

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2024

DOCKET NUMBER: AR20230012630

APPLICANT REQUESTS: 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)

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 was participating in his annual tour of duty, when he tested positive for Tetrahydrocannabinol. During this time he was in the field with a group of other Soldiers and felt peer pressure to participate in smoking marijuana. He had a track record of volunteering for additional duties and performed well prior to this incident.
3. The applicant enlisted in the U.S. Army Reserve (USAR) on 22 December 1988. He entered active duty for initial active duty for training (IADT), on 8 February 1989. He was issued a DD Form 214 (Certificate of Release or Discharge from Active Duty) for this period of service, reflective of his uncharacterized discharge. [see Administrative Note].
4. On 20 August 1992, the applicant tested positive for marijuana from a specimen collected on 29 July 1992.
5. On 22 November 1992, the applicant's commander notified him that he was initiating actions to separate him under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), Chapter 7, paragraph 7-11c1, for misconduct, commission of a serious offense.
6. On 22 November 1992, the applicant acknowledged he had been advised of the basis for the contemplated elimination action. He indicated he desired that military legal

counsel for consultation be available to assist him on request. He requested consideration of his case by a board of officers. He declined to submit a statement in his own behalf.

7. A Commanding Officers Report, dated 3 February 1993, notes the applicant's commander recommended his separation and that the applicant made a halfhearted attempt at rehabilitation. He did not consider the applicant to be serious about rehabilitation.

8. On 3 March 1993, the applicant's commander formally recommended his separation under less than honorable conditions due to his positive urinalysis test.

9. The applicant's record is void of the separation authority's approval of the recommended separation action.

10. Orders 210-142, issued by Headquarters, 99th Regional Support Command, Oakdale, PA on 29 July 1995, discharged the applicant from the USAR effective 31 August 1995, under the provisions of Army Regulation 135-178 (Enlisted Administrative Separations). His service was characterized as under honorable conditions (general).

11. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant tested positive for illegal drugs. Accordingly, his chain of command initiated separation action against him for misconduct. He was discharged from the USAR with an under honorable conditions (general) discharge in accordance with AR 135-178 due to misconduct. The Board found no error or injustice in his available separation processing. 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.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

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:

Except for the correction addressed in Administrative Note(s) below, 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.



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.

ADMINISTRATIVE NOTE(S):

The applicant completed a period of IADT. He was awarded a military occupational specialty at the completion of training and returned to the control of the USAR. Army Regulation 635-200 provides that when a Reserve Component Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Please reissue him a DD Form 214 for the period ending 23 June 1989 showing his character of service as Honorable.

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 135-178 sets forth the basic authority for the separation of enlisted Reserve Component personnel.

a. An honorable characterization of service is appropriate when the quality of the Soldier'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 (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Chapter 7 (Misconduct) prescribed the procedures to discharge Army National Guard and USAR Soldiers for misconduct by reason of one or more of the following: minor disciplinary actions; a pattern of misconduct; commission of a serious offense; or conviction by civil authorities.

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/NR) 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.

//NOTHING FOLLOWS//