

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240006302

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) character of service.

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 requesting an upgrade of his character of service due to the length of time since his discharge.
3. The applicant enlisted in the Regular Army on 17 May 2007. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman). The highest rank he attained was private/E-1.
4. Military Police Report (MPR) Number 02801-2007-MPC552, shows the applicant was apprehended by the Fort Drum Police, on 1 November 2007, for driving while impaired by drugs and endangering the welfare of a child. He was transported to the Fort Drum Police Station, processed, and released to his unit.
5. On 2 November 2007, the applicant's commander was given probable cause to conduct a urinalysis. A memorandum from the Army Substance Abuse Program, dated 13 November 2007, shows that the urine sample provided by the applicant tested positive for tetrahydrocannabinol (THC).
6. An arrest report from the Watertown Police Department shows the applicant was arrested for robbery on 13 November 2007. He was processed and held for arraignment in City Court.

7. A DD Form 2807-1 (Report of Medical History), dated 29 January 2008, and the corresponding DD Form 2808 (Report of Medical Examination) show the applicant was found medically qualified for separation.

8. The applicant underwent a mental status evaluation on 7 February 2008 in preparation for administrative separation. The evaluating provider noted a diagnosis of occupational problems. There was no evidence of cognitive impairment or biological mental illness. The applicant was psychiatrically cleared for any administrative action deemed appropriate by his command.

9. The applicant's immediate commander notified the applicant on 14 March 2008, of his intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c, by reason of commission of a serious offense. The commander cited the applicant's wrongful use of marijuana, physical control of a vehicle while impaired by marijuana, and arrest for robbery as specific reasons for the action. The applicant acknowledged receipt of the notification on the same date.

10. The applicant consulted with counsel. He was advised of the basis for the contemplated separation action and its effects, the rights available to him; and the effect of any action taken by him to waive his rights. He elected not to submit a statement on his own behalf.

11. On 29 April 2008, the applicant's immediate commander formally recommended his separation, prior to his expiration term of service, under the provisions of Army Regulation 635-200, Chapter 14-12c, by reason of commission of a serious offense. The intermediate commander reviewed and concurred with the recommendation, further recommending the issuance of an under honorable conditions (general) characterization of service.

12. The separation authority approved the recommended action on 2 May 2008 and directed the issuance of an under honorable conditions (general) characterization of service.

13. The applicant was discharged on 15 May 2008, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct (serious offense). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was under honorable conditions (general), with separation code JKQ and reentry code RE-3. He completed 5 months and 26 days of net active service, with lost time from 13 November 2007 to 15 May 2008. He was authorized or awarded the National Defense Service Medal, Global War on Terrorism Service Medal, and the Army Service Ribbon.

14. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

15. The Board should consider the applicant's overall record 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, and published Department of Defense Guidance or 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, the frequency and nature of his misconduct, his civil arrest, the separation packet contents, the mental status evaluation, the reason for his separation and the character of service he received upon discharge. The Board did not find evidence of mitigating factors for the misconduct and the applicant provided none. The applicant did not provide evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the applicant's discharge was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 Army Board for Correction of Military Records (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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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.

b. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

3. 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.

//NOTHING FOLLOWS//