

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20240006918

APPLICANT REQUESTS: through counsel, reconsideration of his previous request for correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 14 February 1986 to show in:

- item 24 (Character of Service), upgrade from under other than honorable conditions to honorable
- item 28 (Narrative Reason for Separation), from “For the Good of the Service – In Lieu of Court-Martial” to “Secretarial Authority”
- item 26 (Separation Code), from “KFS” to a separation code that corresponds to the requested narrative reason for separation

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel Legal Brief
- Exhibit 1: DD Form 214, 14 February 1986
- Exhibit 2: Personnel Control Facility Information Sheet, 7 February 1986
- Exhibit 3: DA Form 2-1 (Personnel Qualification Record), Page 2
- Exhibit 4: DD Form 4 (Enlistment or Reenlistment Agreement – Armed Forces of the United States), 11 December 1979
- Exhibit 5: Radiographic Report, 14 November 1978
- Exhibit 6: Chronological Record of Medical Care, 27 July 1981
- Exhibit 7: Medical Record – Supplemental Medical Data, 30 May 1982
- Exhibit 8: DA Form 2-1, Page 1
- Exhibit 9: DA Form 4465 (Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) Client Intake Record), 4 April 1983 and ADAPCP Client Progress Report, 11 July 1983
- Exhibit 10: Chronological Record of Medical Care, 11 March 1984
- Exhibit 11: Radiographic Report, 11 March 1984
- Exhibit 12: Report of Medical History, 15 June 1984
- Exhibit 13: DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) and DD Form 458 (Charge Sheet), 4 December 1984

- Exhibit 14: Orders Number 044-76, 13 February 1986
- Exhibit 15: DA Form 2-1, Page 4
- Exhibit 16: Absent Without Leave (AWOL) – Deserter Verification Sheet, 7 February 1986
- Exhibit 17: DD Form 458, 7 February 1986
- Exhibit 18: Request for Discharge for the Good of the Service, 7 February 1986
- Exhibit 19: Separation Authority Approval of Request for Discharge for the Good of the Service, 13 February 1986
- Exhibit 20: Personnel Control Facility Interview Sheet, 7 February 1986

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 AR20150011190 on 12 July 2016.

2. The applicant's legal counsel states, in pertinent part:

a. The applicant respectfully submits that his chain of command committed a material error in discretion by using the applicant's medical conditions and drug treatment history to initiate several adverse actions stemming from one incident of misconduct. The applicant's command engaged in unfair treatment following the incident, as well as failed to offer adequate support for the applicant's concerns, thus forcing him to go AWOL. But, for the command's error, the applicant would not have gone AWOL and likely would have received a greater characterization of service.

b. The applicant gave his chain of command notice that he had recurrent physical conditions and that he had a marijuana use problem, which the command used to leverage charges against the applicant. The applicant first reported spine pain in 1978, chest pain in 1981, and lower back pain in 1982. By 1984, he reported that those conditions had been recurrent throughout his service, and that the back pain had begun radiating down his hips into his lower extremities. Around this same time, in 1983, he self-admitted and completed an Army drug abuse program. Considering he was experiencing regular physical pain, his regular marijuana use, before drug treatment, more likely suggests self-medication rather than recreational use.

c. The applicant was then involved in the March 1984 incident where multiple aluminum packets containing an unidentified substance fell from his person during a medical evaluation. This act would raise an eye of any medical provider observing, but because the applicant was a Puerto Rican male with a history of pain and marijuana use, he was subjected to heightened criminal treatment. Consequently, he was forcefully restrained when he tried to leave. Even though he voluntarily submitted to an

x-ray, medical personnel, and the military police (MP) still attempted to forcefully provide a medication to induce vomiting via an “NG” tube, a significantly painful procedure for patients. Ultimately, neither the x-ray nor any other test conclusively revealed that the applicant ingested the metal packets. Nonetheless, the applicant’s command utilized this incident along with his history with pain and his history with drug abuse treatment to demote him SP4 in April 1984, give him an Article 15 in December 1984, refer charges for special court-martial in December 1984, and to further demote him to PV1 in February 1985.

d. The command’s multiplicity of punishments stemming from the single instance of misconduct in March 1984 left the applicant with little choice besides going AWOL. At the time, he was stationed in Germany far from his wife and children. Additionally, his everyday duties were causing significant pain on his body. Consequently, when the punishments continued to stack up against him to the point where his rank and his corresponding salary that supported his family was significantly reduced, he made the youthful mistake of going AWOL. He attempted to get help from the Inspector General (IG), military counsel, and his commanding officer before going AWOL, who all failed to properly support him with his concerns of being criminally charged on a foreign base. He was treated by his command as if he was already presumed guilty, which led him to believe he was being unfairly treated. The applicant was thus left with little choice besides taking an unauthorized leave to return home rather than face the Army’s legal machine and risk confinement on a base in a foreign country. Had his command withheld punishment until the investigation and possible court-martial concluded, then he would not have been pressured to go AWOL as his situation got continually worse with no end in sight. Alternatively, had the applicant’s command transferred him to a state side transient unit during the investigation, he would not have gone AWOL to avoid unfair treatment by his command.

e. The applicant’s chain of command committed material errors in discretion by using his history of pain and drug use against him when they issued numerous punishments stemming from one incident of misconduct. His command further engaged in unfair treatment and failed to provide the necessary support that would have prevented him from going AWOL. Consequently, the applicant has faced nearly 40 years of stigma stemming from his characterization of service. Therefore, he respectfully requests that relief should be granted so he may live the remainder of his life unhindered by a youthful indiscretion.

f. Counsel’s complete brief and supporting documents are available for the Board to review.

3. Counseling provides the following:

- a. A Radiographic Report dated 14 November 1978, which shows the applicant's thoracic spine showed minimal scoliosis.
 - b. A Chronological Record of Medical Care dated 27 July 1981, wherein the applicant reported to the medical provider that he was experiencing recurrent pain in his left chest wall that caused shortness of breath. The medical provider stated that it was possibly costochondritis, secondary to old trauma.
 - c. A Medical Record – Supplemental Medical Data form, dated 30 May 1982, which shows the applicant complained of lower back pain.
 - d. A Chronological Record of Medical Care dated 11 March 1984, wherein the applicant reported sharp, stabbing pain, radiating down into his left buttock and lower extremities. The doctor began prepping to check for a hernia when five rectangular aluminum foil packets were discovered in the applicant's underwear. While waiting for the MPs, the applicant attempted to leave the emergency room and was restrained with moderate force. At the end of the struggle, only one packet was found.
 - e. A Radiographic Report dated 11 March 1984, which shows an x-ray was performed on the applicant due to possible ingestion of metallic objects. The results were inconclusive with no definitive sign of ingestion of the aluminum foil packets.
 - f. A Report of Medical History dated 15 June 1984, in which the applicant marked yes to pain or pressure in chest, broken bones, painful or "trick" shoulder or elbow, and recurrent back pain.
 - g. A Personnel Control Facility Interview Sheet dated 7 February 1986, which shows the applicant stated he went AWOL due to unfair treatment. The applicant states he went to IG, military lawyers, and the commanding officer before going AWOL.
4. A review of the applicant's service record shows:
- a. He enlisted in the Regular Army on 10 March 1977.
 - b. On 4 April 1983, the applicant was enrolled ADAPCP due to testing positive for tetrahydrocannabinol (THC). The applicant stated he used a cannabis product 2-6 times per week, and most recently within the last 48 hours of the report. He completed the program, and he was released on 15 July 1983.
 - c. On 9 April 1984, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, UCMJ for on or about 11 March 1984, wrongfully possessing some amount of marijuana/hashish. His punishment included reduction to specialist/E-4,

forfeiture of \$444.00 pay per month for two months, 45 days extra duty, and 45 days restriction.

d. On 9 April 1984, the applicant's commander recommended that he be barred from reenlistment. The commander noted the following:

- 23 February 1983 – counseled for failure to repair
- 21 March 1983 – enrolled in Track I due to testing positive for THC on urinalysis
- 2 March 1984 – letter of admonition for failure to reregister motor vehicle
- 11 March 1984 – found to be in possession of a controlled substance: marijuana/hashish. This was his second offense.
- 4 April 1984 – result of urinalysis performed in conjunction with applicant being found in possession of controlled substance; positive for THC

e. The Bar to Reenlistment was approved on 24 April 1984.

f. The applicant's duty status changed on the following dates:

- Present for Duty to AWOL – 11 March 1985
- AWOL to Dropped from Rolls (DFR) – 10 April 1985
- DFR to PDY – 6 February 1986

g. Court-martial charges were preferred against the applicant on 7 February 1986. His DD Form 458 shows he was charged with being AWOL from on or about 11 March 1985 to on or about 6 February 1986.

h. On 7 February 1986, the applicant elected not to undergo a medical examination for separation from active duty.

i. On 7 February 1986, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10 and acknowledged the following:

(1) He made the request of his own free will and was not coerced by any person.

(2) His understanding that by requesting discharge, he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge.

(3) He understood that if his discharge request was approved, he may be discharged under conditions other than honorable and furnished an under other than honorable discharge certificate.

(4) He could be deprived of many or all Army benefits and he could be ineligible for many or all benefits administered by the Veteran's Administration.

(5) He could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

(6) He understood that he must apply to the Army Discharge Review Board (ADRB) or the ABCMR if he wished review of his discharge and realized the act of consideration by either Board does not imply that his discharge will be upgraded.

(7) He elected not to submit a statement in his own behalf.

j. On the same date, the immediate commander recommended approval of the request for discharge in lieu of trial by court-martial, with characterization of service under other than honorable conditions. The commander noted the applicant was pending a trial for an offense punishable by a bad conduct or dishonorable discharge. The administrative burdens involved in the court-martial and possible confinement were not considered warranted in view of the nature of the offense.

k. The separation authority approved the recommended discharge on 13 February 1986, directed the applicant be reduced to the lowest enlisted grade, and be issued an under other than honorable conditions discharge.

l. The applicant was discharged on 14 February 1986. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the lowest enlisted grade, and his service was characterized as under other than honorable conditions. He completed 8 years and 7 months of net active service during the covered period. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Good Conduct Medal (2nd Award), Army Service Ribbon, Marksman Marksmanship Qualification Badge (M-16), and the Expert Marksmanship Qualification Badge (Hand Grenade)
- Item 18 (Remarks): Immediate Reenlistment this Period – 10 March 1977 to 10 December 1979
- Item 26 (Separation Code): KFS
- Item 27 (Reenlistment Code): 3, 3B, and 3C
- Item 29 (Dates of Time Lost During This Period): 26 February 1985 to

28 February 1985 and 11 March 1985 to 5 February 1986

5. On 12 July 2016 and in ABCMR Docket Number AR20150011190, the ABCMR determined that the applicant's separation was in compliance with applicable regulations; there was no indication of procedural or administrative errors which would have jeopardized his rights. The type of discharge directed was appropriate. Therefore, the Board determined the overall merits of the case were insufficient as a basis for correction of the records of the applicant concerned.

6. There is no indication the applicant applied to the ADRB for review of his discharge processing within the Board's 15-year statute of limitations.

7. 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.

8. The pertinent Army regulation in effect at the time provided discharges under the provision of AR 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

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 pattern of misconduct leading to the applicant's separation and the lack of mitigating and/or clemency evidence for such misconduct, 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:

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.

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 (AR) 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

2. AR 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), currently in effect, states in Chapter 15 (Secretarial Plenary Authority):

a. Separation under this chapter is the prerogative of the SECARMY. Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies. Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interest of the Army. Separations under this chapter are effective only if approved in writing by SECARMY or the Secretary's approved designee as announced in updated memoranda.

b. The service of Soldiers separated under Secretarial plenary authority will be characterized as honorable or under honorable conditions as warranted by their military records unless an entry-level status separation (uncharacterized) is warranted. No Soldier will be awarded a character of service under honorable conditions in accordance with this chapter unless the Soldier is notified of the specific factors in his or her service record that warrant such a characterization, using the notification procedure.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10 for the Good of the Service in lieu of court-martial would receive a separation code of "KFS."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.

- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

5. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

6. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent

evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//