

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230014118

APPLICANT REQUESTS: In effect, an upgrade of his under honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- (2) DD Form 214 (Certificate of Release or Discharge from Active Duty)  
7 February 1989 and 13 May 2005

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 since he served on active duty honorably from 2004 to 2005, he believes his general discharge from 1989 should have also been changed to reflect honorable, after three years.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 18 June 1986.
  - b. On 19 October 1988, he accepted nonjudicial punishment for on or about 29 September 1988, failure to be at his place of duty and willfully disobeying a superior officer.
  - c. On 28 December 1988, he accepted nonjudicial punishment for two counts of wrongful use of cocaine, between on or about 5 October 1988 and 12 October 1988, and between on or about 17 October 1988 and 24 October 1988. His punishment included reduction to specialist, E-4.

d. The service record includes the applicant's medical examination for the purpose of administrative separation which indicated he was generally in good health. The applicant was marked qualified for separation on 4 January 1989.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

e. On 5 January 1989, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows he had no mental health diagnosis and was cleared for whatever action that was deemed appropriate by the command.

f. On 11 January 1989, 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 separation for serious misconduct. The specific reasons for his proposed recommendation were based that the applicant tested positive for controlled substance, specifically cocaine, on 12 and 24 October 1988. The applicant acknowledged receipt on the same day.

g. On 11 January 1989, he waived consultation 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 other than honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the U.S. Army for a period of two years after discharge

h. On 12 January 1989, the immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Paragraph 14-12c, for testing positive for use of cocaine. He recommended that his period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

i. On 18 January 1989, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for separation under the provisions of AR 635-200, Paragraph 14-12c for serious misconduct. He would be issued a General Discharge Certificate.

j. On 7 February 1989, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 5 months, and 20 days of active service with no lost time. He was assigned

separation code JKK and the narrative reason for separation listed as “Misconduct – Drug Abuse,” with reenlistment code 3, 3C. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Noncommissioned Officer Professional Development Ribbon (2nd award)
- Parachutist Badge
- Humanitarian Service Medal
- Sharpshooter Badge with Hand Grenade Bar
- Marksman Marksmanship Badge with Rifle Bar (M-16)
- Sea Service Deployment Ribbon
- Battle “E” Award (2nd award)

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

5. By regulation (AR 635-200), 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:

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of for testing positive for use of cocaine.

2. The Board noted, the applicant' provided no post service achievements or character letters of support for the Board consideration. The applicant was discharged for misconduct and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is

warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. As such, the Board denied relief.

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 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. 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. 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//