

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 February 2025

DOCKET NUMBER: AR20240007743

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) discharge.

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 it has been 36 years since he was in the Army and he never tried to get an upgrade. He is hoping he can get some kind of relief or help if possible.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 20 May 1988.
 - b. He accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 20 December 1988 for on or between 16 October 1988 and [sic] November 1988, wrongfully use cocaine, a schedule II controlled substance. His punishment consisted of reduction to the grade of private/E-1, forfeiture of \$150.00 per month for 2 months, 45 days extra duty, and 45 days restriction.
 - c. He accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on 18 November 1988 for on or about 11 November 1988, without authority, fail to go to his appointed place of duty, to wit: the ammunition holding area. His punishment consisted of forfeiture of \$156.00, 14 days extra duty, and 14 days restriction.
 - d. On 27 April 1989, his immediate commander initiated action to separate him for serious misconduct under the provisions of Army Regulation 635-200 (Personnel

Separations – Enlisted Personnel), Chapter 14-12c. The reason for the proposed action was wrongful use of cocaine. The commander recommended an under honorable conditions (General) characterization of service.

e. On 29 April 1989, the applicant consulted with counsel of the basis for the contemplated action to separate him for misconduct under Army Regulation 635-200, Chapter 14-12c, its effects, the rights available to him, and the effect of any action taken by him in waiving his rights.

(1) The applicant voluntarily waived consideration of his case by an administrative separation board contingent upon receiving a characterization of service no less favorable than under honorable conditions (General).

(2) Statements in his own behalf were not submitted with his request.

(3) He understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

f. On 3 May 1989, consistent with the chain of command recommendations, the separation authority approved the applicant discharge under the provisions of Army Regulation 635-200, Chapter 14-12c. His characterization of service will be under honorable conditions (General).

g. On 18 May 1989, the applicant was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c for misconduct – abuse of illegal drugs with an under honorable conditions (General) characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 11 months and 29 days of active service. It also shows he was awarded or authorized the Army Service Ribbon, Expert Marksmanship Qualification Badge with Pistol Bar (9mm), and Expert Marksmanship Qualification Badge with Hand Grenade Bar.

4. 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 of in-service mitigating factors to overcome the misconduct. The Board noted, the applicant's service record reflects a pattern of misconduct that culminated in his separation under the provisions of Chapter 14-12c, for serious misconduct, specifically, wrongful use of cocaine. Additionally, the record shows that the applicant received two nonjudicial punishments under Article 15 of the Uniform Code of Military Justice: one for failing to report to his appointed place of duty and another for wrongful use of a Schedule II controlled substance. These offenses occurred within a relatively short period of service and demonstrated a disregard for military discipline and standards.

2. The Board recognized the applicant's completion of nearly one year of active service and his receipt of several marksmanship awards, it determined that the nature and frequency of his misconduct warranted the characterization he received. The Board found the discharge to be both proper and equitable, and agreed that there is no basis for granting relief. As such, the request for upgrade of discharge 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 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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7 (Honorable Discharge) states 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. Paragraph 14-12c (Commission of a Serious Offense) states abuse of illegal drugs is serious misconduct.
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/NRs) regarding equity, injustice, or clemency determinations. 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//