

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 May 2024

DOCKET NUMBER: AR20230010709

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Alcohol Testing Form

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:

a. Since he has been out of the Army, he has worked for a company for over 30 years. He has had a commercial driver's license for 30 years. Over the years he has had random drug testing. All his tests came up negative for any substance. He provides his last random drug test with the results (negative, dated 20 February 2020).

b. He has been married for 33 years and raised two children. He currently lives closer to his grandchildren and works on an Air Force Base in the recycling service. He is proud to say he is serving his country again in a different way.

3. The applicant enlisted in the Regular Army on 8 March 1984.

4. The applicant served in Germany from 14 September 1984 to 3 March 1986.

5. The Urinalysis Custody and Report Record, dated 29 July 1986, shows a positive result for cocaine next to the applicant's social security number (SSN).

6. The applicant was counseled on 11 August 1986 for positive urinalysis results. The applicant was referred to Alcohol and Drug Abuse Prevention and Control Program and informed further misconduct of this nature would result in separation procedures.
7. The applicant received a Letter of Reprimand, dated 11 August 1986, for his positive urinalysis result conducted on 8 July 1986.
8. The Urinalysis Custody and Report Record, dated 29 August 1986, shows a positive result for tetrahydrocannabinol (THC) next to the applicant's SSN.
9. A Report of Mental Status Evaluation, dated 11 September 1986, shows the applicant had the mental capacity to understand and participate in the proceedings, was mentally responsible, met retention requirements and was psychiatrically cleared to participate in any administrative action deemed appropriate by command.
10. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on:
 - 23 September 1986, for wrongful use of cocaine from on or about 8 June 1986 until 8 July 1986; his punishment included reduction to private first class/E-3
 - 1 October 1986, for wrongful use of marijuana from on or about 1 August 1986 until 11 August 1986; his punishment included reduction to private 2/E-2
11. The applicant's immediate commander notified him on 1 October 1986 he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14-12d(2), for patterns of misconduct. The reasons for the proposed action were that the applicant had been identified as an illegal drug user on two separate occasions. The applicant acknowledged receipt on the same date.
12. The applicant consulted with legal counsel on 3 October 1986 and was advised of the basis for the proposed separation under the provisions of AR 635-200, Chapter 14, for misconduct and the procedures and rights that were available to him.
 - a. He acknowledged that he may expect to encounter substantial prejudice in civilian life if discharged under honorable conditions (general).
 - b. He elected not to submit statements in his own behalf.
13. The applicant's immediate commander formally recommended the applicant be separated from the Army on 3 October 1986. The commander's reason for the recommendation were the applicant's illegal drug use on two separate occasions. He had counseled the applicant concerning his illegal drug use and how it is incompatible

with the U.S. Army. His chain of command recommended approval that the rehabilitative transfer requirements be waived.

14. The separation authority approved the recommended discharge action, under the provisions of AR 635-200, Chapter 14-12d, on 17 October 1986 and directed that the applicant's service be characterized as under honorable conditions (General).

15. The applicant was discharged on 23 October 1986 under the provisions of AR 635-200, paragraph 14-12b, for misconduct-pattern of misconduct, with Separation Code JKM and Reenlistment Code 3. His service was characterized as under honorable conditions (General). He completed 2 years, 7 months, and 16 days of active service. He was awarded or authorized the Army Service Ribbon and the Overseas Service Ribbon.

16. In reaching its determination, the Board can consider the applicant's petition and 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 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 and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for abuse of illegal drugs on two occasions. The Board noted the applicant's contention of formerly being a truck driver and the need for substance abuse testing to maintain that occupation. Based on the applicant's statement and in accordance with the published equity, injustice, or clemency determination guidance, the Board determined the applicant's characterization of service should be amended to honorable.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant 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, for the period ending 23 October 1986, to show:

- item 24 (Character of Service): honorable
- item 25 (Separation Authority): no change
- item 26 (Separation Code): no change
- item 27 (Reentry Code): no change
- item 28 (Narrative Reason for Separation): no change

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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 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

c. 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 discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

3. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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.

//NOTHING FOLLOWS//