

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20240005809

APPLICANT REQUESTS: upgrade of his (general) under honorable conditions discharge.

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 is trying to apply for Veterans Affairs benefits to help him get back on his feet.
3. The applicant enlisted in the Regular Army on 14 October 1987. He reenlisted on 9 July 1991 for a period of three years. He was promoted to sergeant/E-5 on 1 October 1992.
4. On 2 February 1994, he underwent a mental status evaluation which shows he did not suffer from any psychiatric disease, defect or personality disorder that would cause any defects in judgement, responsibility, or reliability. He was cleared for any administrative action deemed appropriate by command.
5. On 8 February 1994, he underwent a physical examination and was found qualified for chapter.
6. DA Form 4187 (Personnel Action) shows his duty status was changed from present for duty (PDY) to absent without leave (AWOL) on 11 February 1994. It was again changed from AWOL to PDY on 14 February 1994.

7. He received non-judicial punishment (NJP) under article 15 of the Uniform Code of Military Justice (UCMJ) for between on or about 6 December 1993 and 6 January 1994, wrongfully use cocaine, a controlled substance. He was reduced to specialist/E-4. He appealed the punishment to the next higher commander. On 18 March 1994, the next higher commander determined the proceedings were conducted in accordance with law and regulations and the punishments imposed were not disproportionate to the offense committed and denied his appeal.

8. On 1 April 1994, his commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 14-12c, for commission of a serious offense. The reason for his proposed action was he received a field grade article 15, for use of a controlled substance (cocaine).

9. On 13 April 1994, having been advised by consulting counsel of the basis for the contemplated action to separate him for commission of a serious offense under the provisions of AR 635-200, chapter 14, and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He voluntarily waived consideration of his case by an administrative separation board contingent upon receiving a general discharge. He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge is issued to him.

10. On 14 April 1994, his immediate commander recommended that he be separated from the Army prior to the expiration of his current term of service and that he receives an under other than honorable conditions discharge.

11. On 17 April 1994, he received NJP under article 15 of the UCMJ for on or about 26 March 1994, having been restricted to the limits of the barracks, by a person authorized to do so, did on or about 26 March 1994, break said restriction. He was reduced to private/E-2.

12. On 29 April and 2 May 1994, his intermediate commanders recommended that he be separated from the Army prior to the expiration of his current term of service and that he receives a General Discharge Certificate.

13. On 16 May 1994, the separation authority approved separation under the provisions of AR 635-200, paragraph 14-12c and directed he receive a General Discharge Certificate.

14. Accordingly, on 26 May 1994, he was discharged under honorable conditions. His DD Form 214 shows he completed 6 years, 7 months, and 10 days net active service this period. It also shows:

- Item 25 (Separation Authority): AR 635-200, paragraph 14-12c (1)
- Item 26 (Separation Code): JKD
- Item 27 (Reentry Code): RE-3
- Item 28 (Narrative Reason for Separation): Misconduct
- Item 29 (Date of Time Lost During this Period): 940211 – 9402313 (corrected administratively below)

15. There is no evidence the applicant applied to the Army Discharge Review Board (ADRB) within the ADRB's 15-years statute of limitations.

16. By regulation, AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service.

17. 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:

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 misconduct leading to the applicants separation and the lack of mitigation and/or clemency evidence submitted by the applicant, 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:

1. 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.
2. Prior to closing the case, the Board did note the administrative note below from the analyst of record and recommended that change be completed to more accurately reflect the military service of the applicant.



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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous honorable service 19871014 to 19910708." Also, Item 29 should reflect Lost Time Under 10 U.S.C. 972: 940211 – 940213.

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) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed

after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. AR 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment).

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//