

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230010069

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge and personal appearance before the Board.

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)

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:

a. He just wants a status with the Department of Veterans Affairs. He was looking for a new career and he thought that it would help. He served one year in Korea. He was discharged for a positive urinalysis for marijuana, but he only had six months left and he was going to be reassigned to Kuwait for a year.

b. He has been a Boilermakers union member for years. The power plants in his area closed so he is currently looking for a new career. He was discharged six months before he completed his three years. His command wanted him to go to Kuwait for a year with only six months left in service. He was not going for that, considering he had just spent one year in Korea, so he failed a urinalysis for marijuana. He was young and dumb. All he wants is to be considered a veteran and he feels that because he spent one year in Korea, he earned it.

3. The applicant enlisted in the Regular Army on 21 March 1996 for a period of three years. His DA Form 2-1 (Personnel Qualification Record) shows in item 5 (Oversea Service), he served in Korea from 28 July 1996 to 27 July 1997.

4. The applicant received nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, as follows:

- on 23 January 1998 for wrongful use of marijuana between 24 October and 24 November 1997; his punishment included reduction to private/E-1
- on 17 July 1998 for wrongful use of cocaine between 1 May and 1 June 1998

5. On 27 August 1998, the applicant's commander informed him that he was initiating action to separate him from the Army under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, for commission of a serious offense, with an under other than honorable conditions characterization of service. The commander stated the reason for the proposed separation action was the applicant's wrongful use of a controlled substance on three separate occasions. The applicant was also advised of his rights to consult with legal counsel and to provide statements in his own behalf.

6. On 8 September 1998, the applicant consulted with counsel, and he was advised of the basis for the contemplated action to separate him for commission of a serious offense under the provisions of AR 635-200, paragraph 14-12c. He elected not to submit statements in his own behalf.

7. On 25 September 1998, the separation authority approved the applicant's separation and directed the issuance of an Under Other than Honorable Conditions Discharge Certificate.

8. The applicant's DD Form 214 shows he was discharged on 5 October 1998 under the provisions of AR 635-200, paragraph 14-12c(2), by reason of misconduct, with an under other than honorable conditions characterization of service. In the rank/grade of private (PVT)/E-1. He was assigned Separation Code JKK and Reentry Code 4. He completed 2 years, 6 months, and 15 days of net active service.

9. The applicant's record does not contain evidence showing he applied to the Army Discharge Review Board within that Board's 15-year Statute of limitations.

10. The applicant provided argument or evidence that the Board should consider 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 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 applicant was discharged from active duty for serious misconduct following his wrongful use of illegal drugs/controlled substance on three separate occasions. 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.

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 concerned1.





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 sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 provides for separation for various types of misconduct, which include drug abuse. The regulation in effect at the time states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. Individuals in pay grades E-5 and above must be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 may also be processed after a first drug offense and must be processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

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.

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.

a. 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 on the basis of 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.

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) provides Department of the Army policy, criteria, and administrative instructions regarding an applicant's request for the correction of a military record. Paragraph 2-11 states 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//