

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20240005453

APPLICANT REQUESTS:

- In effect, reconsideration of his earlier request to upgrade his general discharge under honorable conditions to an honorable character of service
- As new requests:
  - Upgrade his reentry (RE) code from RE-4 (nonwaivable disqualification) to RE-3 (waivable disqualification)
  - Permission to appear personally before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Certificate of Training
- Degree transcript (not included with application)

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20170010346, on 1 July 2019.

2. The applicant states his discharge should have been corrected because he completed the required training (apparently referring to a Certificate of Training for completion of a Alcohol and Other Drug Abuse Prevention Training (ADAPT) course). The applicant declares he has learned from his mistakes and has been continuously improving his life; approval of his requests will provide him with better opportunities in his new career.

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

a. On 18 September 2008, after completing over 5 months in the New York Army National Guard, the applicant enlisted into the Regular Army for 3 years. Following the award of military occupational specialty 92G (Food Service Operations Specialist),

orders assigned him to Fort Huachuca, AZ, and he arrived at his new unit, on or about 17 July 2009. Effective 1 September 2009, the applicant's leadership promoted him to private first class (PFC)/E-3.

b. In March 2010, the applicant's supervisor gave him two positive counseling statements, noting the applicant had done an excellent job in food preparation and that his overall duty performance for the month had been satisfactory.

c. On 6 April 2010, the applicant participated in a unit urinalysis test and the results came back positive for cocaine. On or about 13 May 2010, the applicant completed a 16-hour ADAPT class.

d. On 27 May 2010, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for the wrongful use of cocaine, between 9 and 12 April 2010; on 2 June 2010, the imposing commander found the applicant guilty and, among the punishments, reduced the applicant to private (PV1)/E-1.

e. On 10 August 2010, after consulting with counsel, the applicant acknowledged counsel had advised him of the basis for a pending separation action and indicated he was waiving his rights; he also opted not to submit statements in his own behalf.

f. On 18 August 2010, the unit's supporting trial counsel prepared a memorandum, subject: Legal Review of Administrative Separation Under AR (Army Regulation) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c (sic; paragraph 14-12c) (Separation for Misconduct – Commission of a Serious Offense), [applicant and unit of assignment]. The trial counsel stated, following a review of the contemplated separation action against the applicant, he determined it was legally sufficient.

g. On 23 August 2010, the applicant's company commander advised him, via memorandum, that he was initiating separation action against the applicant, per paragraph 14-12c, AR 635-200; the reason was the applicant wrongful use of cocaine. The commander added that he was recommending the applicant receive a general discharge under honorable conditions, but the final decision rested with the separation authority.

h. On 25 August 2010, the applicant submitted a written response to his commander's separation notification. The applicant asked the command to retain him on active duty; in the alternative, he asked to be granted an honorable discharge.

(1) The applicant stated he had been in the Army for less than 24 months and had done well during his initial entry training. He expressed remorse for his actions and

said he was grateful that he had been caught. He realized the importance of his security clearance and had come to understand how cocaine could hurt his health.

(2) The applicant asked for another chance to keep his security clearance and military occupational specialty and declared he would use the opportunity to prove himself and mentor his fellow Soldiers on the dangers of drugs.

i. On an unknown date, the applicant's counsel petitioned the separation authority, requesting a reconsideration of the pending separation action; only the second page is available for review. Counsel argued the applicant should be retained for the following reasons:

- The applicant had already been punished with an NJP; the result was reduction to PV1, forfeiture of \$1,446, and 45-days restriction and extra duty
- The underlying intent of AR 600-85 (The Army Substance Abuse Program) and AR 635-200 were to give lower-ranking Soldiers the chance to improve themselves and overcome their shortcoming; the applicant had clearly learned from his misconduct

j. At some point prior to 6 October 2010, the separation authority approved the commander's separation request and directed the applicant general discharge under honorable conditions; on 20 October 2010, orders separated the applicant accordingly.

k. The applicant's DD Form 214 shows he completed 2 years, 1 month, and 4 days of his 3-year enlistment contract. The report additionally reflects the following:

(1) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Global War on Terrorism Service Medal, and Army Service Ribbon.

(2) Special Additional Information:

- Item 25 (Separation Authority) – AR 635-200, paragraph 14-12c (2) (Commission of a Serious Offense – Abuse of Illegal Drugs)
- Item 26 (Separation Code (Separation Program Designator (SPD)) – "JKK"
- Item 27 (RE Code) – RE-4
- Item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

l. On 12 December 2012, the applicant petitioned the Army Discharge Review Board (ADRB) requesting an upgraded character of service. He argued that, in order to prove his innocence, he had requested the unit conduct a blood test; instead, they asked him to help catch the other Soldiers using drugs. On 1 May 2013, after

considering the applicant's arguments and reviewing his service record, the ADRB voted to deny relief.

m. On 20 March 2017, the applicant applied to the ABCMR for an upgrade.

(1) The applicant contended his misconduct was a "one-time, unwise mistake," and pointed out he had completed his punishments and participated in a 16-hour drug prevention course. Additionally, he declared that he had remained "clean" for the past 7 years and maintained steady employment throughout.

(2) On 1 July 2019, the Board assessed the applicant's contentions and applied the Department of Defense's standards of liberal consideration. The Board voted not to grant an upgraded character of service, noting that the applicant had not submitted either character witness statements or evidence of post-service achievements.

4. In reaching its determination, the Board can consider the applicant's petition, his evidence and assertions, and his service record in accordance with the published equity, injustice, or clemency guidance.

5. Army Regulation (AR) 15-185 (ABCMR), currently in effect, states in paragraph 2-11 (ABCMR Hearings) that applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

#### 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct.

a. Discharge Upgrade. Deny. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

b. Amend RE Code from RE4 to RE3. Deny. The Board found no error or injustice in the re-entry code of 4 assigned during separation. Based on a preponderance of the evidence and the narrative reason for separation associated with reentry-code, 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 |
| :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. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, prescribed policies and procedures for the administrative separation of enlisted Soldiers.

a. Paragraph 3-7a (Honorable Discharge). An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to evaluate the extent thereof, as well as the seriousness of the offense. Separation Authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should take into account as the governing factor.

b. Paragraph 5-3 (Secretarial Plenary Authority). Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

c. Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Paragraph 14-12c (Commission of a Serious Offense) applied to Soldiers who had committed a serious military or civilian offense, and for which the UCMJ authorized a punitive discharge for the same or similar offense. In subparagraph (2), the regulation stated the abuse of illegal drugs was serious misconduct.

2. The Manual for Courts-Martial, in effect at the time, showed the maximum punishments for violating UCMJ Article 112a (Wrongful Use, Possession, Manufacture or Introduction of Controlled Substances) included a punitive discharge.

3. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. In paragraph 2-4 (Completing the DD Form 214), the regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For item 27 (Reentry Code), the regulation

referred preparers to AR 601-210 (Active and Reserve Components Enlistment Program).

4. AR 635-5-1, in effect at the time, defined separation codes used on the DD Form 214. For Soldiers separated pursuant to paragraph 14-12c (2), AR 635-200, the assigned SPD code is "JKK."

5. AR 601-210, in effect at the time, covered eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and Reserve Components.

a. Table 3-1 (U.S. Army RE Codes) lists the following:

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 issued to Soldiers show are not fully qualified for reentry, but the disqualification(s) may be waived
- RE-4 is assigned to Soldiers with nonwaivable disqualifications

b. Paragraph 4-25 (Nonwaiver disqualifying separations or discharges) provides a list of nonwaivable discharges and includes persons with prior service last discharged from any U.S. Armed Forces Component for drug abuse.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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, 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.

7. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR Hearings) states applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

//NOTHING FOLLOWS//