

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 September 2024

DOCKET NUMBER: AR20240000841

APPLICANT REQUESTS: an upgrade of his general, under honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Excerpt of Army Regulation (AR) 635-200 (Personnel Separation – Enlisted Personnel), Chapter 9 – (Alcohol or Other Drug Abuse Rehabilitation Failure)

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 is requesting an honorable discharge because he was not offered rehabilitation. The rules for a chapter 9 discharge (1b) require completion of the active phase of the rehabilitation program before being "kicked out." He was not afforded an opportunity for rehabilitation.
3. The applicant provides the above listed documents to be referenced in the service record.
4. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 28 March 1985. His DA Form 2-1 (Personnel Qualification Record) shows he served in Germany from 19 July 1985 through 17 January 1987.
  - b. He accepted nonjudicial punishment for the following:

- 9 April 1986 – for one specification of failure to go to his appointed place of duty, the continuation sheet was identified; however, not available for review by the Board; his punishment included reduction to private (PVT), E-1
- 16 May 1986 – for one specification of leaving his post before he was relieved
- 25 November 1986 – for one specification of wrongful use of marijuana on or about 30 September 1986 and one specification of being disrespectful in deportment towards a noncommissioned officer on or about 14 October 1986

c. On 15 December 1986, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of AR 635-200, Chapter 9, for alcohol drug abuse or rehabilitation failure. The reasons for his proposed action:

- command referred to Alcohol and Drug Abuse Prevention and Control (ADAPCP), track II, for alcohol and drugs on 24 June 1986; the applicant received an article 15 for a positive urinalysis (UA) on 25 November 1986
- the applicant had a positive start with ADAPCP until 30 October 1986 due to a positive UA.
- the chain of command took every step to reform the applicant and he was unwilling to rehabilitate

d. On 15 December 1986, the applicant acknowledged receipt of the letter of notification.

e. On 17 December 1986, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he is not entitled to have his case heard before a board
- he does not request treatment in a Department of Veterans Affairs (VA) medical center
- he does not submit statements on his behalf

f. On 19 December 1986, the immediate commander initiated separation action against the applicant under the provisions of AR 635-200, Chapter 9, for alcohol or other drug abuse rehabilitation failure.

g. On 22 December 1986, the separation authority approved the discharge recommendation for separation under the provisions of AR 635-200, Chapter 9, for alcohol and drug abuse failure. He would be issued a General Discharge Certificate.

h. On 9 January 1987, he was discharged from active duty. His DD Form 214 shows he was discharged in accordance with chapter 9 of Army Regulation 635-200 with a general, under honorable conditions characterization of service. He completed 1 year, 9 months, and 12 days of active service with no lost time. He was assigned

separation code JPC and the narrative reason for separation listed as "Drug Abuse Rehabilitation Failure," with reentry code 3/3c. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge with M-16 Rifle Bar
- Expert Marksmanship Qualification Badge with Hand Grenade Bar

5. 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.

6. By regulation (AR 635-200), a member who has been referred to Army Drug and Alcohol Prevention and Control Program (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.

7. 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:

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 evidence shows the applicant was command referred to Alcohol and Drug Abuse Prevention and Control, Track II program, for alcohol and drugs on 24 June 1986. He then received an article 15 for a positive urinalysis on 25 November 1986. The chain of command took every step to reform the applicant and he was unwilling to rehabilitate. His commander declared him a rehabilitation failure and initiated separation action against him. He was discharged with a general discharge. The Board found no error or injustice in his available separation processing. 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 evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 635-200 (Personnel Separation – Enlisted Personnel), 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 9 provides the authority and outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who has been referred to the Army Drug and Alcohol Prevention and Control Program (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 general under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required. However, an honorable discharge is required if restricted-use information was used.

3. Army Regulation 635-5 (Separation Documents). The DD Form 214 is a summary of a soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active duty service at the time of release from active duty, retirement, or discharge. The DD Form 214 is not intended to have any legal effect on termination of a Soldier's service. Item 28 (Narrative Reason for Separation) is based on regulatory or other authority guidance.

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//