

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 December 2024

DOCKET NUMBER: AR20240003931

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to general, under honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- Character Reference Letter
- Certificate of Registration Business Tax
- Leadership Development course Diploma
- Certificate of Training
- Small Arms Maintenance Training Certificate
- Honorable Discharge Certificate
- Army Achievement Medal

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 he served his country, married for thirty-six (36) years, and became a productive citizen with no other marks against his character. He would like a full consideration of his military discharge to be upgraded to general discharge for future reference in his military files. He was not aware he could get an upgrade. However, after researching benefits that he might be entitled to he learned he could request for an upgrade.
3. The applicant provides the following documents:
 - a. A character reference letter that discusses his honesty, encouragement, and professional capacity.

b. A copy of his certificate of registration of business tax that indicates the applicant is a business owner.

c. Three (3) Training Certificates indicating successful completion dated the following dates:

- 15 October - 19 October 1984
- 29 August – 25 September 1986
- 26 November – 7 December 1984

d. A copy of his Honorable Discharge Certificate dated 30 September 1985.

e. A copy of his Army Achievement Medal for meritorious service as a supply clerk, dated 1 February 1986.

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

a. He enlisted in the Regular Army on 26 June 1982.

b. He served in Germany from 26 September 1984 to 3 January 1986.

c. A urinalysis report shows the applicant tested positive for tetrahydrocannabinol (THC) dated 28 October 1986.

d. On 9 December 1986, he accepted nonjudicial punishment for wrongful use of marijuana.

e. A urinalysis report shows the applicant tested positive for THC dated 4 March 1987.

f. On 27 April 1987, he accepted nonjudicial punishment for wrongful use of marijuana.

g. On 5 May 1987, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 14, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for misconduct. The specific reasons for his proposed recommendation two (2) positive urinalysis screenings.

h. 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 discharge under other than honorable conditions is issued to him

- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he is ineligible to apply for enlistment in the Army for 2 years after discharge

i. The immediate commander-initiated separation action against the applicant for applicability of paragraph 14-12c. The specific reasons for his proposed recommendation two (2) positive urinalysis screenings. The intermediate commander recommended that his period of service be characterized as general, under honorable conditions.

j. Notwithstanding with the chain of command recommendations, the separation authority approved the discharge recommendation for separation under the provisions of Chapter 14, AR 635-200, paragraph 14-12c. However, he would be issued a under other than honorable conditions discharge.

k. On 11 June 1987, he was discharged from active duty with a under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 years, 5 months, and 6 days of active service. He was assigned separation code JKK and the narrative reason for separation listed as "Misconduct-drug abuse." It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- 2nd Class Marksmanship Qualification Badge with Hand Grenade
- Driver-Wheel Badge

5. 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.

6. By regulation, 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.

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

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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the over four years of service completed prior to the misconduct leading to the applicant's separation and the post-service character evidence showing the applicant has learned and grown from the events leading to his separation, the Board concluded there was sufficient evidence to grant clemency by upgrading the characterization of service to Under Honorable Conditions (General).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	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 the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

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 635-200 (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.

3. 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//