

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240008279

APPLICANT REQUESTS:

- An upgrade of his discharge from under honorable conditions to honorable
- A personal appearance before the Board via video/telephone

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:

a. He was informed that Sergeant (SGT) P_, the drug and alcohol noncommissioned officer (NCO) falsified documents related to urinalysis test to protect others that would have been positive. SGT P_ knew he would not test positive but since he had a previous positive result, which he completed counseling for, switched specimens to protect his friends. Judge Advocate General (JAG) advised him to accept a discharge because he had no proof of wrongdoing and would not succeed if he accused an NCO of any improper conduct. He accepted the discharge and was later informed by SGT R_ H_ that he should have contested the results because the illegal actions committed by SGT P_ would have been easily discovered.

b. He was physically attacked by SGT P_ on multiple occasions and threatened by him prior to his discharge. He loves his country and served with pride. He was not perfect but did always correct his deficiencies to serve with honor. He should have fought this at the time but did not want to risk a court-martial. Please help him to correct this injustice.

c. He was advised after speaking to someone about obtaining Department of Veterans (VA) healthcare that he could request an upgrade to his discharge. He would have never accepted JAG's advice had he known this could have been proved without risk of court-martial. He was told by JAG he would lose and go to jail if he fought this. He was bullied into accepting an unjust decision. SGT P_ did not submit specimens from urinalysis test in question in the time required by Army Regulations (AR). The specimens from the entire test would have been discarded had...

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

a. He enlisted in the Regular Army on 14 June 1983.

b. On 3 January 1986, he accepted non-judicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for wrongfully using marijuana as determined by his urinalysis, which tested positive for THC [Tetrahydrocannabinol]. His punishment consisted of reduction to the grade of private/E-2 and forfeiture of \$250.00 per month for 2 months. He did not appeal.

c. On 27 May 1986, he accepted NJP under the provisions of Article 15 of the UCMJ for wrongfully using marijuana as determined by his urinalysis, which tested positive for THC. His punishment consisted of reduction to the grade of private/E-1 and forfeiture of \$250.00 per month for 1 month. He did not appeal.

d. On 30 May 1986, the applicant underwent a Mental Status Evaluation for misconduct. In pertinent part, the Behavioral Science Specialist opined:

(1) The applicant had the mental capacity to understand and participate in the proceedings and was mentally responsible.

(2) The applicant was responsible for his actions and psychiatrically cleared for actions deemed appropriate by his chain of command.

e. On 27 May 1986, the immediate commander notified the applicant that he was initiating action to discharge him from the U.S. Army, under the provisions of paragraph 14-12, Chapter 14, AR 635-200 (Personnel Separations – Enlisted Personnel). The reason for the proposed action was based on misconduct-abuse of illegal drugs (second time offense). The immediate commander also informed the applicant of his rights.

f. On 28 May 1986, the applicant acknowledged he had been advised by his counsel of the basis for the contemplated separation action against him; of the rights available to him; and the effect of any action taken by him in waiving his rights. He elected to submit a statement in his own behalf and stated:

(1) He was assigned to this unit as a private/E-1 in November 1983. Three days after his arrival he participated in a Brigade Command Inspection. He was issued is TA-50 one day before the inspection and prepared it to receive no comments or deficiencies for the inspection. In the following months the Detachment prepared for a Nuclear Weapons Technical Inspection (NWTI). The entire unit put in long hours of training for the inspection. He was pleased to say that he contributed to the units "No Comment no Deficiency" rating.

(2) As a private first class he was the first Soldier under the rank of E-4 to become "EAP" qualified. After this he again prepared for and received No Comments no Deficiencies for another Brigade Command Inspection. For the units 1985 NWTI, he was 2nd Platoon, 3rd Team Reader for the inspection. He again was a contributing factor for the units "No Comment No Deficiency" Rating. Being a part of the unit for nearly 3 years and a great many inspections he achieved the knowledge to do his job efficiently and considered one of the best custodial agents and Soldiers of the unit. Please accept this and the other statements attached in your decision of a general or honorable discharge. Whatever the decision he is sure it will be a fair one.

g. On 29 May 1986, the U.S. Military Community Activity, NEU-ULM, Clinical Director provided a synopsis of Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) rehabilitation activities pertaining to the applicant and stated, in pertinent part:

(1) Within less than four months, the applicant was again referred to this facility on the 14th of May 1986, for a positive urinalysis indicating the ongoing abuse of hashish. During his intake, the applicant volunteered the information that he had really never stopped the use of hashish since he was initially assigned to the 84th USAFAD. He admitted to regular but not daily use.

(2) The applicant expressed the desire to remain in the Army during the rehabilitation meeting. He now completely owns his substance abuse. Nevertheless, due to second abuse within a relatively short period of time, and the high security risk he presents, he offers only marginal potential for rehabilitation within the US military.

h. On 2 June 1986, the immediate commander formally recommended the applicant for separation action under the provisions of paragraph 14-12, Chapter 14, AR 635-200. The reason for this recommendation was the applicant's misconduct in the abuse of illegal drugs (second time offense).

i. On 13 June 1986, the separation authority approved the recommendation for discharge and directed the applicant be issued a General Discharge Certificate.

j. On 11 July 1986, the applicant was medically cleared for separation.

k. On 11 July 1986, he was discharged from the Army. He completed 3 years and 28 days net active service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- item 4b (Pay Grade) – E-1
- item 24 (Character of Service) – Under Honorable Conditions
- item 25 (Separation Authority) – Paragraph 14-12c, AR 635-200
- item 28 (Narrative Reason for Separation) – “Misconduct – Abuse of Illegal Drugs”

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 misconduct leading to the applicant’s separation and a lack of corroborating evidence for the applicant’s statement concerning the 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:

<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.

//SIGNED//

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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 (AR) 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, the regulation states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states 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.
3. AR 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. In pertinent part:
 - a. Section III - Acts or Patterns of Misconduct, paragraph 14-12 (Conditions which subject members to discharge) provides that members are subject to separation per this section for commission of a serious offense. Commission of a serious military or civil offense if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense under the

Manuals for Courts-Martial. Abuse of illegal drugs is serious misconduct. Separation action normally will be based upon commission of a serious offense.

b. 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.

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.

a. 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.

b. 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 on the basis of 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. 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//