

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 January 2025

DOCKET NUMBER: AR20240004873

APPLICANT REQUESTS: a change to his Reentry Eligibility (RE) code and an appearance before the Board via video or telephone.

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

DD Form 149 (Application for Correction of Military Record)

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 two years and four months in the U.S. Army. He accomplished much in that short amount of time. He conquered the mountains of Korea and was awarded his spurs. He developed his marksmanship skills and trained to become a sniper. Unfortunately, COVID-19 prevented him from going to sniper school. He was activated to go to Dallas, TX, where they administered over 500,000 COVID vaccines. All of these accomplishments were ruined because of one mistake. He learned from his mistake and would like to reenlist in the military.
3. The applicant enlisted in the Regular Army on 22 April 2019 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 19D (Cavalry Scout). The highest rank he attained was specialist/E-4.
4. On 29 July 2021, the applicant received a General Officer Memorandum of Reprimand for violating Fort Knox General Order 1, related to COVID -19, by not wearing a mask or providing proof of vaccination, on 21 July 2021.
5. A law enforcement report and associated documents show that during a unit urinalysis, conducted on 6 July 21, the applicant provided a urine sample that tested positive for tetrahydrocannabinol (THC) and THC 8. He stated he used a civilian friend's vape pen multiple times at a party. He did not notice anything wrong with the vape pen

until he tested positive on the urinalysis. He consented to undergo a polygraph. On 18 August 2021 he was administered a polygraph. The final polygraph report showed that he was deceptive in his answers. The Military Justice Advisor, Office of the Staff Judge Advocate, opined that probable cause existed to believe the applicant committed the offenses of wrongful use of marijuana, wrongful use of Delta 8 THC, and false official statement.

6. The applicant underwent a mental status evaluation on 25 August 2021. The evaluating provider determined the applicant had no duty limitation due to behavioral health reasons.

7. He underwent a medical examination on 26 August 2021. He reported being in good health and was medically cleared for separation.

8. On 25 October 2021, the applicant's immediate commander notified the applicant of his intent to initiate action to separate him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c(2), for misconduct-abuse of illegal drugs. The applicant was advised that he was being recommended for an under honorable conditions (general) character of service, and the specific reason for the separation action was the applicant's wrongful use of THC. The applicant acknowledged receipt of the notification on that same date.

9. The applicant was advised by consulting counsel on 3 November 2021.

a. He was advised of the basis for the contemplated action to separate him and its effects; of the rights available to him; and of the effect of waiving his rights. He acknowledged understanding that if he received a character of service that was less than honorable he may encounter substantial prejudice in civilian life.

b. In a statement in his own behalf, the applicant requested to be retained on active duty or in the alternative, honorably discharged. He noted his multiple accomplishments over his two years of service and acknowledged that he made the biggest mistake of his life. He promised that if he were retained, it would not be a mistake. He was a team player; a good, respectful person; and a hard worker.

c. In two letters of support, two noncommissioned officers who worked with the applicant attested to his skills and abilities as a Soldier. His relentless work ethic set him apart. He was eager to learn and was a motivated, dependable Soldier. He had good military bearing, was attentive to customs and courtesies, and was an example to follow. He had proven his grit and professionalism time and time again. The one-time incident was an out of character event.

10. The applicant's immediate commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 14, prior to the expiration of his term of service. The commander noted that while the applicant's performance had been otherwise excellent; he committed a serious error in judgment and showed a lack of character by lying to investigators and his leadership.

11. The applicant's intermediate commander further recommended the applicant's separation, prior to his expiration term of service, with an under honorable conditions (general) character of service.

12. On 8 December 2021, the separation authority approved the separation action, waived the transfer requirement, and directed the applicant's service be characterized as under honorable conditions (general).

13. The applicant was discharged on 29 December 2021, under the provisions of Army Regulation 635-200, by reason of misconduct (drug abuse). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was under honorable conditions (general) with separation code JKK and reentry code 4. He completed 2 years, 8 months, and 8 days of net active service this period. He was awarded or authorized the:

- Army Achievement Medal
- National Defense Service Ribbon
- Global War on Terrorism Service Medal
- Korea Defense Service Medal
- Armed Forces Service Medal
- Humanitarian Service Medal
- Army Service Ribbon

14. The applicant's service record contains correspondence between the Army Review Boards Agency and the Office of U.S. Representative Brad Wenstrup regarding the status of his case.

15. Regulatory guidance states Reentry code "4" applies to Soldiers separated from their last period of service with a non-waivable disqualification. Discharges from any component of the U.S. Armed Forces for drug or alcohol abuse, or as a rehabilitation failure during the last period of service are non-waiverable.

16. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined there was insufficient evidence of in-service mitigating factors for the misconduct that would warrant a change to the applicant's RE-Code. The Board applied Department of Defense standards of liberal consideration to the complete evidentiary record and did not find any evidence of error, injustice, or inequity; the reenry code was correctly provided at his time of separation. Therefore, the Board denied relief
  
2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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.

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 Army Board for Correction of Military Records (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. The regulation provides 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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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 is normally appropriate for a Soldier

discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard.

a. Table 3-1 provides a list of Reenlistment Eligibility (RE) codes:

- RE code "1" applies to Soldiers completing their 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

b. Paragraph 3-23 (Correction of Army reentry eligibility codes) provides that Army prior service personnel will be advised that RE codes may be changed only if they are determined to be administratively incorrect. Applicants who have corrected RE codes will be processed for a waiver at their request if otherwise qualified and waiver is authorized. No requirement to change RE code exists to qualify for enlistment. Only when there is evidence to support an incorrect RE code or when there is an administrative error will an applicant be advised to request a correction. Do not advise applicants to contact the Discharge Review Board or the Army Board for Correction of Military Records when applicant is eligible to request a waiver.

c. Paragraph 4-23 (Non-waiverable disqualifying separations or discharges) provides that discharges from any component of the U.S. Armed Forces for drug or alcohol abuse, or for rehabilitation failure during last period of service are non-waiverable.

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/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 on the basis of equity, injustice, or clemency grounds, Boards 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//