

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 October 2024

DOCKET NUMBER: AR20240001003

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions (UOTHC) character of service
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show he was awarded the Meritorious Service Medal and the Military Outstanding Volunteer Service Medal
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, for the period ending 14 February 2007

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 found information that there were unfair and unjust circumstances to "add to his state of mind and reasons for details" during his training at Fort Benning and Fort Sam Houston. He was targeted by an outside entity who had connections to military personnel.
3. The applicant enlisted in the Regular Army on 27 December 2005 for a 6-year period. The highest rank he attained was private first class/E-3. He was not awarded a military occupational specialty.
4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 11 August 2006 for two occasions of failure to obey a lawful order, on or about 20 June 2006 for wrongfully missing bed check, and on or about 23 June 2006 for being in the female barracks. His punishment consisted of

reduction to private/E-2, forfeiture of \$333.00 pay, extra duty for 14 days, and restriction for 14 days.

5. The applicant was formally counseled on 14 September 2006 for a positive result on a urinalysis which was conducted on or about 5 September 2006. The applicant was restricted to the company area and his living quarters for an undetermined length of time.

6. On 12 October 2006, the applicant was command referred for a legal blood alcohol test and/or breathalyzer. The corresponding test record shows a positive test result.

7. A memorandum from the Acting Clinical Director of the Army Substance Abuse Program (ASAP), dated 25 October 2006, shows the applicant was referred to ASAP for evaluation on 13 June 2006. The evaluation determined his problems were significant enough for enrollment into the outpatient ASAP program. He agreed to adhere to a treatment plan which he failed to comply with. He continued to drink alcohol and on three separate occasions tested positive for cocaine. When confronted regarding his use of alcohol/cocaine, he denied it. He missed numerous appointments, became angry and disruptive in group sessions, and exhibited poor motivation. On 24 October 2006, he was released from the program as having failed treatment.

8. The applicant underwent a pre-separation medical examination on 12 December 2006. The examining provider determined he was physically qualified for separation.

9. The applicant's immediate commander notified the applicant on 19 January 2007 of his intent to initiate separate action against him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14, paragraph 14-12c (2), by reason of commission of a serious offense. As the specific reasons for the intended separation action, the commander cited the applicant wrongfully failed to obey a lawful order on four occasions and wrongfully used cocaine.

10. The applicant acknowledged receipt of the proposed separation notification. He consulted with counsel and was advised of the basis for the contemplated separation action and its effects; of the rights available to him; and the effect of any action taken by him to waive his rights. He elected not to submit a statement in his own behalf.

11. The applicant's immediate commander formally recommended the applicant's separation under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c (2), prior to the expiration of his term of service. The commander noted the applicant had been given ample time and opportunities to rehabilitate.

12. Before a summary court-martial on 19 January 2007, the applicant pled guilty to and was found guilty of two specifications of failure to obey a lawful order by not being

physically present for bed check on divers occasions, between on or about 30 September and 23 October 2006, and for leaving the company area without authorization on divers occasions, between on or about 12 October and 21 October 2006, and one specification of wrongfully using cocaine on divers occasions, between on or about 20 August and 3 October 2006. His punishment consisted of reduction to private/E-1, forfeiture of \$867.00 pay, and confinement for 30 days.

13. The applicant's intermediate commanders reviewed and concurred with the recommendation, further recommending a service characterization of UOTHC.

14. On 2 February 2007, the separation authority approved the recommended separation action and directed the issuance of a UOTHC Discharge Certificate.

15. The applicant was discharged on 14 February 2007 under the provisions of Army Regulation 635-200, paragraph 14-12c (2), by reason of misconduct (drug abuse). His DD form 214 shows his character of service was UOTHC. He completed 1 year, 1 month, and 18 days of net active service. He was awarded the National Defense Service Medal.

16. The applicant does not provide nor does his record include documentation to show he was awarded the Meritorious Service Medal or the Military Outstanding Volunteer Service Medal.

17. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

18. The Meritorious Service Medal is awarded to members of the Armed Forces of the United States or of a friendly foreign nation who distinguish themselves by outstanding meritorious achievement or service in a noncombat area. The Military Outstanding Volunteer Service Medal is awarded to members of the Armed Forces who perform outstanding volunteer community service of a sustained, direct and consequential nature.




19. The Board should consider the applicant's overall 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 applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. The applicant's contentions, the military record, and published DoD guidance for liberal consideration and clemency determinations when reviewing discharge upgrade requests. The Board considered the applicant's record and length of service, the frequency and nature of the misconduct, his referral to ASAP, the outcome of a summary court-martial, and the character and reason for his separation. The Board did not find evidence of in-service mitigating factors and the applicant did not provide any. Neither did the applicant provide evidence of post-service achievements and conduct in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the applicant's character of service and reason for his separation were not in error or unjust.
3. Additionally, the applicant does not provide nor does his record include documentation to show he was awarded the Meritorious Service Medal or the Military Outstanding Volunteer Service Medal. Therefore, the Board concluded there was insufficient evidence to add the two awards to the applicant's DD Form 214, as requested.

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.

4/28/2025

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, 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 Army Board for Correction of Military Records (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 (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 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 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. Paragraph 2-25 provides that the Military Outstanding Volunteer Service Medal (MOVSM) is awarded to members of the Armed Forces who perform outstanding volunteer community service of a sustained, direct and consequential nature. The MOVSM is categorized as a service medal and, as such, no orders are issued to announce its approval and there is no award certificate. An approval memorandum will be uploaded to the Soldier's Army Military Human Resource Record and the MOVSM will be posted on the Enlisted Record Brief for enlisted Soldiers.

b. Paragraph 3-17 provides that the Meritorious Service Medal is awarded to members of the Armed Forces of the United States or of a friendly foreign nation who distinguish themselves by outstanding meritorious achievement or service in a noncombat area. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.

4. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that must be prepared for Soldiers at the time of retirement, discharge, or release from active-duty service or control of the Active Army. It established standardized policy for preparing and distributing the DD Form 214. 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.

5. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

6. 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/NR) 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.

//NOTHING FOLLOWS//