

IN THE CASE OF: ██████████

BOARD DATE: 8 August 2024

DOCKET NUMBER: AR20240000505

APPLICANT REQUESTS: his under honorable conditions (general) discharge be upgraded to honorable.

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

- DD Form 149 (Application for Correction of Military Record) (duplicate)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- National Personnel Records Center (NPRC) Letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 did not receive adequate treatment and counselling for his substance abuse problem. Upon leaving the military he received treatment, and he has been a good father, grandfather, and citizen. He asks for this upgrade so that at his funeral his grandchildren can be proud of his service. He was only 17 when he enlisted and had been living on the streets for two years before that. It was not known then what we now know about substance abuse.
3. The applicant enlisted in the Regular Army on 27 September 1979 for a period of 4 years. His military occupational specialty was 24C (Improved Hawk Firing Section Mechanic).
4. The applicant served in Germany from 5 June 1980 through 31 May 1982.
5. An Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) Intake Form, dated April 1982, shows a 180 day follow up report. The applicant was scheduled for non-resident and individual counselling/therapy.

6. The applicant received nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 4 October 1982 for wrongful use of marijuana on or about 30 August 1982. His punishment consisted of reduction to the grade of private first class/E-3, and extra duty.

7. The Summary of ADAPCP Rehabilitation Efforts shows the applicant was referred to ADAPCP for evaluation due to command directed urinalysis on 18 October 1982.

a. The initial screening made by ADAPCP revealed the applicant was an abuser of alcohol and cannabis products. Based on the evaluation results the Rehabilitation Team determined the applicant had problems significant enough to warrant enrollment in Track II.

b. The applicant had substance abuse of alcohol and amphetamines. He admitted to having a long history of drug usage which resulted in positive result of command directed urinalysis.

c. Resources, counseling, urinalysis were made available the applicant refused Antabuse (Disulfiram). The applicant refused Alcoholics Anonymous and/or Narcotics Anonymous meetings even though counseled by the counselor as to the importance of attendance.

d. The applicant continued to use drugs and alcohol while in the outpatient program and refused all attempts by his counselor to get him to stop abusing drugs and alcohol. The commander recommends, under the provisions Army Regulation (AR) 635-200 (Personnel Separation-Enlisted Personnel), Chapter 9, discharge for alcohol or other drug abuse.

e. It was recommended, in view of the applicant's failure to display significant progress toward rehabilitation that his commander declare him a rehabilitation failure and initiate discharge action.

8. The applicant was counseled by his commander on 24 November 1982 for indicating he would not comply with the requirements prescribed in his Track II drug rehabilitation program.

9. The applicant's immediate commander notified the applicant of his proposed separation on 4 January 1983 under the provisions of AR 635-200, Chapter 9, for alcohol or other drug abuse. The commander stated because of the applicant's inability or refusal to participate in, cooperate in, or successfully complete the ADAPCP he was determined to be a rehabilitation failure. The commander advised him of the rights available to him. The applicant acknowledged receipt on 5 January 1983.

10. On 5 January 1983, the immediate commander recommended an honorable or under honorable conditions (general) discharge. The applicant acknowledged receipt on the same date.

11. The applicant acknowledge his understanding of the separation notification, he did not desire military legal counsel for consultation, and elected not to submit statements in his own behalf.

12. The applicant's commander formally recommended his separation from service on 5 January 1983 under the provisions of AR 635-200, Chapter 9, by reason of alcohol and drug abuse prevention and control program failure. The commander noted the applicant was not suited for continued rehabilitative efforts and that such efforts would not be practical and recommended his immediate discharge.

13. The separation authority approved the recommended discharge on 5 January 1983, and directed the issuance of a under honorable conditions (general) discharge.

14. The applicant was discharged on 17 January 1983. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 9, by reason of drug abuse rehabilitation failure, with Separation Code JKK and Reenlistment Code 3/3C. His service was characterized as under honorable conditions (general). He completed 3 years, 3 months, and 21 days of net active service. His awards include the Army Service Ribbon and the Overseas Service Ribbon.

15. The applicant provides a NPRC letter, dated 12 September 2023, which shows they forwarded the applicant's completed DD Form 149 to the Army Review Boards Agency (ARBA).

16. On 16 April 2024, an agency staff member requested the applicant provide documents that support his medical condition. As of 17 May 2024, no response has been provided.

17. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

18. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART)

application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 17 January 1983 under honorable conditions (general) characterization of service. He states “I did not receive adequate treatment and counseling for my substance abuse.”

The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s DD 214 for the period under consideration shows he entered the regular Army on 27 September 1979 and was discharged under honorable conditions (general) on 17 January 1983 under authority provided in chapter 9 of AR 635-200, Personnel Separations – Enlisted Personnel (1 October 1982): Alcohol or Other Drug Abuse Rehabilitation Failure. The separation code of JPC denotes “Drug Rehabilitation Failure.”

c. A partially legible ADAPCP [Alcohol and Drug Abuse Prevention and Control Program] Military Client Intake and Follow-Up Record is marked as a 180-day follow-up report.

d. The applicant received and Article 15 on 4 October 1982 for wrongful use of marijuana.

e. A summary of his ADAPCP Rehabilitation Efforts noted the rehab team met on 24 November 1982 and stated: “SM [service member] continued to use drugs and alcohol on the out-patient program and has refused all attempts by his counselor to get the SM to stop abusing drugs and alcohol.”

f. In a 24 November 1982 counseling statement prepared by his company commander, it is stated the applicant had indicated that he would not comply with the requirements prescribed for track II of his drug rehabilitation program. The commander informed him that because of the applicant’s failure to comply, he was going to initiate action to separated him under chapter 9 of AR 635-200. He would recommend the applicant receive an under honorable conditions (general) characterization of service.

g. A second ADAPCP [Alcohol and Drug Abuse Prevention and Control Program] Military Client Intake and Follow-Up Record is marked as a 360-day follow-up report – completed program.

h. On his pre-separation Report of Medical History, the applicant wrote “I am under no medications and am in good health.” On the accompanying Report of Medical Examination, the provider documented a normal examination except for 20/40 distant

vision in his left eye, no other defects of diagnoses, and the applicant was found qualified for separation.

i. The applicant was notified of the initiation of separation action under chapter 9 of AR 635-200 on 14 January 1983. The separation action was approved on 15 January 1983 and the applicant was discharged.

j. The applicant's service predates the EMR and JLV shows the applicant is not registered with the VA.

k. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

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 DoD guidance for liberal consideration of discharge upgrade requests. The available evidence shows the applicant's commander declared him a rehabilitation failure due to the applicant's inability or refusal to participate in, cooperate in, or successfully complete the Army drug and alcohol prevention program. As a result, his chain of command, initiated separation action against him. He was discharged with a general, under honorable conditions discharge. The Board found no error or injustice in her separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding no available evidence of a behavioral health condition that could mitigate his rehabilitation failure. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 1.

8/8/2024

X

CHAIRPERSON

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, USC, 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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or

Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Chapter 9 contains the authority and outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who has been referred to the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Nothing in this chapter prevents separation of a Soldier who has been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; traumatic brain injury (TBI); sexual assault; or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences.

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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 on the basis of equity, injustice, or clemency grounds, Boards

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//