

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 January 2025

DOCKET NUMBER: AR20240004727

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- amendment of his narrative reason for separation to Completion of Required Active Service

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

- DD Form 149 (Application for Correction of Military Record) (2)
- Legal brief in support of the application
- Self-authored letter
- Letter from the Office of the Deputy Chief of Staff for Personnel
- Letter of Commendation
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Thank you letter from the Veterans Benefits Administration (VBA)

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. Counsel states, in pertinent part:

a. The applicant served in Bad Herzfeld, Germany, patrolling the border and guarding against invasion of the East German Border. This work placed him and his fellow Soldiers under an immense amount of stress. Unfortunately, the applicant turned to alcohol and drugs to cope with this stress. Recognizing that he needed help, in the Spring of 1983, he enrolled himself in the base's military health office rehabilitation program for drug and alcohol abuse. He worked to change his daily habits and made significant progress. While in the program, he submitted to urinalysis tests to verify his progress. Inexplicably, he continued to test positive for drugs and alcohol. The applicant

knew this could not be accurate, but nobody would believe him. The Army discharged him with a general discharge for "drug abuse and rehabilitation failure."

b. The applicant moved on with his life with great success and led an exemplary life as indicated by his memorandum and the letters he has received over the years from the VBA and the [REDACTED] Court of Appeals. However, he continued to be troubled by his service. For nearly 40 years, the applicant lived with the humiliation of his time in service and his discharge. When his mother passed away, he began to go through her belongings. He found an envelope from the Army containing a letter that said, "the review of your positive urinalysis test reveals that it did not meet all scientific or legal requirements for use in disciplinary or administrative actions." This time period covered the urinalysis test results that were reported from April 27, 1982, through October 31, 1983. It went on to say that he should petition the ABCMR to correct this error or injustice.

c. The applicant's petition is due to be granted. He was discharged for failure in the drug and alcohol program despite his progress and cessation of using drugs and alcohol. The Army used test results to discharge him that the Army later realized were faulty after a "review of the applicant's positive urinalysis test reveals that it did not meet all scientific or legal requirements for use in disciplinary or administrative actions." The Army themselves suggested that he petition the ABCMR. Unfortunately, the applicant did not receive this letter or know of its contents because it was sent to his mother and was never provided to him. It was only in June of 2022 that he learned of this mistake by going through his mother's belongings.

d. The Army used positive drug results that should not have been used in an action to discharge the applicant and characterize his service as under honorable conditions. Not only did he believe this for the past 40 years, but the Army also knew this to be wrong as evidenced by their own memorandum they sent to the applicant. He has made his request to correct this error and injustice within three years of him learning of the mistake in his records. Therefore, this board should grant his petition and correct his record to change his discharge to honorable and adjust his discharge reason to completion of required active service.

3. The applicant states:

a. He was discharged for failing drug tests while he was in rehabilitation. However, he was not using drugs nor alcohol while in treatment. He grew up in a latch key environment, he was raised by a single mother. He joined the Army and excelled as a 19D Cavalry Scout. His initial duty assignment was Bad Herzfeld, Germany. His primary duties were to patrol and guard against invasion of the East German border during the "Cold War." His duty included a three month "on the border" and three month "off the border" rotation, with a seven day work schedule.

b. Over time the stress and exhaustion significantly impacted his mental and physical health. He turned to alcohol and drugs as a form of stimulant and depressants to self-medicate and ensure the peak performance expected of him. As a result of all these challenges and his desire to change the direction his life was going; he tried to distance himself from negative influencers and enablers. He made the decision to seek professional help by enrolling himself in the base's military health office rehabilitation program for drug and alcohol abuse.

c. Following his separation from the Army, he obtained his bachelor's degree completed various certifications as a project management professional. It has been difficult for him to talk about his time in service. He often has feelings of shame and suffers from severe depression. For years, he has had to find ways to overcome anger, negative thoughts about his life and the events he experienced. To the point it negatively impacts his professional and personal economic stability. It has taken more than a year for him to build up the confidence and courage to request review and correction to his records. His service meant a lot to him. It shows by his involvement in the military community, for the past 40 years. He hopes his experiences can be seen as a success, overcoming a terrible addiction through hard work and support.

4. On 30 September 1981, the applicant enlisted in the Regular Army, for 4 years. The highest grade he attained was E-3.

5. On 10 December 1982, the applicant received nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for wrongfully possessing some amount of marijuana, on or about 15 November 1982. His punishment included reduction to E-2, forfeiture of \$321.00 per month for two months, and 21 days extra duty.

6. On 2 February 1983, the applicant received NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 28 December 1982. His punishment included forfeiture of \$150.00 and 14 days extra duty and restriction.

7. On 10 June 1983, the applicant received NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 30 April 1983; and wrongfully use reproachful gestures towards another Soldier, on or about 30 April 1983. His punishment included forfeiture of \$150.00 and 14 days extra duty and restriction.

8. A letter dated 13 June 1983, from the Alcohol and Drug Control Officer (ADCO) to the applicant's commander provided a synopsis of the applicant's rehabilitation activities. The ADCO noted:

a. The applicant was enrolled in the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) on 21 December 1982, as a result of charges for wrongful possession of hashish.

b. During the six month period the applicant was enrolled, he was urine tested five times, two of which were negative, with the remaining three being reported positive for Tetrahydrocannabinol (THC).

c. During the initial session, the applicant expressed a strong desire to rehabilitate himself; however, a recent military police apprehension charging him with wrongful possession and use of hashish had indicated otherwise. The applicant's potential for successful rehabilitation was poor, as evidenced by his behavior and attitude.

9. On 27 June 1983, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

10. The applicant's commander notified the applicant on 25 July 1983, that he was being recommended for discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 9. Specifically, the commander noted that the applicant tested positive for THC three times during his ADAPCP enrollment. Although the applicant showed a desire to be rehabilitated, he was apprehended for possession and use of hashish.

11. The applicant consulted with counsel and was advised of the basis for the contemplated actions to separate him, the rights available to him, and the effect of any action taken by him in waiving his rights. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a general discharge was issued to him. He declined to submit a statement in his own behalf.

12. The applicant's commander formally recommended the applicant's separation from service under the provisions of Army Regulation 635-200, Chapter 9, for rehabilitation failure.

13. On 26 July 1983, the applicant received NJP under Article 15 of the UCMJ, for knowingly and wrongfully using marijuana, on or about 11 May 1983. His punishment included reduction to E-1, forfeiture of \$300.00 per month for two months, and 40 days extra duty.

14. Consistent with the chain of command's recommendations, the separation authority directed the applicant's separation from the Army on 8 August 1983, and issuance of a DD Form 257A (General Discharge Certificate).

15. The applicant was discharged on 26 August 1983. He was credited with 1 year, 10 months, and 27 days of net active service this period. His DD Form 214 contains the following entries in:

- item 24 (Character of Service) – under honorable conditions (General)
- item 25 (Separation Authority) – AR [Army Regulation] 635-200, Chapter 9
- item 26 (Separation Code) – JPC
- item 27 (Reenlistment Code) – 3, 3C
- item 28 (Narrative Reason for Separation) – Drug Abuse Rehabilitation Failure

16. The applicant provides a letter with supporting documents from the Deputy Chief of Staff for Personnel that noted:

a. In September 1983, the Department of the Army became concerned that selected urinalysis test results from the Fort Meade drug testing laboratory were not meeting legal and scientific standards for use in disciplinary and administrative actions.

b. The panel rendered its report on December 12, 1983. The report concluded that the testing procedures used by all laboratories were adequate to identify drug abuse and found no significant evidence of false positive urinalysis reports. However, the panel also found that a percentage of previously reported positive urinalysis results were not scientifically or legally supportable for use in disciplinary or administrative actions.

c. Based on the panel's findings that a number of previously reported positive urinalysis test results were not scientifically or legally supportable, a team of chemists and attorneys have reviewed all available records of positive urinalysis tests reported from April 27, 1982, through October 31, 1983, by each Army drug testing laboratory.

d. The review of the applicant's positive urinalysis test revealed that it did not meet all scientific or legal requirements for use in disciplinary or administrative actions. The applicant was advised that if he believed that any action taken against him was based upon this positive urinalysis test, he may petition the ABCMR to seek a correction of any error or injustice that he believed may have occurred.

17. Additionally, the applicant provides:

a. An in-service letter of commendation for outstanding performance at the Platoon Battle Run conducted during the 1982 Level I Gunnery at Grafenwöhr Training Area.

b. A letter from the VBA to for thank him formally for his company's contribution to the dramatic improvements in customer service that the VBA is realizing as they implement their national Customer Access strategy.

18. 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:

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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The applicant was enrolled in the Army Substance Abuse Program and was cited for testing positive for THC three times during his enrollment. Additionally, he received four records of nonjudicial punishment during his enlistment. His commander declared him an alcohol rehabilitation failure and he was discharged from active duty due to drug abuse rehabilitation failure with an under honorable conditions (General) discharge. The Board found no error or injustice in his separation processing. Based on a preponderance of evidence, the Board determined that the characterization of service the applicant received upon separation was not in error or unjust nor the narrative reason for separation corresponding to his discharge.

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.

4/8/2025

X

CHAIRPERSON

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 600-85 (Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) prescribes policies and procedures needed to implement, operate, and evaluate the ADAPCP. The version in effect at the time provided in Chapter 6:

a. The objective of the limited use policy is to facilitate the identification of alcohol and drug abusers through self-referral, and the treatment and rehabilitation of those abusers who desire to be rehabilitated and who demonstrate the potential for retention. It is not intended to protect a member who is attempting to avoid disciplinary or adverse administrative action.

b. The limited use policy prohibits the use of the following evidence against a soldier in the issuance of the characterization of service in the separation process: Mandatory urine or alcohol breath test results, ADAPCP monitoring tests, a soldier's self-referral to ADAPCP and or voluntary admissions made as part of the enrollment process.

c. A service member protected by the limited use policy may be recommended for administrative discharge on the basis of evidence other than information obtained directly or indirectly from the member's involvement in the ADAPCP. Such a member may receive a discharge characterized as honorable, general, or under other than honorable conditions.

3. 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 "JPC" is the appropriate SPD code to assign Soldiers separated under the provisions of Army Regulation 635-200, for drug abuse rehabilitation failure.

4. 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 9 contained the authority and outlined the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who had been referred to the Alcohol and Drug Abuse Prevention and Control Program for alcohol/drug abuse could be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there was a lack of potential for continued Army service and rehabilitation efforts were no longer practical. Nothing in this chapter prevented separation of a Soldier who had been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings was required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter would be characterized as honorable or under honorable conditions unless the Soldier was in an entry-level status.

5. 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//