficient evidence of in-service mitigating factors for the misconduct and the applicant provided no evidence of post-service achievements or letters of support to weigh a clemency determination. Based on

a preponderance of evidence, the Board determined that the characterization of service the applicant received upon separation was not in error or unjust.

4. Regulatory guidance (AR 635-5) states:

- In item 24, the characterization or description of service is determined by directives authorizing separation. Proper completion of this block is vital since it affects the Soldier's eligibility for post-service benefits.
- In item 26, enter the proper Separation Program Designator (SPD) representing the specific authority for separation (AR 635-5-1 provides the authorities, reasons, and applicable SPDs).
- In item 28, enter the narrative reason for separation as shown in AR 635-5-1 based on the regulatory or other authority.

5. By regulation (AR 635-5-1) Separation Code JHJ is the corrected coded to assign to enlisted Soldiers separated SPDs are used to provide statistical accounting of the reasons for which active Army personnel for unsatisfactory performance under AR 635-200.

6. By regulation (AR 635-200), a commander may initiate separation for a Soldier for unsatisfactory performance when the three following conditions are met:

- The Soldier's performance has been unsatisfactory
- After sufficient counseling and rehabilitative efforts have been made, the Soldier's performance continues to be unsatisfactory
- The Soldier's performance and potential indicate that he or she will not develop sufficiently to become a fully satisfactory Soldier

7. 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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The evidence shows the applicant was discharged from active duty due to unsatisfactory performance (numerous counseling, NJP for the use of marijuana, and expressed interest in being separated). He completed 1 year, 1 month, and 24 days of active service and received a general discharge. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. The Board noted that the applicant's narrative reason for separation was assigned based on the fact that he was discharged under chapter 13, Unsatisfactory Performance of AR 635-200 due to numerous counseling, NJP for the use of marijuana, and expressed interest in being separated. Absent his unsatisfactory performance, there was no reason to process him for separation. The underlying reason for his discharge was his unsatisfactory performance. The only valid narrative reason for separation permitted under chapter 13 is "Unsatisfactory Performance" and the appropriate Separation Code associated with this type of discharge is JHJ. which is correctly listed on 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 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 to amend the decision of the ABCMR set forth in Docket Number AR20190015525 on 21 April 2020.

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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. Army Regulation (AR) 635-5 (Separation Documents) states:

a. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

b. In item 24, the characterization or description of service is determined by directives authorizing separation. Proper completion of this block is vital since it affects the soldier's eligibility for post-service benefits. Only six standard characterizations in this block are authorized:

- Honorable
- Under Honorable Conditions (General)
- Under Other than Honorable Conditions
- Bad Conduct
- Dishonorable
- Uncharacterized

c. In item 26, enter the proper Separation Program Designator (SPD) representing the specific authority for separation (AR 635-5-1 provides the authorities, reasons, and applicable SPDs).

d. In item 28, enter the narrative reason for separation as shown in AR 635-5-1 based on the regulatory or other authority.

3. AR 635-5-1 (Personnel Separations – Separation Program Designators) states SPDs are used to provide statistical accounting of the reasons for which active Army personnel are separated. For unsatisfactory performance in accordance with AR 635-200, the applicable SPD code is “JHJ.”

4. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Chapter 13 of the regulation states action will be taken to separate a Soldier when it is determined that he or she is unqualified for further military service because of unsatisfactory performance.

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/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//