

IN THE CASE OF: ██████████

BOARD DATE: 1 August 2024

DOCKET NUMBER: AR20230013817

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his general discharge under honorable conditions discharge to an honorable character of service.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20180010833, on 16 January 2020.

2. The applicant states, in effect, even though he committed misconduct by smoking marijuana, he still performed all of his duties and to this day, he continues to help other Soldiers.

a. Following his separation, the applicant became an ordained minister, and he has been active within his community. The Army helped him gain discipline and to build a strong character; he has sought to instill that discipline in his children, and his granddaughter says she wants to become an Army Soldier.

b. It took the applicant some time to find support from other Veterans, but over time, he became financially stable and, two years ago, he bought a home. He is now seeking to open an account with a company that requires him to have an honorable (not general) discharge; with that account, he hopes to be able to leave something for his children and grandchildren to help them through life.

3. A review of the applicant's service record reveals the following:

a. On 25 May 2001, the applicant enlisted into the Regular Army for 3 years. After completing initial entry training and the award of military occupational specialty 11B (Infantryman), orders assigned him to Fort Drum, NY, and he arrived at his new duty station, on or about 26 September 2001.

b. On or about 8 February 2002, following unit urinalysis testing, the applicant tested positive for THC (Tetrahydrocannabinol; the active ingredient in marijuana). On 27 February 2002, the applicant accepted field-grade level nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for wrongful use of marijuana. The imposing commander's punishment included a reduction to private (PV1)/E-1.

c. On 4 March 2002, an Army licensed psychologist rendered the applicant's report of mental status evaluation (DA Form 3822-R). The Army psychologist opined that the applicant met medical retention standards and gave the following diagnoses:

- Axis I – Occupational Problem
- Axis II – Deferred
- Axis III – None
- Axis IV – Problems with occupation

d. On 2 May 2002, the applicant's unit commander advised him, via memorandum, that he was initiating separation action against the applicant, under the provisions of paragraph 14-12c (Acts or Patterns of Misconduct – Commission of a Serious Offense), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). The commander's specific reason was the applicant's field-grade NJP after testing positive for marijuana; he added that he would be recommending the applicant for a general discharge under honorable conditions.

e. On 14 May 2002, after consulting with counsel (a Judge Advocate General (JAG) officer), the applicant acknowledged counsel had advised him of the basis for his separation action and informed him of his rights and the effect of waiving those rights. The applicant elected to conditionally waive his right to appear with counsel before an administrative separation board, contingent on the separation authority's approval of a character of service no less favorable than a general discharge under honorable conditions. Additionally, the applicant requested counsel but opted not to submit statements in his own behalf.

f. On 23 May 2002, the separation authority approved the commander's separation recommendation and directed the applicant's general discharge under honorable conditions; on 31 May 2002, orders discharged the applicant accordingly.

g. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he completed 1 year and 6 days of his 3-year enlistment contract. The report additionally reflects the following:

(1) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized): Army Service Ribbon and two marksmanship qualification badges.

(2) Special Additional Information:

- Item 25 (Separation Authority) – AR 635-200, paragraph 14-12c (2) (Commission of a Serious Offense – Abuse of Illegal Drugs)
- Item 26 (Separation Code (SPD)) – "JJK"
- Item 27 (Reentry (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – "Misconduct"

h. On 3 March 2016, the applicant petitioned the Army Discharge Review Board (ADRB), requesting an upgraded character of service.

(1) The applicant argued he was a changed man, pointing out that he had completed several training courses and become an ordained minister. He was hoping to better support his family by gaining access to Veterans benefits. Additionally, he wished to attend a culinary management school.

(2) 28 April 2017, after conducting a records review, the ADRB determined the applicant's separation was proper and equitable and denied the applicant's request.

(a) The ADRB stated, "The applicant contends that, since his discharge, he is a changed man who has completed several training courses and has been ordained. The applicant's post-service accomplishments have been noted as outlined on the application and in the documents with the application. The applicant is to be commended for his post-service accomplishments."

(b) Additionally, the applicant had expressed a desire to "receive benefits to better support his family and finish school for culinary management. However, the Board does not grant relief solely for the purpose of gaining employment or enhancing employment opportunities."

(c) The ADRB concluded that the applicant's character of service was commensurate with his overall service record, and the discharge had been conducted in a manner consistent with procedural and substantive requirements.

i. On 22 August 2018, the applicant requested the ABCMR upgrade his character of service.

(1) The applicant stated that, while in basic combat training (BCT), he learned his sons had been placed in foster care. Upon completion of BCT, he went home to find

out what was going on, and they told him one of his sons had been molested while in the custody of his son's mother and her boyfriend. On his return to duty, the applicant told one of his noncommissioned officers (NCO) what had happened, and the NCO advised him to wait six months. After six months passed, he asked again and was told to wait another six months. In response to the stress and worry he was feeling, the applicant began to self-medicate with marijuana. After his urine test came back positive the Army, with its zero tolerance policy, decided to send him home.

(2) On 16 January 2020, after considering the applicant's request, supporting documents, evidence in the records and published Department of Defense guidance for discharge upgrade requests, the Board voted to deny relief. The Board stated it did not find sufficient evidence of in-service mitigating factors to overcome the misconduct, and, besides his statement, the applicant had offered no further evidence. Additionally, the Board considered the applicant's post-service documents but determined they were insufficient to support clemency.

4. The ABCMR does not grant requests for upgraded characters of service solely to make someone eligible for Veterans' benefits; however, in reaching its determination, the Board can consider the applicant's petition, his evidence and assertions, and his service record in accordance with the published equity, injustice, or clemency 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 committed a serious misconduct – illegal drugs. As a result, his chain of command, initiated separation action against him. He received an under honorable conditions discharge (general) after completing 1 year and 6 days of active service. The Board found no error or injustice in his 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, that would outweigh his misconduct. 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.

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:

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 to amend the decision of the ABCMR set forth in Docket Number AR20180010833, on 16 January 2020.

8/1/2024

X [REDACTED]

CHAIRPERSON

[REDACTED]

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. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. An honorable discharge could be furnished when disqualifying entries in

the Soldier's military record was outweighed by subsequent honest and faithful service over a greater period of time. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). 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. Paragraph 5-3 (Secretarial Plenary Authority). Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers.

d. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Commanders were required to initiate separation action when they determined a Soldier had committed serious misconduct and could clearly establish rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who committed a serious military or civilian offense, for which the UCMJ authorized a punitive discharge for the same or similar offense. Per subparagraph (2), abuse of illegal drugs was deemed serious misconduct.

2. The Manual for Courts-Martial, in effect at the time, showed punitive discharges among the available maximum punishments for violations of UCMJ Article 112a (Wrongful Use, Possession, Manufacture, or Introduction of Controlled Substances).

3. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For item 27 (Reenlistment Code), the regulation referred preparers to AR 601-210 (Regular Army and Army Reserve Enlistment Program).

4. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with paragraph 14-12c (2), AR 635-200 were to receive an SPD of "JKK" and have, "Misconduct" entered in item 28 of their DD Form 214.

5. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers; the table shows the SPD code and its corresponding RE code. The SPD code of "JKK" has a corresponding RE code of "3."

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 on the basis of 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//