

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2025

DOCKET NUMBER: AR20240005020

APPLICANT REQUESTS:

- an upgrade of his other than under honorable conditions discharge to honorable
- 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)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), dated 26 February 2020 show he was honorable release from active duty
- Notification of Separation – not signed by command
- Acknowledgment
- Election of Rights; signed by the applicant and not signed by counsel
- Separation Authority Approval
- Enlisted Records Brief
- DA Form 1059 (Service School Academic Evaluation Report)
- Orders 033-00513, applicant was awarded MOS 91B (Light Wheel Mechanic)
- Permanent Orders 327-002, applicant was awarded the Driver and Mechanic Badge
- Award of the Army Reserve Component's Achievement Medal
- DA Form 4980-18 (The Army Achievement Medal)
- Three Certificate of Achievement
- Frigerant Recovery – recovery and recycle equipment license

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 that despite testing positive for THC after his 2020 deployment, he served honorably throughout his nearly eight-year career and believes the under other than honorable discharge and RE-4 reenlistment code do not reflect his dedication and service. He demonstrated commitment by volunteering for deployments, completing SSD1, earning multiple awards, training fellow soldiers on RT-240s after container handling school, and attempting to go active duty in 2020. Following the 2021 UPL, he faced financial, legal, and transportation issues—at times being homeless—which affected drill attendance, though he made genuine efforts to be present. Since then, he has stabilized his life with secure housing and transportation, attended drills consistently until his involuntary release on 20 March 2024, and is now a full-time NOVA student focused on personal growth. He affirms his integrity and respectfully requests the opportunity to re-enlist, earn the rank of sergeant, and continue serving with honor.

3. A review of the applicant's service record shows:

a. He enlisted in the U.S. Army Reserve on 15 September 2016 and later entered the Regular Army on 11 April 2019.

b. He deployed to Kuwait from 28 April 2019 to 4 May 2019; Iraq from 5 May 2019 to 9 January 2020; Kuwait from 10 January 2020 to 22 January 2020 and was discharged from active duty on 26 February 2020.

c. The applicant provides notification of separation dated 7 July 2021, his commander notified him of his intent to separate him under the provisions (UP) of Army Regulation (AR) 135-178 (Enlisted Administrative Separations), chapter 11 due to abuse of illegal drugs (this document was not signed by the commander); he acknowledged on 10 July 2021.

d. The applicant provides the election of rights dated 11 August 2021, he was advised by consulting counsel of the basis for the contemplated action to separate him for unsatisfactory performance UP of Chapter 11, AR 135-178 and its effects; of the rights available to him; and the effects of any action by him waiving his rights.

e. The applicant provides the separation authority memorandum for record dated 10 July 2023, which shows the separation authority approved his separation UP of AR 135-178, chapter 11-1d for Misconduct – Abuse of Illegal Drugs; he directed a under other than honorable discharge and reduction to private (E-1).

f. The complete facts and circumstances surrounding the applicant's discharge are unavailable for the Board to review; however, the separation orders from the USAR show he was discharged on 20 March 2024 in the grade of private/E-1, with an under other than honorable characterization of service (Involuntary Administrative Separation)

under AR 135-178 chapter 11-1d, Misconduct-Abuse of Illegal Drugs, Separation
Program Designator: JKK, Character of Service: B.

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.
5. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. After thorough review of the application, supporting documents, and the applicant's military record, the Board determined that relief was not warranted in this case. The Board carefully considered the applicant's request for an upgrade of his discharge characterization from "under conditions other than honorable" to "honorable" and conducted a comprehensive review in accordance with published Department of Defense guidelines for liberal consideration of discharge upgrade requests. The applicant's record shows he was discharge due to misconduct – drug use. Although the Board notes his post service conduct and his years of service, they did not find any significant contribution that would warrant upgrading his discharge to honorable. As a result, the Board found no error or injustice and 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
XX	XX	XX	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.


X //SIGNED//

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 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.

3. Army Regulation 135-178 (Enlisted Administrative Separations), sets policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly administrative separation of Army National Guard of the United States (ARNGUS) and U.S. Army Reserve (USAR) enlisted soldiers for a variety of reasons.

a. An 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.

b. If a soldier's service has been honest and faithful, it is appropriate to characterize that service as under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when significant negative aspect of the Soldier's conduct or performance of duty outweighs positive aspects of the Soldier's military record.

c. Chapter 11 (Misconduct) states a Soldier may be discharged for misconduct when it is determined that the Soldier is unqualified for further military service by reason of one or more of the following circumstances:

- minor disciplinary infractions – a pattern of misconduct consisting solely of minor disciplinary infractions
- a pattern of misconduct – consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline
- commission of a serious offense – a serious military or civilian offense, if the specific circumstances of the offense warrant discharge and a punitive discharge would be authorized for the same or a closely related offense under the Uniform Code of Military Justice (UCMJ)
- abuse of illegal drugs – self explanatory

4. 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 based on equity, injustice, or clemency grounds, BCM/NRs 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//