

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20230014815

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) discharge
- a favorable change to his separation code

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Self-Authored Statement

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 had 8 years of exceptional service. He received many awards and achieved the rank of staff sergeant. He was discharged for marijuana use, which is not even considered criminal. His enlisted evaluation reports were constantly superior, and his performance ratings were always exceptional. During his service he sustained multiple injuries. At no time did those injuries reflect on his performance as a Soldier proudly serving in the Army.
3. On 12 September 1977, the applicant enlisted in the Regular Army. He reenlisted on 30 July 1980 for 6 years.
4. On 29 August 1984, the applicant tested positive for marijuana.
5. On 12 September 1984, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

6. On 4 October 1984, the applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for knowingly and wrongfully using marijuana from on or about 19 July 1984 through 2 August 1984. His punishment included reduction to E-5 (suspended) and forfeiture of \$250.00 pay for two months.
7. On 7 February 1985, the applicant tested positive for marijuana.
8. On 22 March 1985, the applicant accepted NJP under Article 15 of the UCMJ, for knowingly and wrongfully using marijuana from on or about 22 December 1984 through 11 January 1985. His punishment included reduction to E-4 and forfeiture of \$400.00 per month for two months.
9. The applicant's immediate commander notified him on 27 March 1985, that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c, for misconduct – commission of a serious offense.
10. The applicant consulted with legal counsel and acknowledged he had been advised of the basis for the contemplated separation action. Following his consultation, he waived the right to personally appear before, and to have his case considered by a board of officers.
 - a. He declined to submit a statement in his own behalf.
 - b. He acknowledged he understood that as a result of issuance of a discharge under honorable conditions (General) or an UOTHC, he may be ineligible for many or all benefits as a veteran under Federal and State laws and that he could expect to encounter substantial prejudice in civilian life.
11. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct – commission of a serious offense. As the specific reasons, the commander cited his two positive urinalysis tests.
12. Consistent with the chain of command's recommendations, the separation authority approved the recommended discharge on 16 April 1985, and directed the issuance of an UOTHC Discharge Certificate.
13. The applicant was discharged on 19 April 1985. He was credited with 7 years, 7 months, and 8 days of active service. His DD Form 214 also shows in:
 - item 24 (Character of Service) – UOTHC
 - item 25 (Separation Authority) – AR [Army Regulation] 635-200, Para 14-12c

- item 26 (Separation Code) – JKQ
- item 27 (Reenlistment Code) – 3, 3C
- item 28 (Narrative Reason for Separation) – Misconduct – Commission of a Serious Offense

14. Additionally his DD Form 214 shows he was awarded or authorized the Army Service Ribbon, Good Conduct Medal (2nd Award), Army Achievement Medal, Noncommissioned Officer Professional Developmental Ribbon “2”, Sharpshooter (M-16 Rifle), and Expert (Hand Grenade).

15. The applicant's DD Form 214 does not show his continuous honorable active service period information that is required for members who honorably served their first term of enlistment [see Administrative Notes].

16. 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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct with the commander citing a positive urinalysis for marijuana on several occasions. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. As it relates to the applicant's request for amendment to his separation code, the Board determined the assigned separation code corresponds appropriated to the narrative reason for separation designated during his separation proceedings and does not warrant amendment.

3. Prior to closing the discussion, the Board noted and concurred with the analyst of record's administrative notes below concerning the applicant's continuous honorable service from 1977 to 1980.

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 19 April 1985, is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- CONTINUOUS HONORABLE SERVICE FROM 770912 UNTIL 800729
- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE

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 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JKQ" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, for misconduct – commission of a serious offense.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed. Paragraph 14-12c (Commission of a Serious Offense) applied to commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense.

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 (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//