

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 September 2024

DOCKET NUMBER: AR20240001236

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under other than honorable conditions discharge.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214, certificate of Release or Discharge from Active Duty, 16 July 1984
- Personal Statement
- Statements of Support from friend and from pastor

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20160013730 on 23 October 2018
2. The applicant states he recently had a stent put in his right leg. He has several health issues including high blood pressure and diabetes. He was a member of the Army for 5 years prior to this episode with being caught with marijuana in his system. While serving in Germany, he was out partying with other Soldiers near the red light district. They decided to purchase some drugs from one of the dealers. They all put their money together and he purchased these drugs. They were arrested together by the CID. After the arrest, they were picked up by their company commander. He (the applicant) was placed on restriction and was called into the commander's office, where the commander and first sergeant asked him to remove his rank. Prior to this incident, he had an excellent career in the Army with no problems. It was this one time where he did not use good judgment. He had plans to make a career in the Army but because of this problem, he was unable to continue his military service. This incident was a life altering experience that he will never forget and has changed him forever. As a 23-year old soldier from small town [REDACTED], he did not understand the choices he made in life would hinder him forever. [Applicant marked Other Mental Health on his application.]

3. The applicant enlisted in the Regular Army on 1 July 1980, and he held military occupational specialty 16R, Air Defense Artillery Short Range

a. He served in Germany from 29 October 1980 to 29 April 1982. He then reenlisted on 16 May 1983 and again served in Germany from 24 October 1983 to around 15 July 1984, assigned an Air Defense Artillery Battalion within the 3rd Armored Division. The highest rank/grade he attained was sergeant/E-5.

b. A DD Form 458, Charge Sheet, is not available for review. However, other evidence shows court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ): possession of 13.6 grams of marijuana in hashish form with the intent to distribute on or about 13 April 1984.

c. On 25 June 1984, the applicant consulted with counsel. He was advised of the basis for the contemplated trial by court-martial, the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to him. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, for the good of the service - in lieu of trial by court-martial. In his request for discharge, he acknowledged:

- he was making this request of his own free will and has not been subjected to any coercion whatsoever by any person and he has been advised of the implications that are attached to it
- by submitting this request for discharge, he acknowledges that he is guilty of the charge against him or of (a) lesser included offense therein contained which also authorize(s) the imposition of a bad conduct or dishonorable discharge
- he hereby states that under no circumstances does he desire further rehabilitation for he has no desire to perform further military service
- he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights & benefits as a veteran under both Federal & State laws
- he was advised he could submit any statements he desired in his own behalf. He elected not to make a statement.

d. On 28 June 1984, the applicant's immediate, intermediate, and senior commanders recommended approval of the discharge request with issuance of an under other than honorable conditions discharge.

e. On 5 July 1984, following a review for legal sufficiency and consistent with the chain of command's recommendations, the separation authority approved the

applicant's request for discharge under the provisions of AR 635-200, chapter 10, for the good of the service, and directed that the applicant be reduced to the lowest enlisted grade and receive an under other than honorable conditions characterization of service.

f. The applicant was discharged from active duty on 16 July 1984. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, for the good of the service with an under other than honorable conditions characterization of service. He completed 4 years and 16 days of active service.

4. On 23 October 2016, the Board considered the applicant's request to upgrade his discharge. However, the Board found the evidence presented did not demonstrate the existence of a probable error or injustice and as such the Board denied his request.

5. The applicant provides:

a. Statement from his spouse who has known the applicant since middle school. She states the applicant was always helpful, even after he was separated and did not have a job. He is a caring and honest husband.

b. Statement from a pastor who states the applicant is an outstanding, dedicated, loyal, and faithful servant to his home. He is involved in the church in various roles. He shows a very good character.

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

7. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request to upgrade his under other than honorable conditions (UOTHC) discharge. He marked Other Mental Health (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 1 July 1980.
- He served in Germany from 29 October 1980 to 29 April 1982. He then reenlisted on 16 May 1983 and again served in Germany from 24 October 1983 to around 15 July 1984.
- A DD Form 458, Charge Sheet, is not available for review. However, other evidence shows court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ): possession of 13.6

grams of marijuana in hashish form with the intent to distribute on or about 13 April 1984.

- On 25 June 1984, the applicant consulted with counsel. He was advised of the basis for the contemplated trial by court-martial, the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to him. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, for the good of the service - in lieu of trial by court-martial.
- The applicant was discharged from active duty on 16 July 1984. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, for the good of the service with an under other than honorable conditions characterization of service with Separation Code KFS and Reentry Code 3/3C.
- On 23 October 2016, the Board considered the applicant's request to upgrade his discharge. However, the Board found the evidence presented did not demonstrate the existence of a probable error or injustice and as such the Board denied his request.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "he recently had a stent put in his right leg. He has several health issues including high blood pressure and diabetes. He was a member of the Army for 5 years prior to this episode with being caught with marijuana in his system. While serving in Germany, he was out partying with other Soldiers near the Red-Light district. They decided to purchase some drugs from one of the dealers. They all put their money together and he purchased these drugs. They were arrested together by the CID. After the arrest, they were picked up by their company commander. He (the applicant) was placed on restriction and was called into the commander's office, where the commander and first sergeant asked him to remove his rank. Prior to this incident, he had an excellent career in the Army with no problems. It was this one time where he did not use good judgment. He had plans to make a career in the Army but because of this problem, he was unable to continue his military service. This incident was a life altering experience that he will never forget and has changed him forever. As a 23-year-old soldier from a small town [REDACTED], he did not understand the choices he made in life would hinder him forever."

d. Due to the period of service, no active-duty electronic medical records were available for review and the applicant did not submit any hardcopy medical documentation from his time in military service.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic 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 marked Other Mental Health (OMH) on his application as related to his request. However, in his statement he does not provide a rationale or indicate the mental health 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. The applicant was discharged due to possession of 13.6 grams of marijuana in hashish form with the intent to distribute. 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. Per Liberal Consideration guidelines, the applicant's self-assertion of OMH would not mitigate possession of a controlled substance with intent to distribute. His misconduct is not part of the natural history or sequelae of any mental health conditions and, even if symptoms of a mental health condition were present, at the time of his misconduct, they do not impact one's ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Behavioral Health Advisor. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct

not being mitigated by a mental health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust. The Board concurred with the correction described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

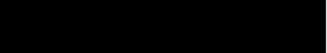
: : : GRANT FORMAL HEARING

   DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Other than the corrections addressed in Administrative Note(s) below, the Board determined 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 otherwise insufficient as a basis for correction of the records of the individual concerned.

3/6/2025

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entries"

- Immediate Reenlistment 1983-05-16 to 1984-07-16
- Continuous honorable service 1978-07-01 to 1983-06-30
- Member Completed First Full Term of Service

REFERENCES:

1. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.
 - a. Paragraph 3-7a states 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 that 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.
2. 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. 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, 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. 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.

3. Army Regulation 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment). Also, an entry regarding completion of first full term of service is required.

//NOTHING FOLLOWS//