

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20240004828

APPLICANT REQUESTS: amendment of his reentry eligibility (RE) code to a more favorable code.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the Period Ending 18 October 2013

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 his misconduct occurred over 10 years ago during a time when he was immature and during the military downsizing. He would like a more favorable RE code so he can enlist in active military service.
3. He enlisted in the Regular Army on 5 June 2009.
4. The U.S. Army Criminal Investigation Command (CID) memorandum (CID Report of Investigation – Initial Final), 18 March 2013, names the applicant as a subject for the offenses of wrongful use of marijuana, failure to obey a general order (paraphernalia), wrongful use of Adderall (a combination of amphetamine and dextroamphetamine), failure to obey a general order (Spice (synthetic marijuana)), and wrongful use of cocaine on 3 February 2013. The investigative summary states:

This office was notified by 1SG [First Sergeant] R____ E. E____, A Company, 4-3 Brigade Special Troops Battalion, 4-3 Task Force Vanguard (TFV), FOB [Forward Operating Base] Shank, Afghanistan, APO [Army Post Office] AE [Armed Forces Europe] 09364 (FOB Shank) that SPC [Specialist] W____ and

[Applicant] tested positive for Marihuana [marijuana] during a Unit Urinalysis Inspection conducted on 6 Feb 13 [6 February 2013].

Investigation established probable cause existed to believe SPC W_____ and [Applicant] committed the offense of Wrongful Use of a Controlled Substance when they ingested Marihuana and subsequently tested positive on a Unit Urinalysis Inspection on 6 Feb 13. [Applicant] also committed the offenses of Wrongful Use of a Controlled Substance and Failure to Obey General Order, when he admitted he ingested Cocaine, Ecstasy [methylenedioxymethamphetamine], Adderall, Spice and Marihuana during a subsequent interview by this office. Further, [Applicant] admitted he utilized a straw and "dollar bills" to ingest Cocaine and Adderall.

SPC W_____ was advised of his rights, which he waived and admitted he ingested Marihuana on the weekend of the Super Bowl in February 2012.

CPT [Captain] J_____ A. P_____, Staff Judge Advocate, TFV , FOB Shank, opined probable cause existed to believe SPC W_____ committed the offense of Wrongful Use of a Controlled Substance; and [Applicant] committed the offenses of Wrongful Use of a Controlled Substance and Failure to Obey General Order (Spice and Paraphernalia).

5. The Company A, 4-3d Brigade Special Troops Battalion, memorandum from his company commander (Separation under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter (should read Paragraph) 14-12c(2), Misconduct – Abuse of Illegal Drugs (Applicant)), 6 September 2013, notified him that he was initiating action to separate him under the provisions of Army Regulation 635-200, paragraph 14-12c(2), for misconduct – abuse of illegal drugs. His commander recommended his discharge under honorable conditions (general) and advised him that he had the right to consult with consulting counsel and civilian counsel at no expense to the Government.

6. On 6 September 2013, he acknowledged receipt of the notification from his company commander informing him of the contemplated action to separate him under the provisions of Army Regulation 635-200, paragraph 14-12c(2). He was advised of his right to consult with counsel prior to submitting his Election of Rights.

7. The Company A, 4-3d Brigade Special Troops Battalion, memorandum from his company commander (Commander's Report – Proposed Separation under Army Regulation 635-200, Chapter (should read Paragraph) 14-12c(2), Misconduct – Abuse of Illegal Drugs, (Applicant)), 9 September 2013, recommended his separation from the Army prior to the expiration of his current term of service under the provisions of Army Regulation 635-200, paragraph 14-12c(2).

8. The Company A, 4-3d Brigade Special Troops Battalion, memorandum from the applicant (Election of Rights Regarding Separation under Army Regulation 635-200, Chapter (should read Paragraph) 14-12c(2), Misconduct – Abuse of Illegal Drugs, (Applicant)), 9 September 2013, requested consulting counsel and representation by military counsel and/ or civilian counsel, and elected to submit statements in his own behalf.

9. The Headquarters and Headquarters Company, 4th Infantry Brigade Combat Team, memorandum from the paralegal specialist (Chapter (should read Paragraph) 14-12c(2), Misconduct – Abuse of Illegal drugs, (Applicant)), 20 September 2013, states the applicant elected to submit matters in his behalf on 13 September 2013. He did not turn in his matters, which were due on 19 September 2013. His discharge packet was forwarded for further processing without his matters.

10. On 20 September 2013, the separation authority directed the applicant's separation under the provisions of Army Regulation 635-200, paragraph 14-12c(2), for misconduct – abuse of illegal drugs and further directed characterization of his service as general under honorable conditions.

11. He was discharged in the rank/grade of private/E-1 on 18 October 2013 under the provisions of Army Regulation 635-200, paragraph 14-12c(2), by reason of misconduct (drug abuse). He completed 4 years, 4 months, and 14 days of net active service during this period. His DD Form 214 shows his service was characterized as under honorable conditions (general). He was assigned the separation code of JKK and the RE code of 4.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. One potential outcome was to grant relief by amending the applicant's RE Code to RE3, allowing the recruiter to see what options may be available to the applicant. However, upon review of the applicant's request and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of drug use.

2. The Board found no error or injustice, the evidence of record shows, at the time of separation, documentation supports the Reentry code for separation properly identified on the applicant's DD Form 214. The Board noted a CID report named the applicant as a subject for the offenses of wrongful use of marijuana, failure to obey a general order

(paraphernalia), wrongful use of Adderall (a combination of amphetamine and dextroamphetamine), failure to obey a general order (Spice (synthetic marijuana)), and wrongful use of cocaine. Based on the preponderance of evidence, the Board denied relief.

BOARD VOTE:

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:	:	■	GRANT FULL RELIEF
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■	■	:	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.

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 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), effective 20 September 2011, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 14 established policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions was normally appropriate for a Soldier discharged under this chapter.

b. Paragraph 14-12c(2) stated Soldiers are subject to action per this section for commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial. Abuse of illegal drugs is serious misconduct.

4. Army Regulation 635-5-1 (Separation Program Designator Codes), effective 20 September 2011, prescribed the specific authorities (statutory or other directives), reasons for separating Soldiers from active duty, and the separation program designator (SPD) codes to be entered on DD Form 214. Table 2-3 shows SPD JKK is assigned to Soldiers involuntarily separated for misconduct (drug abuse) under the provisions of Army Regulation 635-200, paragraph 14-12c(2).

5. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program), effective 12 March 2013, governed eligibility criteria, policies and procedures for enlistment and processing of persons into the Regular Army, U.S. Army Reserve, and Army National Guard. RE codes are used for administrative purposes only and are not to be considered derogatory in nature. They are codes used for identification of an enlistment processing procedure. Table 3-1 defined the following RE codes:

a. RE-1 applied to persons completing their terms of active service who are considered qualified to reenter the U.S. Army. They are qualified for enlistment if all other criteria is met.

b. RE-3 applied to persons who are not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. They are ineligible unless a waiver is granted.

c. RE-4 applied to persons separated from their last period of service with a nonwaivable disqualification. They are ineligible for enlistment.

6. Separation Program Designator (SPD)/Reentry (RE) Codes Cross-Reference Table, 15 June 2006, shows the corresponding RE code for SPD code JKK is RE-4.

7. Army Regulation 635-8 (Separation Processing and Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

//NOTHING FOLLOWS//