

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240002717

APPLICANT REQUESTS: reconsideration of his prior request for an upgrade of his other than under honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Two Certificates of Completion

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 AR20120018954 on 14 May 2013.

2. The applicant states he is requesting an upgrade from an, other than honorable (OTH) discharge to an honorable discharge. He served from February 23, 1984 to May 10, 1990, the first four years of his service were marked by an honorable discharge, but the last two years resulted in an OTH discharge, due to his personal struggles and substance abuse. During his service, he experienced a series of traumatic events, including the death of his newborn daughter, while stationed overseas and the subsequent crash of a plane carrying his military unit. These events led to significant depression, which contributed to poor decisions, including drug use, ultimately resulting in his OTH discharge. He acknowledges his past mistakes, but emphasize his efforts to turn his life around, including attending substance abuse programs and maintaining sobriety for many years. With the support of his family and friends, he has rebuilt his life and now seek an upgrade to his discharge status to reflect his personal growth and positive changes.

3. The applicant provides:

- a. A DD Form 214 dated 11 May 1990.

b. Two Certificate of Completion:

- Outpatient Services Program at JSAS HealthCare, INC, dated 16 December 2014
- Outpatient Substance Abuse Program the First Step, dated 11 September 2017

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 23 February 1984.

b. A DA Form 2627-1 (Summarized Record of Proceedings Under Article 15, UCMJ) shows he accepted nonjudicial punishment on 4 April 1989 for one specification of wrongful use of cocaine on or about 1 March 1989 to 6 March 1989. His punishment was reduction to private (E-1) suspended (remitted if vacated before 4 October 1989, forfeiture of \$250 per month for 2 months.

c. His service record includes a memorandum from the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) dated 24 August 1989, show the applicant self-enrolled into the program on 22 February 1989.

d. On 17 September 1989, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 9, for ADAPCP rehabilitation failure. The reason for his proposed action was for the applicant testing positive on two separate occasions for wrongful use of a controlled substance, for cocaine. The applicant acknowledged receipt on the same day.

e. On 16 October 1989, the immediate commander initiated separation action against the applicant for ADAPCP failure.

f. On 19 October 1989, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general, under honorable discharge was issued to him
- he will be ineligible to apply for enlistment for a period of 2 years after discharge.

g. A DA Form 2627-1, shows he accepted nonjudicial punishment on 31 October 1989 for one specification of wrongful use of cocaine on or about 12 July 1989 and 19 July 1989. His punishment was reduction to private (E-1).

h. A DA Form 3822-R (Report of Mental Status Evaluation), dated 14 December 1989, confirmed the applicant was command referred for a mental evaluation due to administrative separation proceedings. The applicant had the mental capacity to understand and participate in the proceedings. He was cleared for any administrative action deemed appropriate by command.

i. His service record includes a memorandum from the separation authority recommending the applicant being chaptered under AR 635-200, chapter 14-12c, for second time drug offender vice chapter 9.

j. On 22 December 1989, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of AR 635-200, Chapter 14-12c, for commission of a serious offense. The reason for his proposed action was for the applicant testing positive on two separate occasions for wrongful use of a controlled substance, for cocaine. He recommended the applicant receive a under than honorable discharge. The applicant acknowledged receipt on the same day.

k. On 19 October 1989, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he consulted with legal counsel and considered whether or not to submit a conditional waiver
- he voluntarily waived consideration of his case by an administrative board
- he provided a statement on his behalf
- he understood that if the separation authority refuses to accept this conditional waiver of a hearing before an administrative separation board that my case will be referred to an administrative separation board
- he requested a personal appearance before an administrative board
- he may encounter substantial prejudice in civilian life if a general, under honorable discharge was issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment for a period of 2 years after discharge.

l. On 3 January 1990, the applicant provided a statement which states, he does not dispute the alleged offenses, however, he did believe he should receive a discharge characterized as general under other than honorable conditions. To receive a discharge of this type could cause him a great deal of difficulty in obtaining decent employment after discharge. He is married and have two small children; it is important that he obtain a good job so that he may provide for his family with adequate support. To receive a discharge under less than honorable conditions would cause his family to suffer through no fault of their own. He requests an honorable discharge.

m. On 8 January 1990, the separation authority disapproved the applicant's conditional waiver. He felt the applicant's misconduct warranted an involuntary separation with no favorable consideration regarding characterization of service.

n. On 8 January 1990, the separation authority recommended the applicant be processed for discharge from active duty with an other than honorable discharge.

o. On 8 March 1990, a legal review shows the administrative board provided the findings and recommendations of the chapter 14 separation board were adequately supported by a preponderance of evidence. The applicant should be discharged for the commission of serious offenses IAW AR 635-200, paragraph 14-12c. The applicant should be separated with an other than honorable discharge.

p. On 13 March 1990, the general court-martial convening authority considered the board's findings, recommendations and all of the facts and circumstances in the case of the applicant. He approved the will receive an Other Than Honorable Discharge Certificate and the separation reason will be "Misconduct – Abuse of Illegal Drugs", separation code of JKK, and the applicant will be reduced to private (E-1).

q. On 11 May 1990, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 6 years, 2 months, and 19 days of active service with no lost time. He was assigned separation code JKK and the narrative reason for separation listed as "Drug Abuse rehabilitation Failure," with reentry code 3c. It also shows he was awarded or authorized the:

- Army Service Ribbon
- Army Good Conduct Medal
- Overseas Ribbon
- Sharpshooter Marksmanship Qualification Badge with M16 Rifle Bar
- Sharpshooter Marksmanship Qualification Badge with Hand Grenade

5. A review of the applicant's record confirms he is eligible for an award and campaign credits that are not recorded on his DD Form 214. The entries will be added to his DD Form 214 as administrative corrections and will not be considered by the Board.

6. On 14 May 2013, the ABCMR rendered a decision in Docket Number AR20130018954. The Board considered the applicant's request for an upgrade. The Board found absence of evidence to the contrary, it was determined that all requirements of law and regulations were met, and the rights of the applicant were fully protected throughout the separation. The Board considered the evidence, and determined that the overall merits of the case are insufficient as a basis for correction of the records.

7. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

8. By regulation (AR 635-200), action will be taken to separate a Soldier for misconduct, such as a pattern of misconduct, when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

9. 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.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the multiple incidents of wrongful use of cocaine and the failure of the applicant to learn from his misconduct after the first incident, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

2. The Board did note, however, that the applicant completed a period of honorable service not currently annotated on his DD Form 214 and recommended that change be completed to more accurately reflect his military 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 Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by adding the following additional statement to block 18 (Remarks) of his DD Form 214: "Continuous honorable active service from 3 February 1984 until 23 December 1988."
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the characterization of his discharge.

[REDACTED]

[REDACTED]

[REDACTED]

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 635-8 (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).
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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 (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

4. 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 based on 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//