

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 December 2024

DOCKET NUMBER: AR20240004895

APPLICANT REQUESTS: an upgrade of his characterization of service and a personal appearance before the Board via video/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 was 19 years old and very much planned on making the U.S. Army a career. He was well on his way, serving two of his three-year term. After Korea he met his first love, while serving at Fort Lewis and made some immature decisions that he feels in his soul that he has paid for. He is a proud patriot and veteran. It has been 23 years now since he made that irresponsible decision, and he would love nothing more than to finally clear the burden of his youthful actions. This upgrade will help with better employment opportunities and benefits for his family and himself.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 15 April 1999.
 - b. The applicant was counseled for the following:
 - 1 February 2001 – failure to report to the training room on 31 January 2001 at 0545 and disobeying a lawful order
 - 1 February 2001 – failure to report to 0600 accountability formation and disobeying a lawful order

c. A DD Form 2624 (Specimen Custody Document-Drug Testing), dated 7 February 2001, shows he tested positive for tetrahydrocannabinol (THC).

d. He was counseled for the following:

- 26 February 2001 – missing accountability formation and missing work call formation
- 26 February 2001 – pass privileges revoked
- 7 March 2001 – missing accountability formation, missing work call formation, disobeying a lawful order, and pattern of misconduct

e. The applicant's duty status changed on the following dates:

- Present for Duty (PDY) to Absent without Leave (AWOL) – 8 March 2001
- AWOL to PDY – 21 March 2001

f. He was counseled for the following:

- 22 March 2001 – AWOL and disobeying a lawful order
- 29 March 2001 – failure to report to accountability formation and failure to follow orders
- 2 April 2001 – failure to report to accountability formation and failure to follow orders

g. The applicant underwent a mental status evaluation on 9 April 2001 for the purpose of separation. The evaluation shows the applicant had the mental capacity to understand and participate in proceedings.

h. On 11 April 2001, he accepted nonjudicial punishment, under field grade Article 15, Uniform Code of Military Justice, for:

- failing to go at the time prescribed to his appointed place of duty, to wit: 0630, physical training formation, on or about 31 January 2001 and 26 February 2001
- failing to go at the time prescribed time to his appointed place of duty, to wit: 0900, work call, on or about 31 January 2001 and 26 February 2001
- failing to go at the time prescribed, to wit: 0600 accountability formation, on or about 1 February 2001
- being AWOL from on or about 8 March 2001 to on or about 21 March 2001
- wrongfully using marijuana, a controlled substance, between on or about 31 December 2000 and 30 January 2001

i. His punishment included reduction to rank/grade of (PVT/E-1), forfeiture of \$521.00 pay per month for two months, 45 days restriction, 45 days extra duty, so much of the restriction and extra duty in excess of 15 days suspended to be automatically remitted if not vacated before 11 October 2001.

j. The applicant underwent a medical evaluation on 11 April 2001 for the purpose of separation. The examining physician noted the applicant was qualified for service/separation/chapter discharge.

k. On 19 April 2001, the applicant's immediate commander notified the applicant of his intent to initiate separation actions against him under the provisions Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 14, Section III, paragraph 14-12c, by reason of commission of a serious offense. The commander listed the following reasons for the proposed action: he failed to report for duty numerous times, he went AWOL, and his urinalysis tested positive for marijuana. The commander informed the applicant he was recommending he receive a general, under honorable conditions characterization of service and explained his rights.

l. On 20 April 2001, the applicant acknowledged receipt of the notification and after being advised by his consulting counsel of the basis for the contemplated action to separate him for commission of a serious offense under AR 635-200, chapter 14, paragraph 14-12c, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights. He understood if he had less than 6 years of total active and Reserve military service at the time of separation and was being considered for separation under AR 635-200, Chapter 14, he was not entitled to have his case heard by an administrative separation board unless he was being considered for a discharge under other than honorable conditions.

1) He did not submit statements in his own behalf.

2) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him. He further understood that, as a result of issuance of a discharge under other than honorable conditions discharge, he may 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.

3) He understood that if he received a discharge/character of service that is less than honorable, he may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, that an act of consideration by either Board did not imply that her discharge would be upgraded.

4) He understood that he would be ineligible to apply for enlistment in the U.S. Army for a period of 2 years after discharge.

m. On 20 April 2001, the applicant's immediate commander formally initiated separation under the provisions of AR 635-200, chapter 14, Section III, paragraph 14-12c.

n. On 23 April 2001, the intermediate commander recommended approval of the separation with a general, under honorable conditions discharge.

o. On 24 April 2001, the separation authority approved the recommended discharge and directed the applicant be issued a General Discharge Certificate.

p. The applicant was discharged on 9 May 2001. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct, in the rank/grade of private (PVT)/E-1, and his service was characterized as under honorable conditions (general). He completed 2 years and 11 days of net active service during the covered period. Additionally, his DD Form 214 shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Overseas Service Ribbon, and the Marksman Marksmanship Qualification Badge with rifle bar
- Item 18 (Remarks): Member has not completed first full term of service
- Item 26 (Separation Code): JKQ
- Item 27 (Reentry Code): 3

4. On 6 July 2011, the ADRB determined that the applicant was properly and equitably discharged and denied his request for a change in the character and/or reason of his discharge.

5. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-200 for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

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

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation and the lack of any mitigation for such misconduct, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 14 established policy and procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. 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 considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.
 - b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.
 - c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, paragraph 14-12c for misconduct would receive a separation code of "JKQ."
4. AR 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. Table 3-1 provides a list of 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.

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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

- a. 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.

6. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

- a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

//NOTHING FOLLOWS//