

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20240000403

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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

DD Form 149 (Application for Correction of Military Record), 26 October 2023.

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 led a perfect career until the incident leading to his discharge.
3. A review of the applicant's service records show:
 - a. The applicant enlisted in the Regular Army on 10 January 1986, following an earlier period of service in the U.S. Army Reserve (USAR).
 - b. On 30 June 1988, The Commanding Officer, Department of Military Science, (University), approved his enrollment in the Reserve Officer Training Corps (ROTC) program with an effective date of enrollment of 21 September 1988.
 - c. On 5 July 1988, he requested discharge from the Regular Army in order to enlist in the USAR.
 - d. On 31 August 1988, he was honorably discharged and transferred to control of the USAR (ROTC). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 2 years, 7 months, and 22 days of active service with 4 years, 6 months, and 27 days of prior inactive service.

- e. On 1 September 1988, he enlisted in the USAR (ROTC).
- f. On 12 October 1988, he enlisted in the USAR.
- g. On 3 August 1992, he was reassigned to 121st Evacuation Hospital, Yongsan, Korea.
- h. A sworn statement dated 13 July 1993, given to a special agent in connection with U.S. Army Criminal Investigative Division (CID), Report of Investigation (ROI) Number 0480-CIDXXX-XXXXX. The statement reflects the applicant was the principle suspect of completing DA Forms 3949 (Controlled Substance Record) dated 10 July 1993, in which discrepancies documented missing controlled substances consisting of two tubex of Demerol, 75 mg.
- i. A DA Form 2823 (Automated Sworn Statement), dated 17 August 1993, given to a special agent, in connection the investigation, shows the respondent identified the applicant as the principle suspect and by his handwriting on DA Forms 3949 from forged names of medical staff other than himself, for unauthorized issuance of Demerol. The forged entries were noted at 1800 hours on 20 June 1993 for two doses of Demerol, 75 mg; at 2000 hours on 20 June 1993 for two doses of Demerol, 75 mg; at 2200 hours on 20 June 1993 for one dose of Demerol, 75 mg; at 1630 hours on 22 June 1993, two doses of Demerol, 75 mg; at 1630 hours on 22 June 1993, two doses of Demerol, 75 mg; at 2200 hours on 22 June 1993, two doses of Demerol, 75 mg; at 1835 hours on 21 June 1993, one dose of Demerol, 100 mg; at 2250 hours on 21 June 1993, one dose of Demerol, 100 mg; at 2300 hours on 21 June 1993, four doses of Demerol, 100 mg; 1000 hours on 22 June 1993, one dose of Demerol, 100 mg; and possibly on 1515 hours on 9 June 1993, two doses of Demerol, 100 mg.
- j. A DA Form 2823, dated 23 August 1993, signed by the applicant, reflects he stated he took approximately 25 doses of tubex of Demerol, 75 mg and 100 mg between March 1993 and July 1993. He stated he took the controlled tubex from the intensive care unit at 121st Evacuation Hospital and signed out the medication under made-up patient names or names of patients in the unit. He stated that eventually he became addicted and the use became uncontrollable.
- k. On 26 April 1993, he accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice for wrongfully using Demerol, a schedule II controlled substance at Yongsan, Korea between on or about 1 March 1993 and 30 July 1993. His punishment consisted of reduction to specialist (SPC)/E-4.
- i. On 17 September 1993, the Commander, 121st Evacuation Hospital, 18th Medical Command, notified him of his intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Personnel Separations –

Enlisted Personnel), paragraph 14-12c for commission of a serious offense, and advised him of his rights. His commander recommended his service be characterized as under other than honorable conditions and stated the reasons for his proposed action were: he received nonjudicial punishment for larceny of Demerol from the 121st Evacuation Hospital, wrongful use of Demerol, and possession of marijuana. He understood he had the right to consult with consulting counsel and/or civilian counsel at no expense to the government; he may submit written statements in his own behalf; he may obtain copies of the documents that would be sent to the separation authority supporting the proposed separation; he may request a hearing before an administrative board if he had 6 or more years of active and reserve service at the time of separation; he may waive his rights and submit a conditional waiver of his right his hearing before an administrative separation board.

j. On 22 September 1993, he acknowledged receipt of his commander's separation notification. He indicated that he had been advised by his consulting counsel of the basis for the contemplated action to separate him for commission of serious offense under Army Regulation 635-200, section III, paragraph 14-12c, and its effect; of the rights available to him; and of the effect of any action taken by him in waiving his rights. He understood that he was entitled to have his case considered by an administrative separation board as he had completed more than 6 years of active and reserve service and he was being recommended for an other than honorable characterization of service. He waived consideration of his case by an administrative separation board; he waived his right to submit a conditional waiver of his right to have his case considered by an administrative separation board; and he waived a personal appearance before an administrative separation board. He elected not to submit a statement in his own behalf. He requested consulting counsel. He further acknowledged:

- he understood he may expect to encounter substantial prejudice in civilian life if a discharge general, under honorable conditions was issued to him
- he understood that as the result of issuance of a discharge general, under honorable conditions he may be ineligible for all benefits as a veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life
- he requested copies of the separation documents that would be sent to the separation authority supporting the proposed separation

k. On 22 September 1993, his commander initiated separation action against him under the provisions of Army Regulation 635-200, paragraph 14-12c, for misconduct-commission of a serious offense and recommended his service be characterized as under other than honorable conditions.

l. On 29 September 1993, the Commanding General, 18th Medical Command, approved the separation recommendation, and ordered the applicant's discharge under

provisions of Army Regulation 635-200, paragraph 14-12c, for commission of a serious offense and directed he be issued an Under Other than Honorable Discharge Certificate.

m. On 6 October 1993, he was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct with an under other than honorable conditions characterization of service, a separation code of JKQ, and a reenlistment code 3. His DD Form 214 shows he completed 2 years, 11 months, and 13 days of active service. His DD Form 214 also shows he was awarded or authorized:

- Army Service Ribbon
- Army Lapel Button
- National Defense Service Medal
- Noncommissioned Officer's Professional Development Ribbon
- Overseas Service Ribbon

6. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

7. In reaching its determination, the Board can consider the applicant's 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 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 the applicant receiving nonjudicial punishment for larceny of Demerol, wrongful use of Demerol, and possession of marijuana. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. The Board concluded that the characterization of service the applicant received upon separation was appropriate.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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 (Army Board for Correction of Military Records) 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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

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 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

d. Paragraph 14-12c Commission of a Serious Offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge, would be authorized for the same or a closely related offense under the Manual for Courts Martial.

(1) Paragraph 14-12c(2): Other personnel (first-time offenders below the grade of sergeant, or with less 3 years of total military service, Active and Reserve) may be processed for separation as appropriate.

(2) Paragraph 14-12c(2)a: First-time drug offenders. Soldiers in the grade of sergeant and above, and all Soldiers with 3 years or more of total military service, Active and Reserve, will be processed for separation upon discovery of a drug offense.

(3) Paragraph 14-12c(2)b: Second-time drug offenders. All Soldiers must be processed for separation after a second 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/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//