

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 November 2024

DOCKET NUMBER: AR20240002455

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge

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

DD Form 149 (Application for Correction of Military Record)

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 his performance record was stellar and he never had any issues that would have prevented him from performing his duties.
3. The applicant's service record contains the following documents:
 - a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army and entered active duty on 3 August 1994. He remained in the Army through an immediate reenlistment.
 - b. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice(UCMJ)) shows he accepted nonjudicial punishment for disobeying a lawful order. His punishment included extra duty for seven days. He did not appeal his punishment.
 - c. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) shows he accepted nonjudicial punishment, in the rank of sergeant, for wrongful use of marijuana between on or about 12 March 1999 and on or about 12 April 1999. His punishment included to be reduced to the rank of specialist (SPC), forfeiture of \$663 per month of two months, and extra duty for 45 days. He appealed the punishment and his appeal was denied.

d. Memorandum subject Recommendation for Separation under Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, Paragraph 14-12c(2), Commission of a Serious Offense, dated 19 August 1999, shows the applicant's commander was initiating separation of the applicant, in the rank of SPC, for wrongful use of marijuana. The commander was recommending the applicant be retained to complete his service obligation. If the commander's recommendation was not approved, he was recommending the applicant receive an honorable characterization of service. The intermediate commander(s) and separation authority were not bound by the commander's recommendation as to characterization of service.

- g. On 27 August 1999, the applicant was advised by his consulting counsel of the basis for the action to separate him for commission of a serious offense, the rights available to him, and the effect of waiving his rights.

h. The applicant's chain of command recommended he be separated from the Army with an under honorable conditions (general) discharge. In an undated memorandum, the appropriate approval authority approved his separation with issuance of an under honorable conditions (general) discharge.

i. On 20 October 1999, the applicant was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he had completed 5 years, 2 months, and 18 days of active duty service. He was discharged for misconduct, his characterization of service was under honorable conditions (general), his separation code was JKK, and his reentry code was 4. He was awarded or authorized the Expert Marksmanship Qualification Badge with Rifle Bar.

4. Soldiers are subject to separation under the provisions Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, for misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct an under honorable conditions (general) discharge or honorable discharge if such is merited by the overall record.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to grant relief based upon the lengthy period of honorable service completed prior to any misconduct in the record. However, based upon the misconduct leading to the applicant's separation and the lack of any clemency or mitigating evidence for the misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	█	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	:	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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.
2. Prior to closing the case, the Board did note the administrative note below from the analyst of record and recommended that change be completed to more accurately reflect the military service of the applicant.

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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.

ADMINISTRATIVE NOTE(S):

The applicant's DD Form 214 for the period ending 20 October 1999 shows he was awarded a military occupational specialty and attended the Primary Leadership Development Course, as such, he is authorized award of the Army Service Ribbon and the Noncommissioned Officer Professional Development Ribbon. Correct his DD Form 214 for the period ending 20 October 1999 by adding the Army Service Ribbon and the Noncommissioned Officer Professional Development Ribbon.

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 Separations – Enlisted Personnel), in effect at the time sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.
 - a. 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, 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. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.
 - d. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or absence without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Army policy states that an under

other than honorable conditions discharge is normally considered appropriate for a Soldier discharged for misconduct.

3. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JKk is used for discharge for misconduct, use of illegal drugs.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. On 25 August 2017 the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to

consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

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/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 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.

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//