

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 September 2024

DOCKET NUMBER: AR20240001196

APPLICANT REQUESTS:

- in effect, upgrade of the Reentry (RE) Code 4 on his DD Form 214 (Certificate of Release or Discharge from Active Duty)
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- letter of support, dated 28 April 2023
- letter of support, dated 10 May 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 is requesting removal of his RE-4 from his DD Form 214 so he can rejoin the military service. If it cannot be removed, he requests a waiver for reentry into the military service. As a young Soldier, he did not know how to deal with stress or how to get the needed help before a situation got worse. He made a poor decision which ruined his military career and caused him to be separated from the service. Over the years, he has learned how to utilize services that can assist him in better coping with things. He would really like the opportunity to prove to himself that he can be that stellar Soldier and serve his country again. If given a chance, he will always remember to use the service the Army has in place for Soldiers.
3. The applicant enlisted in the Regular Army on 20 July 2015 and was awarded the military occupational specialty (MOS) 92F (Petroleum Supply Specialist).
4. The applicant's service records contain multiple DA Forms 4856 (Developmental Counseling Form) which show:

- Event-oriented counseling from his squad leader on 21 March 2016, for engaging in a physical fight with a civilian on 19 March 2016
- Event-oriented counseling from his platoon sergeant on 14 September 2017, for receiving a speeding ticket on base on 22 August 2017, for allegedly driving 43 miles per hour (MPH) in a 25 MPH zone

5. A partial military police (MP) report shows:

a. On 1 October 2017, the applicant failed to obey an order (Unlawful Transport of a Weapon) at Joint Base Lewis McChord (JBLM), when he was selected for a random trunk inspection upon attempting to enter the installation on the date of the report.

b. During the inspection, weapon registration papers were observed on the dashboard of his vehicle and he was asked if there was a weapon in the vehicle, to which he replied, "Yes and loaded inside the center console."

c. A search of the vehicle revealed a 9 millimeter (mm) Springfield Pistol loaded with a round in the chamber in the center console. The weapon was not stolen and it was registered on the installation. The JBLM Police confiscated the weapon and transported it to the Provost Marshall's Office for safe keeping and eventual storage in the unit arms room.

d. The report also reflects a prior offense of assault on 19 March 2016.

6. On 4 October 2017, the applicant given event-oriented counseling from his immediate commander regarding his unlawful transport of a weapon on 1 October 2017.

7. A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)) shows on 19 October 2017, the applicant accepted nonjudicial punishment (NJP) under Article 15 of the UCMJ for violating a lawful general order by wrongfully transporting a loaded privately owned firearm onto post in his vehicle on 1 October 2017.

8. A Headquarters, JBLM memorandum from the JBLM Substance Abuse Prevention Supervisory Drug Testing Coordinator, dated 26 March 2018, notified the applicant's immediate commander of the applicant's lab-confirmed positive urinalysis for marijuana on 14 March 2018.

9. On 28 March 2018, the applicant was given event-oriented counseling from his immediate commander regarding his positive urinalysis, initiation of a flag to suspend favorable actions, Substance Use Disorder Clinical Care (SUDCC) referral, and recommended Army separation.

10. A DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) shows a field initiated flag was initiated on 22 May 2018 for the applicant's involuntary separation.

11. A DA Form 3822 (Report of Mental Status Evaluation) shows:

a. The applicant underwent mental status evaluation on 12 July 2018, for the purpose of misconduct administrative separation evaluation. The applicant was found to meet medical retention standards and was cleared for administrative action. He had no duty limitations due to behavioral health reasons. The screenings performed included:

- post-traumatic stress disorder (PTSD)
- depression
- traumatic brain injury (TBI)
- substance misuse
- sexual trauma

b. Behavioral health diagnoses show person with feared health complaint in whom no diagnosis is made. He can understand and participate in administrative proceedings and appreciate the difference between right and wrong; no safety precautions were indicated.

c. Further comments show the applicant did not currently have a behavioral health condition that caused him to fail medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness). The medical record does not contain evidence the applicant currently met criteria for a condition requiring referral to the Integrated Disability Evaluation system (IDES) and had no behavioral health diagnosis.

12. A second DA Form 2627 shows the applicant again accepted NJP under Article 15 of the UCMJ on 23 July 2018, for wrongfully using marijuana between on or about 14 February 2018 and 14 March 2018.

13. A DD Form 2807-1 (Report of Medical History) dated 13 August 2018, shows the applicant provided his medical history for the purpose of Regular Army separation. He indicated he had multiple conditions including recurrent trouble sleeping, depression or excessive worry and illegal drug use. The examiner's comments include insomnia treated with prescription medication, anger and adjustment issues for which he was currently in treatment, a history of depression for which he was taking medication with good results, and marijuana use.

14. A physical profile is used to classify a Soldier's physical disabilities in terms of six factors, as follows: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric) and is abbreviated

as PULHES. Each factor has a numerical designation: 1 indicates a high level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent (P) or temporary (T).

15. A DD Form 2808 (Report of Medical Examination) shows the applicant underwent medical examination on 21 August 2018, for the purpose of Regular Army separation. He was found qualified for service with a physical profile rating of 2 in factor P with listed defects and diagnoses including hypertension, hyperlipidemia, proteinuria, temporomandibular joint (TMJ) pain

16. On 2 October 2018, the applicant's immediate commander notified him of his initiation of action to separate him with a general (under honorable conditions) discharge under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 14, for misconduct – abuse of illegal drugs. The reason for the proposed action was his wrongful use of marijuana between on or about 11 February 2018 and 13 March 2018. His commander also intended to consider that on 1 October 2017, the applicant wrongfully drove onto JBLM with a loaded firearm. He advised the applicant of his right to consult with counsel and to submit comments in his own behalf.

17. On 2 October 2018, the applicant acknowledged receipt of notice from his commander of his intent to separate him under the provisions of AR 635-200, chapter 14 and the rights available to him.

18. On 3 October 2018, the applicant acknowledged having been advised by his consulting counsel of the basis for the contemplated action to separate him under the provisions of AR 635-200, chapter 14, for misconduct – abuse of illegal drugs, its effects, and the rights available to him. He indicated he submitted statements in his own behalf and did not indicate whether he desired consulting counsel representation. He acknowledged not being entitled to consideration of his case by an administrative separation board.

19. A U.S. Army Trial Defense Service-West memorandum from the applicant's Trial Defense Counsel, dated 3 October 2018, shows he met with the applicant on the date of the memorandum and the applicant was exercising his right to include some written matters in his separation packet. The applicant's written statements in his own behalf are not in his available records for review.

20. A Madigan Army Medical Center Residential Treatment Facility memorandum from a Substance Use Disorder Provider, dated 3 October 2018, shows:

a. This memorandum provided requested reporting on an evaluation of the applicant's status at the Residential Treatment Facility at Madigan Hospital. On 18 June 2018, the applicant was admitted to the Residential Treatment Facility at the request of his Substance Use Disorder Provider. His length of stay was planned for 28 days, then his treatment team recommended for him to step down into the Addictions Medicine Intensive Outpatient Program (AMIOP) on JBLM.

b. The applicant was compliant and amendable with treatment and made excellent progress during his stay. His prognosis was excellent. There was no clinical evidence or concern that his potential for continued effective service, duty performance, or ability to safeguard information was diminished.

21. A Commander's Report – Proposed Separation under AR 635-200, Chapter 14, Misconduct – Abuse of Illegal Drugs, dated 15 October 2018, shows the applicant's immediate commander recommended his separation prior to the expiration of his term of service. His commander indicated the applicant was a hard-working Soldier, but drug use is incompatible with standards of discipline and he did not possess the potential for useful service under conditions of full mobilization.

22. On 16 October 2018, the applicant's battalion commander recommended approval of the applicant's general discharge under honorable conditions under the provisions of AR 635-200, chapter 14, due to misconduct – abuse of illegal drugs. He indicated the applicant made a decision to use drugs, which is not in keeping with the Army values and cannot be tolerated in our ranks.

23. On 18 October 2018, the approval authority directed the applicant's general discharge under honorable conditions under the provisions of AR 635-200, chapter 14, due to misconduct-abuse of illegal drugs.

24. The applicant's DD Form 214 shows he was given a general discharge under honorable conditions on 7 November 2018, under the provisions of Army Regulation 635-200, chapter 14, due to misconduct (drug abuse), with corresponding Separation Code JKK and RE-4. He was credited with 3 years, 3 months, and 18 days of net active service.

25. The applicant provided a letter of support from the Deputy Comptroller for the 75th Ranger Regiment, Fort Benning, GA, dated 28 April 2023, which shows:

a. She was writing this letter of recommendation in support of the applicant's desire to return to active duty in the Army. He is an awesome young man who has learned from his previous mistakes that cost him his military career. He is now a father and has worked very hard to become a positive role model for his son. Returning to an active duty status in the Army would allow him to better provide for his son.

b. The applicant is a very hard worker who seeks to continue to better himself spiritually, emotionally, and financially. He has integrity, is a born leader, shows selfless service, respect, and is a very loyal individual. These are just a few of the Army's valued and he embodies them all as a civilian. Just imagine what he will do if given the opportunity to serve his country again. She hopes and prays he will be given another chance at being the best Soldier he can be. Everyone deserves a second chance; let's give him one as well.

26. The applicant provided a second letter of support from Master Sergeant (MSG) E____ H____, dated 10 May 2023, which shows:

a. He has known the applicant since January 2016, when he was his platoon sergeant. He watched the applicant grow in his craft and ability to accomplish all his duties in a timely manner with a stellar attitude, which set him apart from his peers. He took charge of his squad in the absence of the squad leader and mentored new Soldiers within the platoon. He has always been a Soldier of great character, integrity, and judgment and shown dedication to his organization.

b. Soldiers at all levels are faced with several stressors in their lives and sometimes forget that the Army has systems in place that can provide them with assistance before poor decisions are made. The applicant made a poor decision which led to his Army separation. He recently decided he would like the opportunity to reenter military service and if given a second opportunity, will ensure he thinks twice about the consequences behind his actions. He respectfully asks the Board look favorably on his request to have his reentry code 4 removed from his DD Form 214 as he possesses unlimited potential for a future in that Army and would be a great asset to any military organization.

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and found the letters of support the applicant provided insufficient to support clemency. The Board confirmed that the RE code assigned to the applicant is the applicable RE code for the reason for his discharge.

Based on a preponderance of the evidence, the Board determined the RE code the applicant was assigned is 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.



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 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 (Separation for Misconduct) 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, use of illegal drugs, 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 considered appropriate for a Soldier discharged under this chapter.

b. Chapter 3 (Character of Service and Description of Separation) provides:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct.

(2) 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.

(3) A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial when the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army or when the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. Examples of factors that may be considered include the following:

- use of force or violence to produce serious bodily injury or death
- abuse of a special position of trust
- disregard by a superior of customary superior-subordinate relationships
- acts or omissions that endanger the security of the United States or the health and welfare of other Servicemembers
- deliberate acts or omissions that seriously endanger the health and safety of other persons

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The SPD code JKK is to be used for RA Soldiers discharged for misconduct (drug abuse) under the provisions of Army Regulation 635-200, chapter 14.

4. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross

reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code JKK has a corresponding RE Code of "4."

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including RA RE Codes.

- Re Code of "1" (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaiverable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

//NOTHING FOLLOWS//