

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 January 2025

DOCKET NUMBER: AR20240006350

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his general, under honorable conditions discharge to an honorable

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 3 December 1984

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20090007629 on 3 September 2009.

2. The applicant states the Board should find it in the interest of justice to consider his application for a discharge upgrade because it has been more than 10 years since he discovered the injustice.

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

a. He enlisted in the Regular Army on 9 March 1982.

b. He served in Korea from 13 September 1982 to 15 September 1983.

c. He accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on two occasions:

- 21 June 1982 – dereliction in the performance of his duties, on or about 19 June 1988; his punishment included placement in correctional custody facility (CCF) category (CAT) II for 7 days.
- 17 October 1984 – knowingly and wrongfully using marijuana, on or between 15 July 1984; his punishment included reduction to private (PV2), E-2

d. A memorandum for the record summarizing the applicant's Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) efforts, dated 22 October 1984, shows:

1) On 4 September 1984, he was referred by his commander to the ADAPCP and was evaluated on the same day by the ADAPCP staff. The evaluation results found that the applicant's primary substance abuse was cannabis, and the ADAPCP staff determined that he would be enrolled in track II of the program.

2) On 18 October 1984, the rehab team met and determined the applicant was not making satisfactory progress in his rehabilitation efforts. After consultation with the members of the rehab team and exhausting all resources for achieving successful rehabilitation due to the applicant's refusal to comply with treatment plans and goals, the Alcohol and Drug Control officer recommended the applicant's commander declare the applicant a rehabilitation failure and initiate discharge action.

e. 24 October 1984, the applicant underwent a medical examination for the purpose of separation which indicated he was generally in good health.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

f. On 8 November 1984, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 9, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) for alcohol or other drug abuse. The specific reasons for his proposed recommendation the applicant's refusal to comply with treatment plans and goals. On the same day, applicant acknowledged receipt with his signature.

g. On 16 November 1984, after consulting with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he did not request treatment in a Department of Veterans Affairs medical center
- he elected to submit statements in his own behalf; however, statements if submitted are not available for review.

h. Biochemical test results dated 16 November 1984 shows the applicant was notified on 16 October 1984 that his urine sample collected on 25 July 1984 tested positive for tetrahydrocannabinol (THC) and cocaine.

i. The applicant's immediate commander formally recommended the applicant's separation from service, under the provisions of Army Regulation 635-200, Chapter 9.

j. The applicant's immediate commander formally recommended the applicant's separation from service, under the provisions of Army Regulation 635-200, paragraph 9, and recommended the issuance of a general discharge.

k. On 26 November 1984, the separation authority approved the discharge recommendation for immediate separation, under the provisions of Chapter 9, AR 635-200, for alcohol or other drug abuse. He would be issued a general, under honorable conditions characterization of service.

l. On 3 December 1984, he was discharged from active duty with a under honorable conditions (General) characterization of service. His DD Form 214 shows he completed 2 years, 8 months, and 25 days of active service with no lost time. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Achievement Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. On 3 September 2009, the ABCMR rendered a decision in Docket Number AR20090007629. The Board found after reviewing the application and all supporting documents, relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records. Although the applicant's post-service achievements are commendable, they are not a justifiable basis for an upgrade of his discharge.

6. By regulation, enlisted Soldiers discharged by reason of alcohol or other drug abuse rehabilitation failure, will receive a service characterization of honorable or under honorable conditions unless the Soldier was in entry-level status.

7. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence in-service mitigating factors to support the applicant's contentions. The Board noted, the applicant provided no evidence of post-service achievements, character references, or other documentation to support a request for clemency or to demonstrate sustained honorable conduct following discharge.

2. The Board acknowledged, the applicant's discharge followed a documented history of substance abuse, including a positive urinalysis for THC and cocaine, and a failure to comply with treatment plans and goals as determined by the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) rehabilitation team. Although, the applicant's overseas service and receipt of several awards, his continued substance abuse and refusal to engage in rehabilitation efforts led to his separation. The characterization of service as general, under honorable conditions was consistent with Army policy and appropriately reflected the nature of his misconduct. In the absence of new, compelling evidence, the Board found no basis to overturn its prior decision or to upgrade the applicant's discharge to honorable. The characterization of service remains appropriate given the circumstances of his separation. Therefore, relief is denied.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20090007629 on 3 September 2009.

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. 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. Chapter 9 provided the authority and outlined the procedures for discharging Soldiers for alcohol or other drug abuse rehabilitation failure. A member who has 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 if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Nothing in this chapter prevents separation of a Soldier who has been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation

failures. The service of Soldiers discharged under this chapter will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status.

2. 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//