

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 November 2024

DOCKET NUMBER: AR20240004131

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge to honorable
- a favorable change of his separation and reentry eligibility (RE) codes
- personal appearance before the Board

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

- DD Form 293 (Application for the Review of Discharge)
- Character reference letter

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 wants to enlist in the U.S. Air Force Reserve or Air National Guard. He understands that he was discharged for smoking marijuana. He was an immature 19 year old kid. He can pass a drug test and he is in good physical condition. He would love to serve again and do whatever it takes.
3. On 28 June 2001, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty 11C (Indirect Fire Infantryman). The highest grade he attained was E-4.
4. The applicant received formal counseling on the following dates/for:
  - 31 May 2002; his room was in an unsanitary and unsafe state
  - 8 July 2002; disobeying a direct order
5. On 16 August 2002, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for making a prank phone call

to and elderly couple pretending to be in danger, on or about 27 July 2002. His punishment included seven days extra duty and restriction.

6. The applicant received additional counseling on the following dates/for:

- 26 September 2002; his living conditions were below standard
- 17 October 2002; missing accountability formation
- 29 April 2003; failing to be at his appointed place of duty

7. A Criminal Investigation Division report of investigation established probable cause to believe the applicant committed the offenses of wrongful use and possession of marijuana and possession of drug paraphernalia, on 15 May 2003.

8. On 19 May 2003, the applicant command-enrolled in the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) for chemical abuse problems.

9. On 24 June 2003, the applicant tested positive for marijuana.

10. On 28 June 2003, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

11. On 2 July 2003, the applicant accepted NJP under Article 15 of the UCMJ, for wrongfully using marijuana between on or about 16 April 2003 to 16 May 2003. His punishment included reduction to E-1, forfeiture of \$500.00 per month for two months, and 45 days extra duty and restriction.

12. A memorandum dated 9 July 2003, from the clinical director to the applicant's commander, noted that the applicant demonstrated continued desire to use cannabis as demonstrated by another positive urinalysis for cannabis. Therefore, the applicant should be considered a ADAPCP failure and administratively separated.

13. The applicant's commander notified the applicant on 1 August 2003 that he was initiating actions to separate him under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12c, for commission of a serious offense. He noted the applicant's positive test for marijuana, and multiple adverse counselings.

14. The applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him.

a. He indicated he understood he would be ineligible to apply for enlistment in the Army for a period of two years after discharge.

b. He declined to submit a statement in his own behalf.

15. The applicant's commander formally recommended his separation, prior to his expiration term of service, under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c.

16. Consistent with the chain of command's recommendations, the separation authority directed the applicant's separation from the Army on 15 August 2003, with issuance of a DD Form 257A (General Discharge Certificate).

17. The applicant was discharged on 5 September 2003. He was credited with 2 years, 2 months, and 8 days of net active service this period. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- Item 24 (Character of Service) – under honorable conditions (general)
- item 25 (Separation Authority) – AR [Army Regulation] 635-200, PARA 14-12c(2)
- item 26 (Separation Code) – JKK
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

18. Additionally his DD Form 214 shows he was awarded or authorized the:

- Army Achievement Medal
- National Defense Service Medal
- Army Service Ribbon
- Marksman Marksmanship Qualification Badge with Rifle Bar
- Expert Infantryman Badge
- Parachutist Badge

19. The applicant provides a character reference letter from his former squad leader, a retired first sergeant, who speaks to the applicant's great work ethic and reliability. He affirms that the applicant's punishment was not consistent with others in the unit.

20. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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.

a. Character of Service: Deny. The evidence shows the applicant committed serious misconduct (positive test for marijuana and multiple adverse counseling). 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.

b. RE Code: Deny. The Board noted that enlisted Soldiers separated under the provisions of chapter 14-12c for a drug related offense are assigned Separation Code JKK. At the time of the applicant's separation, this Separation Code had a corresponding RE Code of 4. The narrative reason for separation is governed by specific directives. The applicant was discharged under chapter 14-12c of AR 635-200. The narrative reason specified by Army Regulations for a discharge under this paragraph for an enlisted Soldier is "Misconduct," the separation code is "JKK", and the reentry code is "RE 4." AR 635-8, Separation Documents, governs preparation of the DD Form 214 and dictates that entry of the narrative reason for separation, entered in block 28, separation code, entered in block 26, and RE Code, entered in block 27 of the form, will be entered exactly as listed in AR 635-5-1, Separation Program Designator (SPD) Codes. The Board found his Separation Code and corresponding RE Code not to be in error or unjust. Additionally, the Board found no mitigating factors that would merit a change to his RE Code. In view of the foregoing, the Board determined that the RE Code he received upon his discharge was both proper and equitable and there is no reason to change it.

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.

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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. 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
  - a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. 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. Army Regulation 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-6 provides a list of RE codes.

- RE code "1" applies to Soldiers completing an initial term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. At the time, this regulation prescribed the separation code "JKK" as the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, for misconduct (drug abuse).

5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. It states that action will be initiated to separate a Soldier for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed.

6. 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/NR) 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.

//NOTHING FOLLOWS//