

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 4 June 2024

DOCKET NUMBER: AR20230012601

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 is appealing his discharge. He was the senior person in his room prior to leaving Korea. An inspection was conducted while he was on watch and marijuana was found in the room. The marijuana was not his as evidenced by him passing the urinalysis; however, he was given an Article 15. He returned to the Continental United States (CONUS) and did test positive on a urinalysis which resulted in a second Article 15. He was informed because it was his second Article 15, discharge proceedings were required. He appeals on the basis that he should not have received the first Article 15, in which case he would have been allowed to remain in the Army.
3. A review of the applicant's service record shows:
 - a. Having had prior service in the Louisiana Army National Guard, he enlisted in the Regular Army on 11 January 1983.
 - b. He served in Korea from 11 May 1983 to 9 May 1984.
 - c. He accepted nonjudicial punishment on 15 March 1984 for one specification of wrongful use of marijuana in the Republic of Korea (ROK). His punishment included reduction to private E-1. The applicant did appeal the nonjudicial punishment; however, his appeal was denied on 1 April 1984.

d. He accepted nonjudicial punishment on 9 November 1984 for one specification of wrongful use of marijuana at or near Fort Hood, TX, between on or about 30 September 1984 and 9 October 1984. The applicant appealed the nonjudicial punishment and his appeal was denied on 15 November 1984.

e. The service record includes the applicant's medical examination and mental evaluations dated 19 December 1984, for the purpose of administrative separation which indicated he was generally in good health and had the mental capacity to understand and participate in administrative proceedings.

- Standard Form 93 (Report of Medical History)
- DA Form 3822-R (Report of Mental Status Evaluation)

f. On 13 December 1984, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 for abuse of illegal drugs and a pattern of misconduct. He acknowledged receipt of the notification of separation on 18 December 1984.

g. On 26 December 1984, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions discharge is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- he may apply to the ADRB or the ABCMR for upgrading
- he will be ineligible to apply for enlistment in the U.S. Army for a period of 2 years following discharge
- he elected not to submit matters

h. On 3 January 1985, the immediate commander initiated separation action against the applicant for abuse of illegal drugs. The intermediate commanders recommended approval.

i. On 2 April 1985, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of AR 635-200, Chapter 14 for the applicant's misconduct. He would be issued an Under Other Than Honorable Conditions Discharge Certificate.

j. On 11 April 1985, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions

of chapter 14-12b of AR 635-200 with an Under Other Than Honorable Conditions Discharge. He completed 2 years, 3 months, and 1 day of active service. He was assigned separation code JKK and the narrative reason for separation listed as "Misconduct – Drug Abuse," with reentry code 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Expert Marksmanship Qualification Badge with Pistol Bar
- Marksman Marksmanship Qualification Badge with Rifle Bar

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. By regulation, action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

6. In reaching its determination, the Board can consider the applicants 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 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 evidence shows the applicant twice tested positive for illegal drugs; as a result, his chain of command initiates separation action against him. The Board found no error or injustice in his separation processing. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature, and that outweigh his misconduct, 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 concerned.

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

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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 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.

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//