

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230009561

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable
- removal of his narrative reason for separation (misconduct – drug abuse) from his DD Form 214 (Certificate of Release or Discharge from Active Duty)
- an appearance before the Board via video or telephone.

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

DD Form 149 (Application for Correction of Military Record)

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 that recent Army rules allow for counseling and rehabilitation. Back in his time, he was just kicked out. His DD Form 214 should be updated due to the new laws.
3. The applicant enlisted in the Regular Army on 31 July 1979 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 88M (Motor Transport Operator). He subsequently extended on 28 May 1982 and reenlisted on 20 August 1985. The highest rank he attained was sergeant/E-5.
4. A Criminal Investigation Division (CID) Report of Investigation, dated 3 December 1986, shows the applicant was the subject of an investigation involving the possession and distribution of cocaine, conspiracy to possess and distribute cocaine, and violation of the Texas Controlled Substance Act (delivery of cocaine). It was reported to CID that three Soldiers assigned to Fort Hood, TX, were selling illicit controlled substances to other Soldiers, from an off post residence. A joint controlled purchase operation was

conducted, on 23 October 1986, by the Killeen Police Department and the Drug Suppression Section, CID. During an authorized search of the residence, on 24 October 1986, [the applicant] was apprehended, invoked his rights, and was released without questioning.

5. Five DA Forms 4187 (Personnel Action) show the applicant was reported absent without leave (AWOL) on the following dates:

- from on or about 10 October 1986 until on or about 14 October 1986
- from on or about 13 November 1986 until on or about 17 November 1986
- from on or about 31 December 1986 until on or about 5 January 1987

6. On 10 March 1987, the applicant received nonjudicial punishment against the applicant, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for the wrongful possession of cocaine, on or about 24 October 1986, the wrongful use of marijuana and cocaine, on or about 12 November 1986, and for being AWOL, on or about 31 December 1986 until on or about 5 January 1987. His punishment consisted of reduction to specialist/E-4, forfeiture of \$505.00 pay per month for two months, and extra duty for 45 days. The applicant appealed the findings and punishment. After consideration of additional matters submitted by the applicant, the appeal was denied.

7. The applicant again received nonjudicial punishment, under the provisions of Article 15 of the UCMJ, on 23 April 1987, for the wrongful use of marijuana, on or about 10 March 1987, and for dereliction in the performance of his duties, on or about 16 April 1987. His punishment consisted of reduction to private/E-1 and forfeiture of \$329.00 pay per month for two months.

8. On 24 April 1987, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, by reason of misconduct – abuse of illegal drugs. As specific reasons for the proposed action, the commander noted the applicant's possession of cocaine, wrongful use of marijuana and cocaine, financial irresponsibility, and periods of AWOL. The applicant acknowledged receipt of the proposed separation notification.

9. On 27 April 1987, the applicant consulted with counsel. He was advised of the basis for the contemplated separation action, its effects, the rights available to him, and the effect of waiving his rights. The applicant waived a personal appearance and consideration of his case by a board of officers and representation by counsel. He elected not to submit a statement in his own behalf.

10. The applicant's commander initiated a Bar to Reenlistment on 1 May 1987. As reasons for the proposed action, the commander cited the applicant's two occasions of nonjudicial punishment, two letters of nonpayment for just debts, three periods of AWOL, and two positive drug urinalyses. The bar was approved on 24 June 1987.

11. The applicant's immediate commander formally recommended his separation from service, under the provisions of AR 635-200, Chapter 14. The commander stated [the applicant] was counseled in writing concerning financial responsibilities, AWOL, and drug usage. He was enrolled in the "drug and alcohol" program, and no further rehabilitation or counseling was required under the provisions of AR 635-200, paragraph 1-18a.

12. The applicant's intermediate commanders reviewed and concurred with the recommendation, further recommending a waiver of the rehabilitation requirements and the issuance of a DD Form 796A (UOTHC Discharge Certificate).

13. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the UCMJ, on 13 July 1987, for the wrongful use of marijuana, on or about 15 April 1987. His punishment consisted of forfeiture of \$150.00 pay and 14 days of extra duty.

14. On 15 July 1987, the separation authority approved the recommended separation action, waived further counseling and rehabilitative requirements, and directed the issuance of a DD Form 796A.

15. The applicant was discharged on 6 August 1987, under the provisions of AR 635-200, Chapter 14, with narrative reason "misconduct – drug abuse." His DD Form 214 confirms his character of service was UOTHC, with separation code JKK and reenlistment code RE 3, 3B, 3C. He was credited with 7 years, 11 months, and 23 days of net active service, with lost time from 10 October 1986 to 13 October 1986, 13 November 1986 to 16 November 1986, and 1 January 1987 to 4 January 1987.

a. The Remarks block listed his immediate reenlistment but did not list his continuous honorable service or whether he completed his first full term of service.

b. He was awarded or authorized: Army Achievement Medal (5th award), Army Good Conduct Medal (2nd award), Noncommissioned Officer Professional Development Ribbon with numeral 1, Army Service Ribbon, Overseas Service Ribbon with numeral 1, Expert Marksmanship Qualification Badge with Rifle bar (M-16), Driver and Mechanic Badge.

16. 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.

17. Additional regulatory guidance, in effect at the time, stated commanders will ensure adequate counseling and rehabilitative measures have been taken before initiating action to separate a Soldier for minor disciplinary infractions or patterns of misconduct.

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

#### BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially 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.

a. Upgrade: Deny. The evidence shows the applicant was discharged due to misconduct following a series of serious misconduct including multiple failed urinalysis for the possession and use of illegal drugs and multiple instances of AWOL. He received an under other than honorable conditions 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 he received upon separation was not in error or unjust.

b. Narrative Reason: Deny. The Board noted that the applicant's narrative reason for separation was assigned based on the fact that he was discharged under chapter 14-12 of AR 635-200 due to a misconduct – drug abuse. Absent his misconduct in the form of drug abuse, there was no reason to process him for separation. The underlying reason for his discharge was his drug abuse misconduct. The only valid narrative reason for separation permitted under chapter 14 is "Misconduct- Drug Abuse" and the appropriate separation code associated with this discharge is JKK.

c. Continuous Honorable Service: Grant. The Board did note that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time

covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

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:            :            :            GRANT FORMAL HEARING

:            :            :            DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 ending on 6 August 1987, by adding to Remarks Block:

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 790731 UNTIL 850819

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge or changing the reason for separation and corresponding Codes.

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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. 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 635-5 (Personnel Separations), 15 August 1979, 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 (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty. SPD "JKK" identifies separation authority AR 635-200, Chapter 14, and narrative reason for separation "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. Paragraph 1-18a provides that commanders will insure that adequate counseling and rehabilitative measures have been taken before initiating action to separate a Soldier for one of the following reasons:

- inability to perform prescribed duties due to parenthood (paragraph 5-8)
- personality disorder (paragraph 5-13)
- entry level performance and conduct (chapter 11)
- unsatisfactory performance (chapter 13)
- minor disciplinary infractions or a pattern of misconduct (chapter 14, paragraphs 14-12a and b)

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-7b states 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.

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

4. 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.

//NOTHING FOLLOWS//