

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 September 2024

DOCKET NUMBER: AR20240001976

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) discharge to honorable, and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- Letters of Recommendation (3)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 18 August 2006
- Appointment Affidavits, dated 16 March 2009
- DD Form 1615 (Request/Authorization for Department of Defense Civilian Permanent Duty or Temporary Change of Station (TCS) Travel), dated 10 January 2023
- U.S. Office of Personnel Management (OPM) Records (196 pages), dated 3 March 2009 to 2 January 2022
- Certificates of Training (9), dated 22 May 2014 to 30 June 2022

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:

a. He was discharged in 2006 for using marijuana while under the influence of alcohol. He regrets that poor decision every day. He has not used alcohol or any other substance since then. Since his discharge, he has worked extremely hard and accomplished a lot.

b. In 2009, he was hired by the Communication Electronics Command as a General Schedule (GS)-9, Logistics Assistance Representative (LAR). After 15 plus years of

excellent service, he is now a GS-12, step 10 equivalent. He has excellent annual reviews, maintains a secret security clearance, and has deployed numerous times to Afghanistan, Iraq, Kuwait, Syria, and South Korea. He takes every training opportunity provided, regularly supports field events and training exercises, fields calls for support from all over the world, and works closely with commanders and senior leadership. He would like to further his career. An upgrade would assist him in attaining his goals and allow him to provide a better life for his family.

3. Having had prior service in the U.S. Army Reserve, the applicant enlisted in the Regular Army on 25 August 2005 for a 3-year period. He served in Military Occupational Specialty (MOS) 92A (Automated Logistics). The highest rank he attained was private first class/E-3.

4. The applicant was formally counseled on 10 March 2006 for testing positive for tetrahydrocannabinol (THC) on a urinalysis conducted on 28 February 2006.

5. The applicant underwent a medical examination on 16 March 2006. The relevant DD Form 2807-1 (Report of Medical History) and corresponding DD Form 2808 (Report of Medical Examination) show the applicant reported being in good health and was determined to be medically qualified for separation.

6. The applicant underwent a mental status evaluation on 23 March 2006. The evaluating provider noted a diagnosis of "adjustment disorder with anxiety, resolving," and psychologically cleared the applicant for administrative action deemed appropriate by the command. During the evaluation, the applicant denied marijuana use, stating he was taking Motrin and Naproxen for knee pain, both substances known to cause "false positive" THC lab results.

7. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two occasions:

a. On 23 March 2006, for the wrongful use of marijuana, between on or about 28 January 2006 and 28 February 2006. His punishment consisted of reduction to private/E-1, forfeiture of \$636.00 pay per month for two months, 45 days of extra duty, and 45 days restriction.

b. On 11 April 2006, for making a false official statement with the intent to deceive, on or about 23 March 2006. His punishment consisted of forfeiture of \$636.00 pay per month for two months, 45 days of extra duty, 45 days restriction, and an oral reprimand.

8. The applicant's immediate commander notified the applicant on 12 April 2006, of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, by

reason of commission of a serious offense. The commander noted the applicant's nonjudicial punishment for the wrongful use of marijuana and making a false official statement as reasons for the proposed action.

9. The applicant consulted with counsel on 13 April 2006.

a. He was advised of the basis for the contemplated actions to separate him and its effects; of the rights available to him; and the effect of any action taken by him to waive his rights. He acknowledged understanding that if his service was characterized less favorably than honorable, he may expect to encounter substantial prejudice in civilian life.

b. In a statement in his own behalf, the applicant requested that he be retained. He stated it was his desire to make the military his career. He wished to be part of the team when his unit deployed, as he knew they were shorthanded in his MOS. He could not justify his behavior. He apologized for showing disrespect, and for allowing his problems at home to interfere with his soldiering. He was dealing with a divorce from his wife and an uncertain future.

10. On 18 April 2006, the applicant's immediate commander formally initiated action to separate the applicant under the provisions of AR 635-200, paragraph 14-12c. The commander recommended the applicant be retained, as he was a steady performer, with the potential to overcome his personal family problems and make strong contributions to the unit. The commander further stated the initiation of a chapter was required for the wrongful use of drugs under the provisions of AR 600-85 (The Army Substance Abuse Program), paragraph 1-35.

11. The applicant's intermediate commanders reviewed and concurred with the recommended separation action, further recommending the separation be suspended for a period of twelve months to give the applicant an opportunity to rehabilitate himself.

12. On 24 April 2006, the separation authority approved the recommended separation action, suspending the separation for a period of twelve months.

13. Subsequently, the applicant's immediate commander notified the applicant of his intent to recommend the suspension of his discharge be vacated based upon misconduct. The commander noted the applicant committed adultery with another Soldier and took a photograph with numerous unauthorized badges and ribbons.

14. The applicant acknowledged receipt of the notification of vacation of the suspension of his discharge and submitted a statement, wherein he admitted he had done wrong in the past, but he paid for his transgressions. He should not be discharged because the military was his way of life, and his fellow Soldiers needed him. His work was

unquestionable, and he deserved a second chance. He requested to be transferred to another unit for a fresh start.

15. In two additional supporting statements, two noncommissioned officers vouched for the applicant's professional and personal performance. He was knowledgeable in his MOS and performed beyond expectation. They recommended his retention, as he had the ability to serve in any motor pool and be a valuable asset to the company.

16. On 27 July 2006, the Rear Detachment Chaplain recommended the applicant be relocated to another unit on Fort Drum. The chaplain stated because of [the applicant's] prior issues he was assigned guilt for problems in the unit with which he had no involvement. If removed from his present environment, he could thrive in his demonstrated MOS.

17. The applicant's immediate and intermediate commanders recommended the vacation of the suspension of the approved separation action, further recommending a service characterization of under honorable conditions (general).

18. The separation authority directed vacation of the suspension and execution of the separation, with a service characterization of under honorable conditions (general).

19. The applicant was discharged on 18 August 2006, under the provisions of AR 635-200, paragraph 14-12c (2), by reason of misconduct (drug abuse). His DD Form 214 shows his character of service was under honorable conditions (general). He completed 1 year, 5 months, and 3 days of net active service.

20. The applicant provides the following:

a. In a statement of support, Command Sergeant Major (CSM) (Retired) [REDACTED] states he was the rear detachment CSM when the applicant tested positive for marijuana use. At the time, the CSM was in favor of applying the maximum punishment. Since the applicant's discharge, the applicant has worked as a contractor, and LAR for the 10th Logistics Support Battalion. He was highly regarded for his expertise and other skill sets. He was the first person on the field and last to come off. He participated in numerous deployments. He should be given special consideration for his service to the Army during the Iraq/Afghanistan war.

b. In two additional statements of support, the authors attest to the applicant's performance as a Soldier and as a civilian employee. He served with pride and honor and should have been honored with a proper discharge. He could always be counted on to go above and beyond. He has deployed twice to combat locations, and he is someone you would want on your team.

c. The applicant's appointment affidavits, deployment orders, and OPM record show his appointments, deployments, promotions, and evaluations in civilian service from 3 March 2009 to 10 January 2023.

d. Nine Certificates of Training, dated 22 May 2014 to 30 June 2022, show some of the applicant's post-service training in his field of expertise.

21. When an individual is discharged under the provisions of AR 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.

22. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

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.

3. The Board found the evidence of post-service achievements and the letters of support provided by the applicant support clemency. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to honorable.

4. The Board concurred with the correction described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3



GRANT FULL RELIEF

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GRANT PARTIAL RELIEF

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GRANT FORMAL HEARING

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DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- Reissuing his DD Form 214 for the period ending 18 August 2006 to show his character of service as honorable
- Making the correction described in Administrative Note(s) below

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):

The applicant completed a period of initial active duty for training (IADT). He was awarded a Military Occupational Specialty at the completion of training and returned to the control of the U.S. Army Reserve. Regulatory guidance provides that when a Reserve Component Soldier successfully completes IADT, the characterization of service is Honorable unless directed otherwise by the separation authority. Please reissue him a DD Form 214 for the period ending 6 July 2005, showing his character of service as honorable.

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 15-185 (Army Board for Correction of Military Records), paragraph 2-11 states applicants do not have the right to a hearing before the ABCMR. The Director of the ABCMR may grant a formal hearing whenever justice requires.
3. Army Regulation 600-85 (The Army Substance Abuse Program), in effect at the time, identified Army policy on alcohol and other drug abuse and assigned responsibilities for implementation of the program. Paragraph 1-35 (Illegal Drugs and Sanctions) states administrative separation will be initiated and processed to the separation authority for decision on any Soldier with a positive drug test that could not have resulted from legitimate medical use of a drug. Processing will be initiated within 30 calendar days of receipt of a positive drug test report.
4. Army Regulation 635-5-1 (Separation Program Designator Codes) provides the specific authorities, reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. Separation code "JKK" is the appropriate code to assign to Soldiers involuntarily separated under the provisions of Army Regulation 635-200, Chapter 14, Paragraph 14-12c(2), by reason of misconduct (drug abuse).
5. Army Regulation 635-8 (Separation Processing and Documents) establishes the standardized policy for preparing and distributing the DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service. 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.
6. 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. 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. 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 was merited by the Soldier's overall record.

7. 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//