

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240006312

APPLICANT REQUESTS: an upgrade to his under other than honorable conditions discharge to an honorable discharge.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Trial Fact Sheet, Staff Judge Advocate (SJA), 3d Armored Division, 14 October 1980

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 the incident that led to his discharge occurred in 1980. He left his home earlier in the day with friends and did not return until around midnight. When he arrived home, his roommate told him there was a party and the police had been called. He was told the police wanted to speak with him because marijuana seeds and heroin were found in his room. He admitted to having marijuana seeds that were found in his room, but the heroin had been hidden in his room under his pillow by his roommate. His roommate's fingerprints were the only prints found on the bag of heroin. In a Trial Fact Sheet, paragraph 1(d) states he claimed reasonability for the heroin but that is not true. He never touched the heroin and did not know it was even in the house. He offered to be drug tested. He also informed his Judge Advocate General (JAG) officer that his roommate told me that he hid the heroin under his pillow when the police came so they wouldn't find it on him or his wife. He also believes Sergeant (SGT) G\_\_\_\_, his roommate, was trying to put the responsibility on him because he had only been staying with him for approximately a month while waiting on housing.

3. He enlisted in the Regular Army on 13 January 1976 for a period of 3 years.

4. He was honorably discharged on 28 September 1978 by reason of immediate reenlistment. His DD Form 214 (Report of Separation from Active Duty) shows he completed 2 years, 8 months, and 16 days of total active service.
5. He reenlisted in the Regular Army on 29 September 1978 for a period of 4 years in the rank/grade of specialist four (SP4)/E-4. He was promoted to the rank/grade of SGT/E-5 effective 17 January 1979.
6. The applicant accepted nonjudicial punishment (NJP) on 15 June 1980, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), in that at Coleman Village, Gelnhausen, Federal Republic of Germany, on or about 15 February 1980, wrongfully have in his possession, a bag of marijuana seeds in violation of Article 134, UCMJ. His punishment was reduction to the grade of specialist four, forfeiture of \$325 pay per month for one month, suspended until 1 October 1980, and to perform extra duty for 30 days. He elected not to appeal.
7. The DD Form 458 (Charge Sheet), 12 August 1980, shows he was charged with one specification of violation of Article 134, in that he did at Coleman Village, Gelnhausen, Federal Republic of Germany, on or about 15 February 1980, wrongfully have in his possession .25 grams, more or less, of a habit forming narcotic drug, to wit; heroin, said offense occurring outside the territorial limits of the United States and not being cognizable in a United States Civilian Court.
8. On 9 September 1980, 17 September 1980, and 19 September 1980, his chain of command recommended a trial by Special Courts-Martial empowered to adjudge a "Bad Conduct Discharge."
9. After consulting with legal counsel on 2 October 1980, he voluntarily requested discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service in lieu of trial by court-martial.
  - a. He was making this request of his own free will and has not been subjected to any coercion whatsoever by any person. By submitting this request for discharge, he acknowledges that he understood the elements of the offense charged and is guilty of the charges against him, which authorizes the imposition of a bad conduct or dishonorable discharge. Moreover, he states that under no circumstances does he desire further rehabilitation, for he has no desire to perform further military service.
  - b. He acknowledged he understood that if his discharge request were approved, he could be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate. He further acknowledged that as a result of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for

many or all benefits administered by the Veterans Administration (now known as the Department of Veterans Affairs), he could be deprived of his rights and benefits as a veteran under both Federal and State laws, and he could expect to encounter substantial prejudice in civilian life by reason of an undesirable discharge. He elected not to submit a statement in his own behalf. He did not desire a physical examination.

10. The applicant's immediate and intermediate commanders, by memorandum, recommended his request for discharge under provisions of Army Regulation 600-200, Chapter 10, be approved 7 October 1980 and 14 October 1980, respectively.

11. He provides a Trial Fact Sheet, SJA, 3d Armored Division, 14 October 1980 from the Officer-in-Charge, that noted the background of the offenses and dates of violations. The applicant highlights the following pertinent parts (see attachment for further details):

a. Facts and circumstances surrounding the Offenses: Sergeant G\_\_\_\_ and SP4 C\_\_\_\_ were charged with possession of heroin and, in SGT G\_\_\_\_'s case marijuana, in connection with a search that was conducted of SGT G\_\_\_\_'s quarters. The heroin was found in a plastic bag, on which was found G\_\_\_\_'s thumbprint. At the Article 32, SP4 C\_\_\_\_ claimed the heroin was his. SP4 C\_\_\_\_ had been staying in SGT G\_\_\_\_'s quarters. (Note: A review of his records does not contain an Article 32 available for review).

b. Prior disciplinary action: SGT G\_\_\_\_, None; SP4 C\_\_\_\_, one Article 15 for possession of marijuana (same incident as above).

c. Legal issues evidentiary and witness problems: It is highly likely that, if sent to court, neither of these cases would result in conviction. The only evidence linking (Applicant) to the heroin is the fact that he lived at G\_\_\_\_'s and his statement at the Article 32, which he might well retract at trial.

12. He underwent a psychiatric evaluation by a licensed psychiatrist on 16 October 1980, to determine his mental condition prior to the commencement of administrative separation actions. The medical professional that performed the evaluation stated the following:

a. He was fully alert and oriented, with normal behavior, and good memory. His thinking and thought content were clear and normal. He was mentally responsible and could distinguish right from wrong.

b. He further had the mental capacity to understand and participate in board proceedings and meet retention standards under the provisions of chapter 3, Army Regulation 40-501 (Standards of Medical Fitness).

c. He was and is mentally responsible, able to distinguish right from wrong and to adhere to the right, and he has the mental capacity to understand and participate in administrative procedures deemed appropriate by the command.

13. The approval authority approved the applicant's request for discharge on 20 October 1980, under the provisions of Army Regulation 635-200, chapter 10, in lieu of trial by court-martial, and directed that he be reduced to the lowest enlisted grade and that he be issued a DD Form 794A (Under Other than Honorable Conditions Discharge Certificate).

14. He was discharged on 10 November 1980. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 4a (Grade, Rate, or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12c (Net Active Service This Period) – 2 years, 1 month, and 12 days
- item 12d (Total Prior Active Service) – 2 years, 8 months, 16 days
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10
- item 26 (Separation Code) – JFS (for the good of the service in lieu of trial by court-martial)
- item 27 (Reenlistment Code) – RE 3 and 3C (ineligible for reenlistment without a waiver)
- item 28 (Narrative Reason for Separation) – Administrative Discharge Conduct Triable by Court-Martial (For the Good of the Service - in Lieu of Court-Martial)

15. The Board should consider the applicant's statement 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 for consideration of discharge upgrades, the Board found that relief was/was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service, the nature of his misconduct, the record of NJP, the charge and his statement regarding the offenses, the Trial Fact Sheet, his request for discharge, the reason for his separation and the character of service he received upon discharge. Based on a preponderance of evidence, the Board majority found his statements and supporting documents compelling and determined that the punishment was too harsh and recommend an

upgrade of his discharge to Under Honorable Conditions as a matter of clemency. One Board member determined that based on the evidence, the character of service the applicant received was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
XX:	XX:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	XX:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 10 November 1980, to show:

- item 24 (Character of Service): Under Honorable Conditions (General)

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains upgrading his characterization of service to Honorable.

**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 635-200 (Personnel Separations – Enlisted Personnel), set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. The basic authority for the separation of enlisted personnel.

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

c. Chapter 10 (Discharge for the Good of the Service) provided that a Soldier who committed an offense or offenses for which the authorized punishment included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial.

(1) Commanders would ensure that an individual would not be coerced into submitting a request for discharge for the good of the service. The member would be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge.

(2) The request could be submitted at any time after charges were preferred and must have included the individual's admission of guilt.

(3) If the member elected to submit a request for discharge for the good of the service after receiving counseling, he would personally sign a written request certifying that he had been counseled, that he understood his rights, that he may receive a discharge under other than honorable conditions, and that he understood the adverse nature of such a discharge and the possible consequences.

(4) A discharge under other than honorable conditions normally were appropriate for a Soldier who was discharged for the good of the service. However, the

separation authority could direct a general discharge if such were merited by the Soldier's overall record.

d. Paragraph 14-4 (Authority for Discharge or Retention) stated upon determination that a member is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.

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.

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//