

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 1 June 2024

DOCKET NUMBER: AR20230012355

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

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), for the period ending 14 April 1986

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 feels the punishment he received was too harsh and too severe.
3. The applicant's records contain sufficient evidence to support corrections not shown on his DD Form 214. His DD Form 214 will be administratively corrected to show the awards in the Administrative Notes section below.
4. A review of the applicant's service records show:
 - a. On 2 June 1982, he enlisted in the Regular Army.
 - b. On 20 March 1985, the Clinical Director, Alcohol and Drug Abuse Prevention and Control Program (ADAPCP), Fort Hood, notified his Commander, Company A, 16th Signal Battalion, the applicant was evaluated on 8 February 1985 by ADAPCP as a command referral for cannabis use due to a positive urinalysis test result submitted on 20 November 1984. After evaluation, the ADAPCP rehabilitation staff decided to refuse him rehabilitation services. This was based on his total lack of motivation for

rehabilitation and his statement that he had discontinued drug use on his own and his rejection of rehabilitation services offered by the ADAPCP.

c. On 15 April 1985, he was counseled for a positive urinalysis. A DA Form 4856-R (General Counseling Form) shows he provided a urinalysis sample on 20 November 1984 which tested positive and he was referred to III Corps ADAPCP. He refused ADAPCP rehabilitation because he lacked motivation and stated he discontinued drug use on his own. As part of his counseling he was notified he would be command directed to take part in urinalysis test and if he tested positive again, he would be eliminated from the service.

d. On 31 July 1985, he was honorably discharged from the Regular Army in order to reenlist.

e. On 1 August 1985, he reenlisted,

f. On 10 December 1985, he received a disciplinary release from Primary Leadership Development Course, U.S. Army Noncommissioned Officer Academy III Corps. A DA Form 1059 (Service School Academic Evaluation Report) shows he was 20 minutes late for the 0600 hours formation on 30 November 1985 and he also reported to duty intoxicated at the 1600 hours formation on 1 December 1985.

g. On 1 January 1986, a message from the Commander, 16th Signal Battalion, Fort Hood, shows he was the subject of a positive urinalysis and that the urinalysis sample should be retained for an additional 180 days.

h. On an unspecified date, the Commander, 16th Signal Battalion, notified him by memorandum of this positive urinalysis test result and that another urine sample would be taken on an unannounced basis no sooner than 30 days.

i. On 24 January 1986, the ADAPCP officer notified his command the applicant provided a urinalysis sample on 16 December 1985, which tested positive for marijuana. An enclosed DA Form 5180-R (Urinalysis Custody and Report Record) shows the custody chain of his sample.

j. On 4 February 1986, he accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for wrongfully using marijuana between 16 November 1985 and 16 December 1985. His punishment included reduction to private first class/E-3.

k. On 7 February 1986, he underwent a mental status evaluation (DA Form 3822-R) by the Chief Psychiatrist, U.S. Army Hospital, Fort Hood, as requested by his command. The examiner found that the applicant met the physical retention standards prescribed

in Army Regulation 40-501 (Standards of Medical Fitness). The examiner further determined that the applicant was mentally responsible, he was able to distinguish right from wrong, he was able to adhere to the right, and he had the mental capacity to understand and participate in proceedings. The examiner cleared him for administrative action deemed appropriate by his commander.

l. On 3 March 1986, his commander notified him of his intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c, for commission of a serious offense, and advised him of his rights. His commander recommended he receive a general, under honorable conditions characterization of service. The specific reason for his proposed action was: misconduct-abuse of illegal drugs. He understood he had the right to consult with consulting counsel and he may consult with civilian counsel at his own expense; he may submit statements in his own behalf; he could obtain copies of the documents that would be sent to the separation authority supporting the proposed separation; or he may waive these rights in writing.

m. On 12 March 1986, his commander initiated separation action against him under provisions Army Regulation 635-200, paragraph 14-12c for misconduct-commission of a serious offense. He recommended approval of his separation for abuse of illegal drugs on one occasion on 16 December 1985, and an ADAPCP failure for lacking motivation to participate in the program.

n. On 21 March 1986, he acknowledged receipt of his commander's separation notification. He consulted with counsel and was advised of the basis of the contemplated separation against him, its effect, and his rights. He understood his case would not be considered before a board of officers since he had less than 6 years total active and/or reserve military service. He elected not to submit statements in his own behalf. He understood that the least favorable characterization he may receive was a general, under honorable characterization of service. He further understood that he may expect to encounter substantial prejudice in civilian life if a discharge general, under honorable conditions was issued to him.

o. On 1 April 1986, his intermediate commander recommended approval of his discharge and that rehabilitation requirements be waived.

p. On 2 April 1986, the separation authority approved and ordered the applicant's discharge under provisions of Army Regulation 635-200, Chapter 14 and directed issuance of a General Discharge Certificate.

q. On 14 April 1986, he was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c by reason of misconduct-drug abuse with an

under honorable conditions (General) characterization of service; a separation code of JKK; and a reenlistment code of RE-3 and RE-3C. He completed 3 years, 8 months, and 5 days of active service. His DD Form 214 also shows he was awarded or authorized:

- Army Achievement Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

5. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

6. 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 partial 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.

a. Discharge upgrade: Deny. The evidence shows the applicant committed a serious offense by using illegal drugs (and ADAPCP failure for lacking motivation to participate in the program). As a result, his chain of command initiated separation action against him. He was discharged with a general discharge. The Board found no error or injustice in his available 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 and reason for separation the applicant received upon separation were not in error or unjust.

b. Continuous Honorable Service: Grant. The Board noted 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

█ █ █ GRANT PARTIAL RELIEF

: : : 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 his DD Form 214 for the period ending on 14 April 1986 to show:

- Continuous Honorable Active Service From 820810 Until 850731
- Member Completed His First Term of Service

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.

1.



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

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, convictions by civil authorities, and abuse of illegal drugs. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

d. Paragraph 14-12c. Under this paragraph members were subject to separation for commission of a serious offense. Commission of a serious military or civil offense, in the specific circumstances of the offense warranted separation and a punitive discharge, would be authorized for the same or a closely related offense under the MCM. Abuse of illegal drugs. First time drug offenders, grades E-5-E-9 would be processed for separation upon discovery of a drug offense. Second time drug offenders, grades E-1 to E-9 would be process for separation after the second offense.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JKK" corresponded to "Misconduct-Drug Abuse," and the authority, Army Regulation 635-200, chapter 14-12c.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a list of Armed Forces reentry eligibility (RE) codes. Table 3-1 (U.S. Army reentry eligibility codes) reads:

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable
- RE-4 applies to persons separated from their last period of service with a nonwaivable disqualification

5. Army Regulation 635-5, Interim Change, in effect on 2 October 1989, implemented by DODI 1336.1, provided updated instructions for completing the DD Form 214. In block 18 (Remarks) it stated, this must be the first entry in block 18. Enter list of reenlistment periods for which a DD Form 214 was not issued, if applicable, e.g., "Immediate reenlistments this period: 761218-791001; 791002-821001." However, for soldiers who have previously reenlisted without being issued a DD Form 214 and who are being separated with any characterization of service except "Honorable," the following statement will appear as the first entry in block 18, "Continuous Honorable Active Service From (first day of service for which a DD Form 214 was not issued, e.g., 761218) Until (date before commencement of current enlistment, e.g., 821001); then enter the specific periods of reenlistments as prescribed above.

//NOTHING FOLLOWS//