

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20240000570

APPLICANT REQUESTS:

- an upgrade of his characterization of service
- personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 13 November 2023
- self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 29 January 2003
- certificate of completion, Mental Health Studies – Suicide, Violent Behavior and Substance Abuse, 10 November 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, in effect, he is requesting a discharge upgrade due to his personal growth and circumstances since his discharge. He was discharged due to a positive drug test before a deployment in support of Operation Enduring Freedom. He emphasizes the incident was a result of one single bad decision and it did not reflect his overall character and dedication he exhibited throughout his military service. Prior to the incident he served honorably and was recognized for his commitment and professionalism.

a. Since his discharge, he has built a successful career in investigations, where he has witnessed firsthand the devastating effects of drug and alcohol addiction on individuals and their families. His experience further solidified his resolve to lead a drugfree life and to make a positive impact on others.

b. He now is happily married with two daughters while being a responsible parent, a role model, and ensuring his children are provided with the best possible future. He has a job which aligns with his skills and experience. He believes that having access to the Department of Veterans Affairs (VA) will assist him to ensure his children are provided for, enhance his personal well-being, and enable him to contribute more effectively to society.

3. On his DD Form 149, he annotates other mental health is related to his request.

4. The applicant enlisted in the Regular Army on 21 October 1998, for a 3-year period. He extended on 29 June 2000, for an additional 1-month period to meet the service remaining requirement for an overseas assignment. He reenlisted on 7 January 2001, for an additional 3-year period.

5. His DA Form 2-1 (Personnel Qualification Record) shows he was awarded the military occupational specialty of 77F (Petroleum Supply Specialist) and the highest rank he attained was specialist/E-4.

6. A DD Form 2624 (Specimen Custody Document – Drug Testing), dated 16 September 2002, confirmed the applicant received a positive uranalysis test, showing he tested positive for the use of cocaine.

7. The applicant accepted nonjudicial punishment, under the provisions of Article 15, of the Uniform Code of Military Justice on 30 October 2002, for wrongfully using cocaine at some unknown time and place before 4 September 2002. His punishment imposed was reduction to E-2, forfeiture of \$619 pay/month for 2 months, and 45 days of extra duty.

8. The applicant was notified by his immediate commander of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c (Commission of a Serious Offense). His commander noted the applicant's positive test for the use of cocaine.

9. A DA Form 3822-R (Report of Mental Status Evaluation) shows on 15 November 2002, the applicant was found mentally capable and responsible to understand and participate in the Chapter 14 (Separation for Misconduct) proceedings.

10. The applicant acknowledged the proposed separation action and consulted with counsel on 19 December 2002. He was advised of the basis for the contemplated action to separate him and of the rights available to him. He acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if a general discharge was issued to him and that he may be ineligible for many or all benefits under both Federal and State laws. He requested consulting counsel, did not make an election to

submit a statement in his own behalf, and further understood he may be ineligible to apply for enlistment for a period of 2 years after discharge.

11. The applicant's immediate commander formally recommended his separation from service under the provisions of AR 635-200, paragraph 14-12c, by reason of commission of a serious offense. The intermediate commander concurred with the recommendation, further recommending the issuance of a under honorable conditions (general) discharge.

12. On 23 December 2002, the applicant's recommendation for separation under the provisions of AR 635-200, paragraph 14-12c, was determined to be legally sufficient.

13. On 7 January 2003, the separation authority approved the recommended separation action, waived further rehabilitative requirements and transfer to the Individual Ready Reserve, and directed the issuance of a under honorable conditions (general) discharge.

14. The applicant was discharged on 29 January 2003, under the provisions of AR 635-200, paragraph 14-12c(2), by reason of misconduct, in the grade of E-2. His DD Form 214 confirms his character of service was under honorable conditions (general) with separation code JKK and reentry code 3. He was credited with 4 years, 3 months, and 9 days of net active service. He was awarded or authorized the following decorations, medals, badges, citations, and campaign medals:

- Army Commendation Medal (2nd award)
- Army Achievement Medal
- Army Good Conduct Medal
- Army Service Ribbon
- Noncommissioned Officer's Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon
- Multinational Force and Observers Medal (2nd award)
- Expert Marksmanship Qualification Badge with Rifle Bar
- Expert Marksmanship Qualification Badge with Grenade Bar

15. Block 18 (Remarks) of his DD Form 214 lists his reenlistment and that he completed first term of service. It does not list his continuous honorable service.

16. The applicant provides his certification showing he successfully earned his certificate in Mental Health Studies – Suicide, Violent Behavior and Substance Abuse on 10 November 2023.

17. Regulatory guidance states when an individual is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a under honorable conditions (general) discharge if such is merited by the Soldier's overall record.

18. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

19. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge. He selected OMH on his application as related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 21 October 1998 and reenlisted on 7 January 2001.
- A DD Form 2624 (Specimen Custody Document – Drug Testing), dated 16 September 2002, confirmed the applicant received a positive uranalysis test, showing he tested positive for the use of cocaine.
- Applicant accepted nonjudicial punishment, under the provisions of Article 15, of the Uniform Code of Military Justice on 30 October 2002, for wrongfully using cocaine at some unknown time and place before 4 September 2002. His punishment imposed was reduction to E-2, forfeiture of \$619.00 pay per month for two months, and 45 days of extra duty.
- Applicant was notified by his immediate commander of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c (Commission of a Serious Offense). His commander noted the applicant's positive test for the use of cocaine.
- Applicant's immediate commander formally recommended his separation from service under the provisions of AR 635-200, paragraph 14-12c, by reason of commission of a serious offense. The intermediate commander concurred with the recommendation, further recommending the issuance of a under honorable conditions (general) discharge.
- Applicant was discharged on 29 January 2003, under the provisions of AR 635-200, paragraph 14-12c(2), by reason of misconduct, in the grade of E-2. His DD Form 214 confirms his character of service was under honorable conditions

(general) with separation code JKK and reentry code 3. He was credited with 4 years, 3 months, and 9 days of net active service.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he is requesting a discharge upgrade due to his personal growth and circumstances since his discharge. He was discharged due to a positive drug test before a deployment in support of Operation Enduring Freedom. He emphasizes the incident was a result of one single bad decision and it did not reflect his overall character and dedication he exhibited throughout his military service. Prior to the incident he served honorably and was recognized for his commitment and professionalism. Since his discharge, he has built a successful career in investigations, where he has witnessed firsthand the devastating effects of drug and alcohol addiction on individuals and their families. His experience further solidified his resolve to lead a drugfree life and to make a positive impact on others. He now is happily married with two daughters while being a responsible parent, a role model, and ensuring his children are provided with the best possible future. He has a job which aligns with his skills and experience. He believes that having access to the Department of Veterans Affairs (VA) will assist him to ensure his children are provided for, enhance his personal well-being, and enable him to contribute more effectively to society.

d. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy documentation shows the applicant underwent a mental status evaluation on 15 November 2002. The evaluation indicates the applicant had no significant mental illness or diagnosis, he was mentally responsible, able to distinguish right from wrong, able to adhere to the right, and had the mental capacity to understand and participate in board proceedings.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic behavioral health medical records were available for review, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of OMH.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH on his application but provides no indication of the BH condition he might have experienced.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any other mental health condition. And while the applicant self-asserted OMH, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his contention of OMH is sufficient to warrant consideration by the Board.

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 partial relief was 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.

a. Discharge upgrade: Deny. The evidence shows the applicant committed a serious misconduct (cocaine). As a result, his chain of command, initiated separation action against him. He was discharged and received an under honorable conditions discharge (general). The Board found no error or injustice in his 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 agreed with the medical provider's finding insufficient evidence to support the applicant had an experience or condition that mitigates her serious misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Therefore, 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.

b. Continuous Honorable Service: Grant. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry

is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 his DD Form 214 for the period ending on 29 January 2003 to show: Continuous Honorable Service Form 1998-10-21 to 2001-01-06.
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 upgrading the characterization of his discharge.

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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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) 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. Paragraph 3-7b states 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 consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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 under other than honorable conditions discharge is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

5. 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; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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//