

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 April 2024

DOCKET NUMBER: AR20230009576

APPLICANT REQUESTS: 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)
- Letters of Commendation/Appreciation
- Letters from the National Personnel Records Center
- [REDACTED] Retirement System Letter
- Certificate of Promotion to E-4

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 he likes to have his discharge changed to honorable. [REDACTED] Retirement System ([REDACTED] RS) is requesting the change so that he can claim years for his retirement under Article 20 benefit purposes. He has a letter from the [REDACTED] RS requesting the change to the DD Form 214 (Certificate of Release or Discharge from Active Duty). He served the Army proudly and supported the military service.

3. Review of the applicant's service records shows:

a. The applicant enlisted in the Regular Army on 29 November 1983, and he held military occupational specialty 63S, Heavy Wheel Vehicle Mechanic. He served in Germany from May 1984 to April 1987.

b. On 19 November 1986, the applicant was charged with possession of marijuana. A urinalysis was done the next day and he came up positive for THC on 20 November 1986.

c. On 22 December 1986, he accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for:

- wrongfully possessing marijuana at Frankfurt International Airport
- wrongfully importing marijuana during Customs Check
- wrongfully using marijuana

d. On 26 March 1987, he accepted nonjudicial punishment under Article 15 for operating a vehicle in Kaiserslautern while drunk. His punishment included reduction to the lowest enlisted grade of E-1.

e. On 30 January 1987, 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 - Enlisted Personnel), paragraph 14-12(d), for misconduct - commission of a serious offense. The specific reasons are listed as: Soldier was charged with possession of marijuana on 19 November 1986, a urinalysis was done the next day and he came up positive for THC on 20 November 1986, was charged with use of marijuana. Per AR 635-200, paragraph 14-12d(1), first time drug offenders in the grade of E-5 or higher will be processed for elimination.

f. On 30 January 1987, 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 acknowledged he understood he was not entitled to an administrative separation board if he had less than 6 years of total service. He also elected not to submit a statement in his own behalf. 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.

g. Subsequent to his acknowledgement, the applicant's immediate commander formally initiated separation action against him in accordance with AR 635-200, paragraph 14-12c, for misconduct – abuse of illegal drugs. The intermediate commander strongly recommended approval of the applicant's separation with an under honorable conditions (general) characterization of service.

h. On 3 March 1987, the separation authority approved the applicant's discharge under the provisions of AR 635-200, chapter 14, by reason of misconduct – abuse of

illegal drugs and directed his service be characterized as under honorable conditions (general). On 1 May 1987, the applicant was discharged accordingly.

i. The DD Form 214 he was issued confirms he was discharged under the provisions of AR 635-200, chapter 14, by reason of misconduct – Drug Abuse with a character of service of under honorable conditions (Separation Code JKK, Reenlistment Code 3/3C). This form further confirms he completed 3 years, 5 months, and 3 days of active service during this period of service. His DD Form 214 shows he was awarded or authorized the:

- Army Service Ribbon
- Overseas Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar
- Driver/Mechanic Badge

4. There is no indication he petitioned the Army Discharge Review Board for a review of his discharge within that board's 15-year statute of limitations.

5. He provides a letter, dated 4 April 2023, from [REDACTED] Retirement System informing him that before they can proceed with his request, they require a copy of the form DD Form 214, military discharge papers to verify dates and character of service. The form he submitted with dates 11/26/1983 through 5/1/1987 does not include character of service as honorable. Under §1000 specifically requires that the member was "honorably discharged," "under honorable conditions" is not sufficient for Art. 20 benefit purposes.

6. 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.

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:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency

determinations requests for upgrade of her characterization of service. Upon review of the applicant's petition and available military records, the Board found insufficient evidence of in-service mitigating factors to overcome the misconduct of drug abuse. The Board noted, the applicant post-service achievements however, he provided no character letters for the Board to weigh a clemency determination.

2. The Board agreed the applicant was discharged for misconduct and was provided an under honorable conditions (general) characterization of service. The Board found the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an honorable discharge. Therefore, the Board denied relief.

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.

5/14/2024

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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), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. 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. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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.

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//