

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 February 2025

DOCKET NUMBER: AR20240007812

APPLICANT REQUESTS: reconsideration of his previous requests for an amendment of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show a different separation code in item 26, a different reentry code in item 27, and a different narrative reason for separation in item 28.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214, for the period ending 19 May 2014
- Montgomery GI Bill Act of 1984 Basic Enrollment
- Headquarters, 2d Armored Brigade Combat Team, Memorandum, subject: Separation Under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], 28 April 2014
- Headquarters, 1st Battalion, 9th Field Artillery Regiment Memorandum, subject: Separation Under Army Regulation 635-200, Chapter 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], 16 April 2014
- Bravo Battery, 1st Battalion, 9th Field Artillery Regiment Memorandum, subject: Commander's Report – Proposed Separation Under Army Regulation 635-200, Chapter 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant]
- DD Form 2648 (Pre-separation Counseling Checklist)
- Bravo Battery, 1st Battalion, 9th Field Artillery Regiment Memorandum, subject: Separation Under Army Regulation 635-200, Chapter 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant]
- Bravo Battery, 1st Battalion, 9th Field Artillery Regiment Memorandum, subject: Acknowledgement of Receipt of Separation Notice, Chapter 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], 3 April 2014
- Bravo Battery, 1st Battalion, 9th Field Artillery Regiment Memorandum, subject: Election of Rights Regarding Separation Under Army Regulation 635-200, Chapter 14-12c(2), Misconduct-Abuse of Illegal Drugs, [Applicant], 9 April 2014
- Service Medical Records
- DA Form 4856 (Developmental Counseling Form), 24 January 2014

- Memorandum from Army Substance Abuse Program, subject: Positive Test and Required Action for Amphetamines, Barbiturates, Opiates, and Steroids
- DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 11 February 2014
- DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)), 7 February 2014
- Enlistment Documents
- Enlisted Record Brief
- DD Form 93 (Record of Emergency Data)
- U.S. Army Installation Management Command Orders 177-460, 26 June 2013
- Servicemembers' Group Life Insurance Election and Certificate
- Headquarters, U.S. Manuever Center of Excellence Orders 136-3223, 16 May 2013
- Magisterial District Courts Docket Sheets
- Magisterial District Judge Docket Transcript
- Marriage License
- Social Security Card
- Birth Certificate
- Letter to Applicant from the Office of the Deputy Chief of Staff, G-1, subject: Rescind Tentative Job Offer, 21 December 2023
- Character Letter
- Background Screening Report

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 Numbers AR20150011262 on 12 July 2016 and AR20170018896 on 20 November 2019.

2. The applicant states during his tenure at Fort Stewart, GA, he received multiple counseling statements for failing to report to physical training sessions, which was attributed to a lack of effective time management rather than physical inability. On 17 December 2013, he submitted a positive urinalysis for the prescription medication oxymorphone. He obtained the medication from his neighbor. He suffered undocumented pain from physical training and failed to report the pain. Against his better judgement, he ingested the oxymorphone to aid in the pain. The Monday following the event, he failed the urinalysis. He was to be command referred to the Army Substance Abuse Program, processed under UCMJ, and processed for separation from the military. He completed the requirements of the Army Substance Abuse Program. Under the UCMJ, he was reduced one grade, forfeited half a month's pay for two

months, and served extra duty and restriction for 45 days. He was separation from the military.

a. While his actions were uncharacteristic, he fully acknowledges and takes responsibility for his lack of honor and integrity. He holds himself accountable and deeply regrets his juvenile decisions. While acknowledging there is no excuse for his actions, it is important to note that he was young at the time and he has since grown and matured significantly. He is writing to attest to his character. Over the past ten years, he has demonstrated unwavering commitment to personal and professional growth as well as maintaining a lifestyle free from drug/alcohol/nicotine use.

b. He enrolled in Shippensburg University and participated in their Reserve Officers Training Corps Program while there, showcasing dedication to education, self-improvement, and duty. Concurrently, he has steadily held employment positions, consistently performing at a high level and serving as a valuable member with various organizations.

c. He has been an active member of the community, regularly engaging in volunteer work. This demonstrates a strong sense of civic responsibility and empathy toward others.

3. The applicant provides:

a. A closed non-traffic docket transcript from 23 November 2009 wherein the applicant pled guilty to public drunkenness and similar misconduct with an offense date of 21 October 2009.

b. A letter from the Office of the Deputy Chief of Staff, G-1, subject: Rescind Tentative Job Offer, dated 21 December 2023.

(1) This letter is to inform you that we must rescind your tentative job offer extended for the position of Maintenance Worker, with the Directorate of Public Works. We were notified that you cannot fulfill your conditions of employment at this time. Management was made aware of this situation and has agreed to move forward due to this security flag.

(2) If you wish to obtain information regarding your security clearance, please call the security office to learn more.

c. A character letter from Staff Sergeant (Retired) DF, dated 30 March 2024, which recommends the applicant's discharge with the Army as the commander of the Veterans Council Color Guard. He has supervised the applicant in his role as a member

of the color guard for the past 10 years. He has witnessed the applicant's loyalty, duty, selfless service, and honor and believes these qualities make him an asset.

d. A background screening report, which shows, in pertinent part, no information relating to felony or misdemeanor criminal records.

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

a. He enlisted in the Regular Army on 9 April 2013.

b. On 11 February 2014, he accepted nonjudicial punishment under the UCMJ for wrongfully using oxycodone, a schedule II controlled substance on or about 17 December 2013. His punishment consisted of reduction to private (PVT)/E-1, forfeiture of \$765.00 pay per month for 2 months, suspended, and extra duty for 45 days.

c. On an unknown date, the applicant's immediate commander notified him of his action to separate him for misconduct-abuse of illegal drugs. The reasons for his proposed action were: On or about 17 December 2013, he tested positive on a urinalysis for oxycodone, a schedule II controlled substance. He was recommending that his service be characterized as general (under honorable conditions).

d. The applicant acknowledged receipt of the separation action on 3 April 2014.

e. On 9 April 2014, the applicant consulted with legal counsel. He was advised of the basis of the contemplated action to separate him for misconduct-abuse of illegal drugs under Army Regulation 635-200, Chapter 14-12c(2) and its effects, of the rights available to him, and of the effect of any action taken by him in waiving his rights. He understood:

- he was not entitled to consideration of his case by an administrative separation board
- he was not entitled to personal appearance before an administrative separation board
- statements in his own behalf are submitted herewith
- he requested consulting counsel and representation by military counsel and/or civilian counsel at no expense to the Government
- he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him
- he may be ineligible for many or all benefits as a veteran under both Federal and State laws

f. On 29 April 2014, consistent with the chain of command recommendations, the separation authority approved the applicant's separation with a general under honorable conditions characterization of service.

g. On 19 May 2014, he was discharged accordingly. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, paragraph 14-12c(2) for misconduct (drug abuse) with separation code JKK and reentry code 4. He completed 1 year, 1 month, and 11 days of active service. He was awarded or authorized the National Defense Service Medal, Global War on Terrorism Service Medal and the Army Service Ribbon.

5. The applicant applied to the Army Discharge Review Board (ADRB) for a review of his discharge. On 21 October 2014, the board determined the discharge was both proper and equitable and denied relief.

6. The applicant applied to the ABCMR for amendment of his reentry code or an upgrade of his general discharge to honorable. On 12 July 2016, the Board determined the overall merits of his case are insufficient as a basis for correction of the records and denied relief.

7. The applicant applied to the ABCMR for amendment of his narrative reason for separation. On 20 November 2019, the Board determined relief was not warranted and denied his request.

8. Action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him/her as a satisfactory Soldier, further effort is unlikely to succeed or rehabilitation is impracticable or the Soldier is not amenable to rehabilitation. Soldiers are subject to action for acts or patterns of misconduct for commission of a serious offense including abuse of illegal drugs. A discharge under other than honorable conditions is normally appropriate.

9. 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:

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. Upon review of the applicant's petition and available military records, the

Board found insufficient evidence to support the applicant's contentions for correction. The record clearly documents that the applicant tested positive for oxymorphone, a Schedule II controlled substance, and was subsequently processed for separation under the provisions of Army Regulation 635-200, paragraph 14-12c(2), for misconduct—drug abuse. The Board acknowledged the applicant's commendable post-service conduct, including his educational pursuits, employment history, and community involvement. However, these factors, while noteworthy, do not alter the factual basis for his separation or justify modification of his DD Form 214. The applicant's separation code (JKK), reentry code (RE-4), and narrative reason for separation are consistent with regulatory guidance and the circumstances surrounding his discharge. Based on the preponderance of evidence, the Board determined that reversal of the previous decision is without merit and denied relief.

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 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 AR20150011262 on 12 July 2016 and AR20170018896 on 20 November 2019.

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 (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a discharge with honor. The honorable characterization is appropriate when the quality of the Soldier's service general has met the standards or acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Chapter 14 (Acts or Patterns of Misconduct) states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him/her as a satisfactory Soldier, further effort is unlikely to succeed or rehabilitation is impracticable or the Soldier is not amenable to rehabilitation. Soldiers are subject to action for acts or patterns of misconduct for commission of a serious offense including abuse of illegal drugs. A discharge under other than honorable conditions is normally appropriate.

2. Army Regulation 635-5-1 (Separation Program Designation Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in tables 2-2 or 2-3 of the regulation. Table 2-3 lists for SPD code JKK, the narrative reason as, "misconduct (drug abuse)" in accordance with Army Regulation 635-200, paragraph 14-12c(2).

3. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) prescribes 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 nonwaivable disqualification

4. 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//