

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2025

DOCKET NUMBER: AR20240006860

APPLICANT REQUESTS: upgrade of his under other than honorable conditions 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)
- Self-authored statement, undated
- Character Statements of Support (three)

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, in effect, he served a significant portion of his enlistment but made a regrettable mistake due to being youthful.
3. He enlisted in the Regular Army on 2 July 1980.
4. He accepted nonjudicial punishment (NJP) on 22 March 1981, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ), in that on or about 15 February 1981, wrongfully having in his possession a hand-rolled cigarette containing marijuana in violation of Article 134, UCMJ. His punishment was reduction to private/E-1, forfeiture of \$116.00 pay, and restriction. He elected not to appeal.
5. A Superior Court of California Minute Order, 17 June 1982 shows he was convicted of "assault with intent to commit rape" and after serving time was given probation.
6. The applicant's immediate commander-initiated action to separate him on 7 July 1982, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12a (misconduct – conviction by civil court)

and informed him of his rights and consultation to legal counsel. He acknowledged receipt of the notification on 7 July 1982.

7. The applicant met with counsel on 19 July 1982, elected not to submit statements in his own behalf, elected to waive representation by counsel, and did not desire a discharge physical examination. He further stated he understood that a result of an issuance of a discharge under conditions other than honorable, he could be ineligible for many or all benefits as a veteran under both federal and state law and he could expect to encounter substantial prejudice in civilian life.

8. In an undated memorandum, his immediate commander recommended that he be eliminated from the service under the provisions of Army Regulation 635-200, Chapter 14-12a. He cited the applicant's civil conviction and confinement, and his minor disciplinary incident.

9. The separation authority approved his discharge on 7 September 1982, under the provisions of Army Regulation 635-200, chapter 14-12a, by reason of misconduct – conviction by civil court, and directed he be reduced to the lowest enlisted grade and be issued with an under other than honorable conditions discharge certificate.

10. He was discharged on 17 September 1982 in the rank/grade of private/E-1. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was separated under the provisions of Army Regulation 635-200, paragraph 14-12a, by reason of misconduct – conviction by civil court. He completed 2 years, 9 months, and 23 days of net active service this period, and had 143 days of lost time.

11. He provides three-character statements attesting to him being a kind, trustworthy, hardworking, and dependable person.

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 applicant's available military record, the Board noted the applicant's contentions that his misconduct stemmed from youthful indiscretion and that he served a substantial portion of his enlistment honorably, the record reflects serious and disqualifying behavior.

2. The Board determined there is insufficient evidence of mitigating factors to overcome the misconduct for possession of marijuana and subsequent conviction by a civil court for assault with intent to commit rape which represented significant breaches of military discipline and legal standards. Although the Board recognized the applicant's post-service efforts and the positive character references submitted, these do not outweigh the severity of his misconduct. Therefore, the Board found that the discharge was both proper and equitable and denied relief for upgrade.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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 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 15-185 (ABMCR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases on the evidence of record. It is not an investigative body.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a, provides that 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 3-7b, provides that 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records, on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also

applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

//NOTHING FOLLOWS//