

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2025

DOCKET NUMBER: AR20240008109

APPLICANT REQUESTS: an upgrade of his under honorable conditions (general) discharge to an honorable 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)

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 he was slipped a drug at a party and did not realize it. He was not given a chance to explain what happened to him or the opportunity for rehabilitation.
3. He enlisted in the Regular Army on 6 August 1974. He reenlisted on 23 December 1980 and again on 9 October 1984.
4. He accepted nonjudicial punishment (NJP) on 22 January 1987, under the provisions of Article 15, Uniform Code of Military Justice, in that on or about 31 October 1986, wrongfully use cocaine. His punishment was reduction to the grade of sergeant/E-5 and forfeiture of \$600.00 pay per month for 2 months (one month suspended). He elected to appeal and submitted matters on his behalf. His appeal noted the circumstances that led to this incident, his outstanding service to this point, and his desire to continue to serve (see document for additional details).
5. On 22 January 1987, his immediate commander initiated separation proceedings under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, by reason of commission of a serious offense. He cited the reason as his positive urinalysis for cocaine on 31 October 1986. The applicant acknowledged receipt on 22 January 1987.

6. The applicant consulted with counsel and acknowledge his rights on 2 February 1987. He requested consideration of his case by an administrative separation board and to appear in person with counsel.
7. His immediate commander recommended on 3 February 1987 that he be separated from the service for use of an illegal drug (cocaine).
8. On 8 April 1987, he consulted with counsel and waived his right to an administrative separation board contingent upon him receiving a characterization of service of under honorable conditions (general) discharge. He further understood he could encounter prejudice in civilian life if a general discharge was issued and he elected not to submit statements in his own behalf.
9. On 24 April 1987, his intermediate commander recommended approval of the discharge with an under honorable conditions (general) discharge.
10. The separation authority approved his waiver and the recommendation on 1 May 1987 and directed he receive an under honorable conditions (general) discharge characterization of service.
11. He was discharged on 29 May 1987, under the provisions of Army Regulation 635-200, paragraph 14-12d, by reason of misconduct – abuse of illegal drugs. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his service was characterized as under honorable conditions (general) and he completed 12 years, 9 months, and 24 days of net active service this period.
12. The Board should consider the applicant's overall 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. One potential outcome was to grant relief based on one instance of drug use and the applicant served honorably for 12 years prior. The Board member found a general discharge under these circumstances to be overly harsh. However, upon review of the applicant's request and available military records, the Board majority determined the applicant accepted nonjudicial punishment under Article 15, UCMJ, for wrongful use of cocaine.

2. The Board acknowledged the applicant's extended service in the Regular Army, which began on 6 August 1974 and concluded with his discharge on 29 May 1987, including multiple reenlistments. While the Board recognizes the applicant's length of service and prior commitment, it determined that the characterization of his discharge appropriately reflects the seriousness of the offense and the circumstances surrounding his separation. The applicant has not presented sufficient evidence to justify a change in the character of service. As such, relief is denied.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
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), still in effect, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

b. 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.

c. Paragraph 3-7b states 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.

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//