

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2024

DOCKET NUMBER: AR20240005776

APPLICANT REQUESTS: an upgrade of his characterization of service.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Request for Honorable Discharge, 4 October 1983
- Orders Number 286-1, 13 October 1983
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 27 October 1983

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 popped a test after trying marijuana at a party. He was counseled on rehabilitation but refused. He would like his discharge upgraded because he was not a continuous user. He has some college schooling but has not obtained a degree. For the past 20 years he has been clean, and he is drug tested every month.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 10 April 1979.
  - b. On 22 June 1983, he accepted nonjudicial punishment, under Article 15, Uniform Code of Military Justice, for on or about 31 May 1983, knowingly and wrongfully using marihuana. His punishment included reduction to the grade of specialist (SP4)/E-4, forfeiture of \$200.00 per month for two months, \$200.00 for one month suspended until 22 December 1983, and 45 days extra duty. The applicant appealed and on 22 July 1983, the appeal was denied.

c. He underwent a mental status evaluation on 22 September 1983. The examiner noted the applicant had the mental capacity to understand and participate in the proceedings.

d. A letter dated 31 August 1983, shows the applicant was referred to the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) on 12 July 1983 as a result of a positive urinalysis for tetrahydrocannabinol (THC) on a unit sweep conducted on 30 May 1983. His treatment consisted of initial screening, awareness education, individual counseling, and command consultation. The Director, Personnel and Community Activities, stated the applicant had not successfully curtailed his substance abuse as indicated by his unwillingness to discontinue his use of cannabis. He failed to demonstrate the motivation necessary to deal effectively with his illegal drug abuse, and further rehabilitation services were not practical at that time. The Director declared the applicant a rehabilitative failure and recommended that he be separated from the service.

e. On 26 September 1983, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 9. The commander listed the following reasons for the proposed action: the applicant's continued use of drugs and marijuana and his failure to successfully complete the drug/alcohol program. The commander informed the applicant that if approved, he would receive an honorable or general discharge certificate, and he explained his rights.

f. On 30 September 1983, the applicant acknowledged receipt of his commander's separation notification and after being advised by his consulting counsel of the basis for the contemplated action to separate him for alcohol or other drug abuse rehabilitation failure under the provisions of AR 635-200, chapter 9, and its effects; of the rights available to him; and the effect of any action he took in waiving his rights. He acknowledged that he was provided the opportunity to consult with legal counsel. He understood 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 he would be ineligible to apply for enlistment in the United States Army for a period of 2 years after discharge. He waived treatment in a Veterans Affairs Medical Center.

g. On 3 October 1983, the applicant's immediate commander-initiated separation under the provisions of AR 635-200, chapter 9, for abuse of drugs. The commander stated that the applicant was declared a rehabilitative failure.

h. On 4 October 1983, the applicant requested that he be given an honorable discharge. He stated that he entered the U. S. Army on 9 April 1979 and served to the best of his ability for four and half years. He participated in and received the Expert Field Medical Badge and was selected for several schools during his service. His

positive urinalysis during the unit sweep was the first and only trouble he had been involved in during his career. He stated that the punishment he received, although justified, was very harsh. It took away the earnings of several years of hard work. Therefore, he could not reconcile to himself to remain in the service with no prospect of promotion or reenlistment. He felt it was in his best interest and that of the Army for him to leave the service and further his civilian career. Consequently, he chose to fail the ADAPCP Track I. He asked that his active record be looked at when deciding on the type of discharge that would be appropriate.

i. On 6 October 1983, the separation authority approved the discharge and directed the applicant be issued a General Discharge Certificate (DD Form 257A).

j. The applicant's DD Form 214 shows he was discharged on 27 October 1983, under the provisions of AR 635-200, chapter 9, by reason of drug abuse rehabilitation failure, in the rank/grade of SP4/E-4. His service was characterized as under honorable conditions (general). This form also shows in:

- Item 12c (Net Active Service This Period): 4 years, 6 months, and 18 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Good Conduct Medal, Army Service Ribbon, Overseas Service Ribbon, and the Marksman Marksmanship Qualification Badge (rifle and hand grenade)
- Item 18 (Remarks): Immediate reenlistment this period: 10 April 1979 – 29 October 1981

4. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 9 outlines the procedures for discharging Soldiers for because of alcohol or other drug abuse, and whom further rehabilitation efforts are not practical, rendering the member a rehabilitation failure. The service of Soldiers discharged under this chapter will be characterized as honorable or under honorable conditions (general).

5. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record and length of service to include a reenlistment, the frequency and nature of his misconduct, his referral to ADAPCP, the reason for his separation (rehab failure) and the character of service he received upon discharge. The Board did not find evidence of mitigating factors for the applicant's misconduct and behaviors and the applicant did not provide evidence of post-service achievements or conduct for the Board to consider as a matter of clemency. Based on a preponderance of evidence, the Board determined that the reason shown on his DD Form 214 and the character of service the applicant received upon separation was not in error or unjust.

3. ADMINISTRATIVE NOTE: The Board did find that item 18 (Remarks) of the applicant's DD Form 214 should be corrected to reflect: CONTINUOUS HONORABLE SERVICE 790410-811029.

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, except for an administrative correction to show in item 18 of his DD Form 214 for the period ending 831027: Continuous Honorable Service 790410-811029, from the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.


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 (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 9 contained the authority and outlined the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who had been referred to the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

- There is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.
- Long-term rehabilitation is necessary, and the Soldier is transferred to a civilian medical facility for rehabilitation.

b. The service of Soldiers discharged under this chapter would be characterized as honorable or under honorable conditions (general) unless the Soldier was in an entry-level status.

c. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member'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.

3. 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

4. AR 635-5-1 (Separation Program Designators (SPD)) provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 9, for drug abuse rehabilitation failure would receive a separation code of JPC.

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/NR) 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//