

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 August 2024

DOCKET NUMBER: AR20230015125

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to amend his separation code from JKQ (misconduct) to something else
- a personal appearance before the Board

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

DD Form 149 (Application for Correction of Military Record).

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 his current separation designator (SPD) code reflects the separation code JKQ with the narrative reason for separation listed as "Misconduct (Serious Offense)," and he believes it should reflect SPD code JKK with the narrative reason for separation listed as "Drug Use."
 - a. He served in theater during Desert Shield/Desert Storm as a specialist (SPC)/E-4. The whole brigade was ordered to receive six or seven unknown injections. From that day forward he suffered from headaches and vision disorders. He returned to Fort Bragg, NC and continued to have headaches and vision disorders. He was ordered to be seen at Womack; however, the doctors could not explain what was happening to him.
 - b. He began to self-medicate with Tylenol and continued to do so for well over a year. He subsequently began using cocaine and it was detected in his urinalysis. He failed the urinalysis, became a private (PVT)/E-1, and was not given an opportunity to rehabilitate although he was placed into rehabilitation treatment. He was discharged with a general, under honorable conditions discharge and a separation code of JKQ for misconduct, serious offense. The whole ordeal was not level, not right, and not fair.

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

a. Having had prior service in the U.S. Coast Guard, he enlisted in the Regular Army on 17 July 1989.

b. His DA Form 2-1 (Personnel Qualification Record – Part II) shows he served in Saudi Arabia from 23 December 1990 to 11 April 1991.

c. A Results of Biochemical Testing memorandum, dated 28 April 1992 shows the applicant tested positive for cocaine.

d. He accepted nonjudicial punishment on 14 July 1992, for one specification of wrongful use of cocaine between on or about 11 April 1992 and 13 April 1992. His punishment included reduction to PVT/E-1.

e. A Standard Form 93 (Report of Medical History), dated 12 August 1992, shows the applicant underwent a medical examination for the purpose of separation. The physician noted the applicant had a history of tinnitus.

f. On 12 August 1992, a DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant underwent a mental status evaluation following misconduct. The evaluation indicated he was mentally responsible and had the mental capacity to participate in administrative proceedings.

g. A Results of Biochemical Testing memorandum dated 1 September 1992 shows the applicant tested positive a second time for cocaine.

h. On 14 September 1992, 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, paragraph 14-12c, for commission of a serious offense. The specific reason for his proposed recommendation was the applicant tested positive for cocaine during two urinalyses on 28 April 1992 and again on 1 September 1992.

i. On 14 September 1992, after declining consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he did not have a total of 6 years of service and was not eligible to have his case heard before a board of officers
- he elected not to submit matters

j. On 21 September 1992, the immediate commander initiated separation action against the applicant for commission of a serious offense. He recommended that his period of service be characterized as general, under honorable conditions. No additional misconduct was listed. The intermediate commander recommended approval.

k. On 20 September 1992, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation, under the provisions of AR 635-200, Chapter 14, paragraph 14-12c for commission of a serious offense, abuse of illegal drugs. He would be issued a General Discharge Certificate.

l. On 22 October 1992, he was discharged from active duty. His DD Form 214 shows he was discharged under the provisions of chapter 14-12c of AR 635-200 with an under honorable conditions (General) characterization of service. He completed 3 years, 3 months, and 6 days of active service. He was assigned separation code JKQ and the narrative reason for separation listed as "Misconduct – Commission of a Serious Offense," with reentry code 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- National Defense Service medal
- Southwest Asia Service Medal with two bronze service stars
- Kuwait Liberation Medal – Saudi Arabia
- Humanitarian Service Medal
- Army Achievement Medal (one oak leaf cluster)

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

5. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

6. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).

7. By regulation (AR 635-5-1), provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in

block 28 of the DD Form 214 exactly as listed in the regulation. The following SPD codes are listed:

- JKQ - "Misconduct – commission of a serious offense" in accordance with AR 635-200, paragraph 6-3b
- JPC (JKK) – "Drug Abuse – rehabilitation failure" in accordance with AR 635-200, chapter 9

8. 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. Paragraph 14-12c states Soldiers are subject to action per this section for 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 under the Manual for Courts-Martial.

9. 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. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board noted that the applicant's narrative reason for separation was assigned based on the fact that after he committed misconduct – serious offense (2x positive cocaine use). As a result, his chain of command separated him under the provisions of chapter 14-12c of AR 635-20. Absent his misconduct, there was no reason to initiate separation action against him. The underlying reason for his discharge was his commission misconduct in the form of a serious offense. The only valid narrative reason for enlisted separation permitted under chapter 14-12c is "Misconduct -Commission of a Serious Offense." The separation code associated with serious misconduct -drug abuse fluctuated between JKQ and JKK. Currently, the appropriate Separation Code is JKK. However, notwithstanding the foregoing, it is the general policy of the Board not to cause an applicant to be worse off than he or she would have been had the Board not acted in the case.

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.

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The information entered thereon reflects the conditions as they existed at the time of separation. For Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designators (SPD)).

4. Army Regulation 635-5-1 (Separation Program Designators) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214 exactly as listed in the regulation. The following SPD codes are listed:

- JKQ - "Misconduct – commission of a serious offense" in accordance with AR 635-200, paragraph 6-3b
- JPC (JKK) – "Drug Abuse – rehabilitation failure" in accordance with AR 635-200, chapter 9

5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel. 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. Paragraph 14-12c states Soldiers are subject to action per this section for 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 under the Manual for Courts-Martial.

6. 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.

7. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//