

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 November 2024

DOCKET NUMBER: AR20240003519

APPLICANT REQUESTS: an upgrade of his (general) under honorable conditions discharge. Also, a personal appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Self-authored statement

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 at the time of his discharge this was the only option that was given to him. Currently, he realizes that other options, should have been presented to him such as counseling, therapy, mediation. Had this been presented he would have completed his full term or retired from the Army. He was informed under honorable conditions (general) was on a positive note. He recently tried to sign up for health benefits and was denied due to item 24 (character of service) of his DD Form 214. In a self-authored letter, he states:

a. His full intent was to serve his country and that obligation was cut short due to a hiccup in his personal life. His wife at the time (now ex-wife) was being unfaithful, there were several infidelity episodes happening and it was hard to stay afloat mentally due to his unit occasional field mission exercises.

b. He joined the Army because he wanted to serve his country and loved every bit of the experience that he endured while in the Army, everything from his military occupational specialty, he learned so much, and met so many people while serving. He would consider himself an excellent soldier, that never got in trouble nor sought it. He was liked by fellow soldiers and so he ended up being his commander's driver for his

unit which was the 24th Quarter Master Supply Company in Fort Lewis, WA. He had no blood family where he was stationed at the time, but he had shared this information with his front line and squad leader.

c. He was discharged without any counseling or anything. Nothing was done to assist him, instead he was release early from his military obligation. He was quite young at that moment. Had he known that counseling or some other mental health mediation could assist him in the matter he would have agreed for anything to help him during his journey and made the military a career like he planned. He wanted to get his DD Form 214 upgraded so that he can utilize his state & federal benefits. He believes if he was with the right people, he would have gotten the proper help that he needed at the time, he would have retired by now from the military. He asks please help so he can finally get the help that he needs for himself after all these years.

3. The applicant enlisted in the Regular Army on 10 August 2000. He held military occupational specialty 62B (Construction Equipment Repairer).

4. The applicant's command was notified on 28 March 2002, of a positive toxicology drug test for Tetrahydrocannabinol (THC) by the applicant's specimen taken on 13 March 2002.

5. His commander referred him in Alcohol and Drug Abuse Prevention and Control Program on 5 April 2002.

6. The applicant's command was notified on 8 April 2002, of a positive toxicology drug test for THC by the applicant's specimen taken on 19 March 2002.

7. On 9 April 2002, the applicant underwent a mental status evaluation. He was mentally responsible for his behavior, can distinguish right from wrong, and possessed sufficient mental capacity to participate in administrative and judicial proceedings. He was cleared for any administrative actions deemed appropriate by command.

8. On 8 May 2002, his immediate commander notified him of her intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14, paragraph 14-12c for commission of a serious offense. The reason for the proposed action was he tested positive for marijuana on 13 and 19 March 2002. The applicant acknowledged receipt of the notification the same day.

9. DA Form 4187 (Personnel Action) shows he was reduced to the grade of private with a date of rank of 13 May 2002. The non-judicial punishment was void of his records.

10. On 15 May 2002, he was afforded the opportunity to consult with counsel for the contemplated action to separate him for commission of a serious offense under the

provisions of AR 635-200, chapter 14, and its effects; of the rights available to him; and the effect of any action taken by him in waiving those rights. He understood:

- He may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- As the result of issuance of a discharge under other than honorable conditions, he may be ineligible for many or all benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life

11. On 16 May 2002, his chain of command recommended that he be separated prior to the expiration of his current term of service under AR 635-200, chapter 14, paragraph 14-12c and that his character of service be general, under honorable conditions.

12. On 20 May 2002, the separation authority directed that the applicant be separated from the Army with a General Discharge Certificate.

13. Accordingly, he was discharged on 12 June 2002. His DD Form 214 shows he completed 1 year, 10 months, and 3 days net active service this period. It also shows:

- Item 24 (Character of Service): Under Honorable Conditions (General)
- Item 25 (Separation Authority): AR 635-200, paragraph 14-12c
- Item 26 (Separation Code): JKQ
- Item 27 (Reentry Code): 3
- Item 28 (Narrative Reason for Separation): Misconduct

14. There is no evidence the applicant applied to the Army Discharge Review Board within the Board's 15-year statute of limitations.

15. By regulation, AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service.

16. 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. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant committed serious misconduct (positive test for marijuana). As a result, his chain of command initiated separation action against him. He was discharged with a general, under honorable conditions characterization of service. The Board found no error or injustice in his separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was 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.

[REDACTED]

[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 (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a (1) 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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.

//NOTHING FOLLOWS//