

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230013202

APPLICANT REQUESTS: an upgrade of his characterization of service from under honorable conditions (general) to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- DD Form 214 (Report of Separation from Active Duty), 25 July 1975
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 5 September 1985

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, in effect:

a. When he first returned home in September 1985, his Veterans Affairs (VA) officer explained his eligibility for enlistment after 24 months, but not about upgrading his discharge. His time exceeded two years and he no longer qualified to upgrade his discharge. From 1988 to 2023 his case had been on hold until recently speaking with a VA support officer from San Juan, who visits the clinic once a month, and gave him these documents to fill out and submit.

b. He served proudly during his time in service and sincerely thinks he should be honored. He is not perfect, but he was punished for misconduct, which he regrets. He was young, immature, and inexperienced, with no sense of the repercussions for following bad company. He has completely changed, and he is more conscious and knowledgeable about life. He has better eating and drinking habits; no smoking, no alcohol, no carbonated beverages, no juice, better carbohydrates, and more water. He

goes to church. He would like to ask for forgiveness and assistance with changing his discharge to "Honorable." He would like to be able to join the United Services Automobile Association (USAA), and they only accept honorable discharges. He needs this help and benefit. He has a 16-year-old son who is going to the 11th grade. He has never met his dad, but he would like to show his son a good life.

3. The applicant provides a DD Form 214, which shows he served honorably in the Regular Army from 3 August 1973 to 25 July 1975.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 8 March 1976. The highest rank/grade he held was staff sergeant (SSG)/E-6.

b. He was counseled for the following:

- 9 July 1984 – performance counseling for the month of June 1984; good work
- 7 August 1984 – monthly counseling for July 1984; knowledgeable
- 7 September 1984 – performance counseling for the month of August 1984; knowledgeable, doing great as the manager of team #1, and good work.
- 9 October 1984 – monthly counseling for September 1984; good work
- 30 October 1984 – counseled for lack of motivation, initiative, and negligence. He was also counseled on the responsibilities of a noncommissioned officer (NCO).
- 14 November 1984 – monthly counseling for October 1984; good work
- 27 November 1984 – monthly counseling for November 1984; needed a little more work on field training and told to keep up the good work.
- 28 December 1984 – monthly counseling for December 1984; performed his duties with high standards and attention to detail.
- 14 February 1985 – performance counseling for the month of January 1985; job performance was among the highest caliber, and he took initiative.
- 5 March 1985 – monthly counseling for February 1985; he excelled in his duties. The only thing that he needed to work on was the speed in which he worked.

c. Urinalysis results, dated 15 April 1985, show the applicant's urine specimen tested positive for tetrahydrocannabinol (THC).

d. On 30 April 1985, he was counseled on his duty performance. He was informed that he had failed to perform his duties to standard and he had shown to be generally incompetent in his duties as a materiel manager. He displayed a lack of urgency in providing support to customers and a lack of consciousness toward the commitment of

funds for requisitioning repair parts. He did not follow the guidance that was given to him, and he failed to follow up on actions implemented by him.

e. A memorandum dated 6 May 1985, which shows he received a warning letter from the Post Commander. The warning letter states the applicant was involved in a domestic disturbance on 27 April 1985. The applicant was informed that further misconduct of any type could jeopardize his right to reside in government quarters on military reservations within Alaska, and he was given 72 hours to acknowledge receipt of the warning letter.

f. He was counseled on 8 May 1985 for the domestic disturbance that occurred on 27 April 1985 in government quarters. He was referred to Army Community Service (ACS) for initial counseling on spouse abuse.

g. DA Form 2496 (Disposition Form) for Alcohol and Drug Abuse Prevention and Control Program (ADAPCP), dated 16 May 1985, shows the applicant was referred for Counseling Center screening for testing positive for THC on 15 April 1985.

h. On 23 May 1985, the applicant's privilege to reside in government quarters on Fort Richardson, Alaska was terminated, effective 8 July 1985, by the Post Commander. The action was based upon the repeated misconduct of the applicant and his family members.

i. He was counseled on 24 May 1985 for testing positive for marijuana on a urinalysis that was conducted on 15 April 1985. His rights under Article 31, Uniform Code of Military Justice (UCMJ) were read to him, and he stated he understood.

j. On 3 June 1985, the applicant accepted nonjudicial punishment (NJP) under field grade Article 15, UCMJ, for wrongful use of marijuana. His punishment included reduction to the grade of E-5, forfeiture of \$250.00 per month for 2 months, restriction to the company area for 45 days (suspended for 180 days), and extra duty for 45 days to be determined by the first sergeant.

k. The applicant underwent a mental status evaluation on 4 June 1985. The Chief, Center for Mental Health Services, stated that the applicant admitted to occasional use of marijuana, taking full responsibility for his actions. He desired retention on active duty and expressed his willingness to participate in rehabilitation. Unfortunately, marital and financial problems caused further embarrassment to the command which compounded his problems and potentially diminished the possibility of successful rehabilitation to a fully effective Soldier. His mental status was clear for administration action.

l. On 7 June 1985, the applicant underwent a medical examination and the doctor stated he was qualified for separation.

m. On 1 July 1985, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), paragraph 14-12a, by reason of misconduct – minor disciplinary infraction. The commander listed the following reason for the proposed action: for violation of AR 635-200, paragraph 14-12d, abuse of illegal drugs. The commander informed the applicant he was recommending he receive a general, under honorable conditions discharge and explained his rights, which included:

- (1) Consult with counsel within a reasonable time (not less than 3 duty days).
- (2) Submit statements on his own behalf.
- (3) Request copies of documents that will be sent to the separation authority supporting the proposed separation.
- (4) To present his case before a board of officers, when applicable, or to present written statements instead of board proceedings, when applicable.
- (5) To be presented by appointed counsel for representation.
- (6) Waive the above rights in writing at any time prior to the date the separation authority approves the separation. Failure to respond within 7 duty days constitutes a waiver of these rights.

n. On 1 July 1985, the applicant acknowledged he was advised by his consulting counsel of the basis for the contemplated action to separate him for misconduct under AR 635-200, chapter 14, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights. He understood that if he had less than 6 years of total active and Reserve military service at the time of separation and was being considered for separation for reason of misconduct under AR 635-200, Chapter 14, he was not entitled to have his case heard by an administrative separation board unless he was being considered for a discharge under other than honorable conditions.

- (1) He requested a personal appearance and consideration of his case by an administrative separation Board.
- (2) He elected not to submit statements in his own behalf.
- (3) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him. He further understood that, as the result of issuance of a discharge under other than honorable conditions, he may be ineligible for many or all benefits as a veteran under

both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life. He understood that if he received a discharge certificate/character of service which was less than honorable, he may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading.

(4) He further understood that he would be ineligible to apply for enlistment in the United States Army for a period of 2 years after discharge.

o. On 15 July 1985, the applicant's immediate commander formally initiated separation under the provisions of AR 635-200, chapter 14, paragraph 14-12a.

p. On 13 August 1985, the applicant waived his right to have his case heard before an administrative separation board.

q. The intermediate commander recommended approval of the separation.

r. On 19 August 1985, the separation authority approved the recommended discharge and directed the applicant be issued an under honorable conditions (general) discharge.

s. The applicant was discharged on 5 September 1985. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 14, by reason of misconduct – abuse of illegal drugs. His service was characterized as under honorable conditions (general). This form shows in:

- Item 12c (Net Active Service This Period): 9 years, 5 months, 28 days
- Item 12d (Total Prior Active Service): 1 year, 11 months, and 23 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Army Good Conduct Medal (3rd Award), Army Service Ribbon, Overseas Service Ribbon (3rd Award), NCO Professional Development Ribbon, Marksman Qualification Badge with rifle bar (M-16)
- Item 18 (Remarks): Immediate reenlistment this period: 8 March 1976 – 29 December 1983; 30 December 1983 – 5 September 1985

5. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and other than his own statement, the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurs with the correction described in the Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Other than the correction addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

12/19/2024

X

CHAIRPERSON

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's DD Form 214 is missing an administrative entry in item 18. Please correct the DD Form 214 by adding the following to item 18: "Continuous honorable active service from 8 March 1976 through 29 December 1983."

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. The honorable characterization 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 discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

d. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. 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 considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-12a for Misconduct-Drug Abuse would receive a separation code of "JKK."

4. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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//