

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240004099

APPLICANT REQUESTS: reconsideration of his previous request for 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)
- Letter addressed to the board
- Applicant's biography
- Three (3) Character Statements
- Request for Criminal Background Record Check

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 AR20170010090 on 26 June 2019.

2. The applicant states, via letter addressed to the Board:

a. He understands and accepts full responsibility as to the reason why he was discharged. However, he was young and unaware of how truly beneficial serving in the Army at the time. It was his first time away from home and he allowed it to get to him. If he could go back and redo things, he would because it was an honor to serve for his country. He would love to be able to say, with pride, to his sons that he served in the Army without feeling the shame and guilt from his actions.

b. He did not realize how much he gained from serving, until it was too late. He knows that the discipline and the work ethics that he has comes from Army training. He is now married, with two boys and a bonus son, who he is raising as his own. He always encourages his sons to finish what they start, no matter how difficult the task may be at the time. He knows in his heart that this comes from the guilt he carries from not completing his obligation or even staying beyond the time.

c. He ensures that he gives 100% at his job every single time, nothing less. He has been working with the Alabama Department of Transportation (ALDOT) for six years. He knows that his time in service prepared him for this position. Even during off duty hours, he is always on call in case of a natural disaster (i.e. snowstorm, rainstorm, tornado, or even a bad accident) that may require the aide of ALDOT. An upgrade in his discharge would mean a great deal to him, as it will be an accomplishment that he can be proud to tell his sons about. This would also show his sons that that yes, we all make mistakes, but there is also grace if we can stand on those mistakes and do everything in our power to correct them. This upgrade will open doors for his entire family that he thought were closed forever.

3. The applicant provides:

a. Applicant's statement, which outlines his time in service and the events that led to his discharge, is as follows:

(1) Upon completion of training, he was stationed in Fort Drum, NY, which was a long way from home and what he was used to. He was all set to start his Army career. He wanted to get his car so that he would have a way to get around if he needed to. He requested leave but was told that he was 100 days in the hole, which he had no clue about since he just finished training. He went to his first sergeant (1SG) and explained to him the situation and the 1SG told him that he would check into it and get it fixed, but he (the applicant) was able to go home to get his car.

(2) When he returned, he went back to his 1SG to see if the problem was fixed, but it was not. He was now in the hole even more than the days it took him to go home and get his car. His 1SG stated that he would take care of this problem. They removed a couple of days, but he was still in the hole for hundreds of days. This went on for about a year, with no resolution in sight. At the time, there were things going on at home with his mother and sister, and due to having no leave days, he could not go home to check on them. This bothered him as his mom suffered from bipolar and depression while caring for his mentally disabled sister.

(3) Once again, he reached out to 1SG to see if it was possible to be transferred to someplace closer to Alabama since he was having a hard time getting his leave straightened out. The 1SG responded by saying, "no" and he would not be signing anything that would allow him to transfer at any time. This devastated him because he thought that the 1SG would understand and have some compassion. Instead, his leave balance was never corrected and the 1SG made it clear that he will not let him (the applicant) transfer either. He felt as if his request was met with animosity and that he was constantly singled out and embarrassed in front of the other Soldiers.

(4) He and his 1SG constantly got into arguments. He started to feel alone and depressed. A major family crisis occurred at home and he went to his 1SG in hopes that he would be granted his leave to go home for a few days. Once again, his leave was denied and was told by the 1SG that he did not have to let him (the applicant) go home. This sent him into a depressive state, so he started finding ways (drugs or alcohol) to cope with the pain that he was feeling. He stopped caring because he felt as though no one cared about him. He was put on extra duty and even went to jail for 20 days. He knows that this wasn't the right way to handle it, but the depression had gotten the best of him. He just wanted out by any means necessary.

b. Three (3) Character Statements written by the applicant's spouse, fellow Soldier, and current ALDOT supervisor, all which attest to the applicant's dependability, work ethics, determination, and commitment to his family, his job, and his community.

c. Request for Criminal Background Record Check, dated 2 February 2024, reflects the applicant voluntarily requested a criminal background record check. It was determined that there is a criminal record on file in Butler County on the applicant.

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

a. He enlisted in the Regular Army on 9 November 2000.

b. He accepted nonjudicial punishment (NJP) as follows:

- On 21 December 2001, for wrongfully use marijuana on or about 19 October 2001 and on or about 19 November 2001; he was reduced to private (E-1)
- On 15 January 2002, for failing to go at the times prescribed to his appointed place of duty on or about 18 December 2001

c. On 12 February 2002, he was convicted by a summary court-martial of one specification of being absent without leave on 24 January 2002 and one specification of failure to be at his appointed place of duty on 24 January 2002. The court sentenced him to 20 days confinement. The convening authority approved the sentence.

d. On 9 April 2002, his immediate commander notified him of his intent to initiate separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 14-12b for pattern of misconduct. The applicant acknowledged notification on 9 April 2002. The reason for the commander's actions are due to frequent counseling for various infractions between 23 October 2001 and 5 March 2002, including:

- failing to report on multiple occasions
- failing to be at his appointed place of duty

- failing to report to extra duty
- disobeying orders
- positive urinalysis test for illegal drugs
- two Article 15s (one for disobeying orders and one for illegal drugs)

e. On 16 April 2002, he was advised by his consulting counsel of the basis for the contemplating action to separate him for misconduct under AR 635-200, Chapter 14 and its effects; of the rights available to him; and the effects of any action taken by him in waiving his rights. He understood if he had less than six years total of active and reserve military service at the time of separation and being considered for separation for misconduct under AR 635-200, Chapter 14, he is not entitled to have his case heard by an administrative separation board. The applicant requested:

- consideration of his case by an administrative board
- personal appearance before the administrative separation board
- did not submit statements on his behalf
- consulting counsel representation

f. On 16 and 18 April 2002, the applicant's immediate commander and intermediate commanders recommended separation under the provisions of AR 635-200, chapter 14-12b, pattern of misconduct, waiver of rehabilitative requirement, and the applicant's service be characterized as under other than honorable conditions.

g. On 30 April 2002, the separation board was empowered to adjudicate an under other than honorable discharge, to consider whether the applicant should be separated before expiration of his current term under the provisions of AR 635-200, chapter 14-12b for pattern of misconduct.

h. On 9 May 2002, the applicant was again advised by his consulting counsel of the basis for the contemplating action to separate him for misconduct under AR 635-200, Chapter 14 and its effects; of the rights available to him; and the effects of any action taken by him in waiving his rights. He understood if he had less than six years total of active and reserve military service at the time of separation and am being considered for separation for misconduct under AR 635-200, Chapter 14, he is not entitled to have his case heard by an administrative separation board. The applicant:

- waived of consideration of his case before an administrative separation board
- waived of personal appearance before an administrative separation board
- elected not to submit no statement on his behalf will be submitted
- understood he may encounter substantial prejudice in civilian life if an Other Than Honorable discharge is issued to him
- understood that as the result of issuance of a discharge under other than honorable conditions, he might be ineligible for many or all benefits as a

veteran under both Federal and State laws and that he may expect to encounter substantial prejudice in civilian life

i. On 15 May 2002, the separation authority approved the unconditional waiver and withdrawal of the referral of his case to an administrative separation board. He further approved the separation under the provisions of AR 635-200, chapter 14-2b for pattern of misconduct and ordered the applicant's service be characterized as under other than honorable conditions.

j. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows that he was discharged on 20 May 2002 under the provisions of AR 635-200, chapter 14-12b, misconduct, separation code JKA, reentry code 4, and character of service of under other than honorable conditions. He served 1 year, 5 months, and 22 days net active service this period. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded the National Defense Service Medal, Army Service Ribbon, and Marksman-Marksmanship Qualification Badge with Rifle Bar (M16). He had lost time from 12 February 2002 to 3 March 2002.

5. On 26 June 2019, the Board denied his request for an upgrade of his discharge. After review of the application and all evidence, the Board determined relief is not warranted. The Board carefully considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the relatively short term of service completed prior to a pattern of misconduct, the reason for his separation and whether to clemency was to be applied. The Board found insufficient evidence of in-service mitigating factors and the applicant did not provide post-service character witness statements or evidence of post-service achievements to support his statement and a clemency determination. The Board applied Department of Defense guidance for consideration of discharge upgrade requests to the complete evidentiary record and did not find any evidence of error, injustice, or inequity. Based on a preponderance of evidence, the Board agreed that the applicant's discharge characterization was warranted as a result of the misconduct and not in error or unjust.

7. The applicant provides letters of support from:

a. His spouse who states the applicant is a remarkable person who puts effort in everything that he does. He is a provider of the household; he cares for every member of his family and hers. He cares for his mother who has suffered 3 strokes and is a wonderful brother to a mentally disabled sister. He is well loved by all, coworkers, friends, family, etc. He has chosen to take on two jobs so that she can focus solely on attending school, raise her son, and assist with his mother and sister as needed.

b. Retired staff sergeant who worked with this man for the last 7 years at the Alabama Department of Transportation in Greenville, AL. The applicant displays professionalism and confidence in his job and has gained the trust of each and every one of us here. The applicant is someone he would have trusted with his life in combat zones as well as home life. He recommends the applicant be considered for a discharge upgrade to a General discharge under Honorable conditions. The applicant has learned a valuable lesson from his actions while in service.

a. Transportation Director, Alabama Department of Transportation, states he supervises 52 employees including the applicant. Since beginning his employment, the applicant has been an exemplary employee performing at an "Exceeds Standards" level based on their annual Performance Appraisal rating system. He has a strong work ethic and is capable of performing all duties required of him. He has obtained and retained all required trainings and certification including a Commercial Drivers License (CDL). He has very good punctuality and attendance, cooperates exceptionally well with co-workers and the public and is always willing to volunteer during after hours emergency situations to ensure people are able to travel safely on their roadways.

6. By regulation, AR 635-200 establishes policy and prescribe procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

7. 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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant exhibited a pattern of misconduct (NJP for wrongfully use marijuana; failing to go at the times prescribed to his appointed place of duty, and conviction by a summary court-martial of one specification of being AWOL and failure to be at his appointed place of duty). As a result, his chain of command initiated separation against him. He was discharged with an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The applicant provides multiple character reference letters in support of a clemency determination. The letters speak of his post discharge employment, character, and family support, and voted to upgrade his discharge. The Board found these letters insufficient and do not outweigh his misconduct (NJPs, summary court-martial, and drug

use). Based on a preponderance of available 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 to amend the decision of the ABCMR set forth in Docket Number AR20170010090 on 26 June 2019.

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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.

REFERENCES:

1. Army Regulation 635-200 (Personnel Separations-Enlisted Separations) in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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. 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 that regulation states members are subject to separation for a pattern of misconduct consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline.

2. 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. 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. 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//