

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240007905

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Two letters of support

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 that at the age of 12, witnessing the treatment of service men during the Vietnam War left a deep impression on him, sparking a sense of discontent. When he reached 21, he resolved to enlist in the Army, driven by a profound admiration for the institution and inspired by the service of his uncle, who also served. Assigned military occupational specialty 95B (Military Police (MP)), he embraced his military career with the intention of dedicating three decades to it.
 - a. Around 12 years into his service, he made a regrettable error in judgment. At a party, unaware that the marijuana he consumed was laced with an unknown substance, he failed to recognize the risk. The following day, during a routine drug test, he tested positive, facing the consequences of his actions. Accepting full responsibility, he acknowledges it was a foolish mistake, one that abruptly ended his military journey.
 - b. Fast forward to the present day, he has spent 25 years serving in the healthcare sector. Additionally, he serves as a Deacon in his church and actively contributes to the efforts of an anti-violence organization.

3. On 20 January 1982, the applicant enlisted in the U.S. Army Reserve (USAR) for a period of 6 years in pay grade E-1. After completing initial entry training, he was awarded military occupational specialty 95B, released from active duty, and transferred to his USAR MP company.
4. Effective 15 March 1984, he was transferred from his MP company to the USAR Control Group (Reinforcement) due to unsatisfactory participation.
5. On 6 January 1988, he reenlisted in the USAR for 6 years. He held pay grade E-4 at the time.
6. Effective 3 February 1989, he was again transferred from his MP company to the USAR Control Group (Reinforcement) due to unsatisfactory participation.
7. His record contains the first page of a DA Form 2166-7 (Noncommissioned Officer Evaluation Report) for the period December 1990 through November 1991. The form shows he was promoted to sergeant/E-5 effective 15 February 1991 and held the duty title of Patrol Leader. The entries for the Army Values are all marked "yes."
8. A DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 29 April 1992, shows he was flagged for adverse action effective 9 April 1992.
9. In a memorandum dated 12 May 1993, the applicant's company commander advised him he was initiating action to separate him from the USAR for misconduct under the provisions of paragraph 11c.1, Army Regulation 135-178 (Separation of Enlisted Personnel), due to abuse of illegal drugs. His commander stated the reason for the proposed action was that the applicant tested positive for cocaine on 14 January 1992. His commander advised him he was suspending action for 45 days to give him an opportunity to exercise the following privileges:
 - To consult with consulting counsel
 - To appear and present his case before an administrative separation board
 - To obtain copies of documents that would be presented to the separation authority
 - To be represented at any hearing by appointed counsel or civilian counsel at his own expense
 - To submit statement in his own behalf
 - To waive the above rights in writing

His commander further advised him acknowledgment of the notification memorandum was required within 30 calendar days of receipt, and failure to respond and request consideration by an administrative separation board would be considered a waiver of that right.

10. In a memorandum dated 12 July 1993, the applicant's company commander requested his involuntary separation for abuse of illegal drugs after testing positive for cocaine during a command-directed urinalysis on 14 January 1992. The applicant's commander noted the applicant had been notified of the proposed separation action but had not replied within the allotted time frame. His commander stated it was not feasible or appropriate to effect other disposition but separation from the USAR and he recommended the applicant receive a discharge under honorable conditions (general).
11. On 8 August 1993 and 9 September 1993, the intermediate authorities concurred with the company commander's recommendation.
12. The available records do not include the separation authority's final approval of the applicant's discharge.
13. On 28 September 1993, Headquarters, USAR Command, issued Orders 93-248-017 reducing the applicant to the lowest enlisted grade and discharging him from the USAR with service characterized as under other than honorable conditions.
14. The applicant provides two letters of support which are available in their entirety for the Board's review.
 - a. The first letter is from the chief executive officer of the anti-violence organization the applicant supports. The author commends the applicant for his role as a Head Deacon and mentor in their community and describes his community service.
 - b. The second letter is from a friend and former coworker of the applicant. She commends him for being considerate, accommodating, and a hard worker with good communication skills.
15. Army Regulation 135-178 provided that abuse of illegal drugs is serious misconduct and discharge action normally will be based on commission of a serious offense. The regulation required that first-time offenders in the rank of sergeant through command sergeant major would be processed for discharge on discovery of a drug offense. The regulation provided that the character of service for Soldiers discharged for misconduct would normally be under other than honorable conditions, but if warranted by the Soldier's overall record a character of service of under honorable conditions (general) was authorized.
16. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and the applicant's service record in accordance with the published equity, injustice, or clemency 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for testing positive for cocaine. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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.

5/5/2025



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 135-178 provided that abuse of illegal drugs is serious misconduct and discharge action normally will be based on commission of a serious offense. The regulation required that first-time offenders in the rank of sergeant through command sergeant major would be processed for discharge on discovery of a drug offense. The regulation provided that the character of service for Soldiers discharged for misconduct would normally be under other than honorable conditions, but if warranted by the Soldier's overall record a character of service of under honorable conditions (general) was authorized.
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/NR) 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.

//NOTHING FOLLOWS//