

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 August 2024

DOCKET NUMBER: AR20240000081

APPLICANT REQUESTS: a change in the narrative reason for separation.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States).

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 served a full active-duty term, and his narrative reason was based on one isolated incident out of his six years of service. During his time in the military, he received numerous awards and accolades. He understands he made a mistake, and this mistake continues to linger over him. He would like to move forward in his pursuit for a career in law enforcement, but the narrative reason for separation is holding him back.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 22 November 2010.
 - b. A DA Form 4856 (Development Counseling Form) dated 19 November 2015, shows the command was notified the applicant tested positive for tetrahydrocannabinol (THC) on or about 5 November 2015.
 - c. On 24 November 2015, the applicant underwent a mental evaluation. The DA Form 3822-R (Report of Mental Status Evaluation) shows he had the mental capacity to understand and participate in administrative proceedings and he understood the difference between right and wrong. He was deemed fit for duty and deployment.

d. The service record includes the applicant's medical examinations, dated 10 December 2015, for the purpose of separation which indicated he was in generally good health. The applicant was marked qualified for service.

- DD Form 2807-1 (Report of Medical History)
- DD Form 2808 (Report of Medical Examination)

e. On 28 January 2016, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c (2) for misconduct, abuse of illegal drugs. The specific reason for his proposed action was on 5 October 2015, the applicant tested positive for THC. He recommended the applicant's service be characterized as general, under honorable conditions. The applicant acknowledged receipt on the same day.

f. On 2 February 2016, after declining 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 honorable conditions is issued to him
- he may be ineligible for many or all benefits as a veteran under both Federal and State laws
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment in the United States Army for two years

g. On 3 February 2016, the immediate commander initiated separation action against the applicant for misconduct, abuse of illegal drugs. He recommended that the applicant's period of service be characterized as general, under honorable conditions. The intermediate commander recommended approval.

h. On 8 February 2016, consistent with the chain of command's recommendation, the separation authority approved the discharge recommendation for separation under the provisions of AR 635-200, Chapter 14-12c (2), for misconduct, abuse of illegal drugs. He would be issued a general, under honorable conditions discharge.

i. On 26 February 2016, he was discharged from active duty with a general, under honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 5 years, 3 months, and 5 days of active service. He was assigned separation code JKK and the narrative reason

for separation listed as "Misconduct (Drug Abuse)," with reentry code 4. It also shows he was awarded or authorized:

- Army Achievement Medal (3rd Award)
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Non-Commissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon

4. On 25 August 2016, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for a change in the character and/or reason of his discharge was denied.

5. A review of the applicant's record confirms an administrative entry was not recorded on his DD Form 214. The entry will be added to his DD Form 214 as an administrative correction and will not be considered by the Board.

6. By regulation (AR 635-8), 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.

7. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as commission of a serious offense, 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.

8. 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 partial relief was 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. Upon review of the applicant's petition and available military records,

the Board under liberal consideration changes to the applicant's narrative reason for separation is not warranted. Evidence in the record show the applicant was discharged under AR 635-200, paragraph 14-12c (2), for misconduct, abuse of illegal drugs. The applicant at the time of his discharge was provided an under honorable conditions (General) characterization of service. Based on a preponderance of evidence, the Board determined the applicant's narrative reason received upon separation was not in error or unjust.

2. However, during deliberation, the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial relief.

BOARD VOTE:

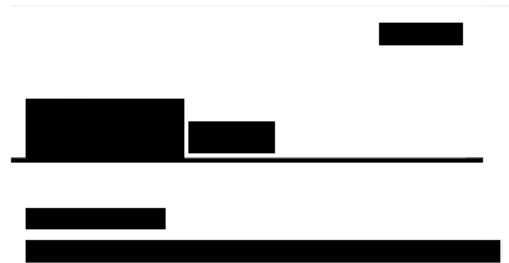
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:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 26 February 2016 by adding in item 18 (Remarks) the entry "Continuous Honorable Active Service from 20101122 to 20130724."

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to correction of the applicant's narrative reason for separation.



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): N/A

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 635-8 (Separations Processing and Documents), in effect at the time, 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. For item 18 (Remarks), to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

3. Army Regulation 635-200 (Active Duty – Enlisted Administrative Separations), 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.

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/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//