

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 February 2025

DOCKET NUMBER: AR20240008316

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his characterization of service from under other than honorable conditions to honorable. He also requests a personal appearance before the Board.

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

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 Number AR20230006171 on 15 December 2023.

2. The applicant states:

a. After his second AWOL (absent without leave) and extra duty, he was getting discharged under general conditions and sought help at Tripler Hospital on his own to get clean and mental health. His records showed he did seek out help for his mental and drug problems while in the military after coming back from Bosnia. He had a friend from his unit drop him off at Tripler Hospital. He was pulled from Tripler only after 3 days of detox and detox is a minimum of 7-10 days hold and was put back into work and not just regular duty but extra duty. With his mental health and substance abuse at that time and being put back into work and with extra duties, he did relapse. He could not control his mental health and urges. He deeply and whole heartedly regrets that he could not fight his mental health and substance abuse. He needed the help from his leaders and doctors. No one can say for sure, but if he would have received the proper treatment, he could have possibly turned everything around.

b. Instead of getting the help he needed, a new commander come in and through the book at him. This commander is also the one that told him to better not come back to his island. And stated he would not be able to get any benefits or credits of any overseas medals, accomplishments, and certificates. The same commander after court martial had him escorted by Sergeant Lo__ around but was not able to get any of his

personal items (clothes, CDs, TV, play station, movies, awards, pictures, certificates and so on.

c. He would appreciate it if the Board reconsidered his case, at least for a general discharge. He also like to request an in person hearing to speak his side as writing it out is not the same as him speaking about personal experience of all he went through from being deployed to Bosnia and coming back to Hawaii and finding out that his unit and he would be deployed to Iraq. It shows that in June, he was AWOL. But he was in the hospital getting the help he needed, for 3 of those days. He was also not AWOL between 25 November 2003 and 8 December 2003. He was at Ford Island Prison.

3. The applicant enlisted in the Regular Army on 22 June 2001 for 3 years. He held military occupational specialty 11B (Infantryman).

a. He served in Hawaii with the 1st Battalion, 14th Infantry Regiment, 25th Infantry Division. The highest rank he held was private first class/E-3.

b. On 3 February 2003, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for wrongfully using cocaine. His punishment consisted of reduction to private/E-1, forfeiture of \$575 pay, and extra duty and restriction for 45 days.

c. A DD Form 2624 (Specimen Custody Document – Drug Testing) shows the applicant tested positive for cocaine on specimen dated 16 April 2003.

d. On 27 June 2003, he received counseling for his wrongful use of cocaine and being AWOL. The key point of discussion shows he was counseled for a second time drug offense and a second time AWOL offense.

e. Also on 27 June 2003, he accepted NJP under the provisions of Article 15 for failing to go to his appointed place of duty on 17 March 2003, being AWOL from 17 to 22 April 2003, and wrongfully using cocaine between 9 and 16 April 2003. His punishment consisted of forfeiture of \$575 pay per month for two months, and extra duty and restriction for 45 days.

f. On 31 July 2003, the applicant's immediate commander notified the applicant of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14, paragraph 14-12(c)(2), by reason of misconduct - commission of a serious offense. He noted the specific reasons as the applicant's positive tests for wrongful use of cocaine on 12 November 2003 and on 16 April 2003 and for being AWOL on three separate occasions totaling 34 days. He additionally recommended the applicant receive an under other than honorable characterization of service.

g. The applicant acknowledged receipt and consulted with counsel on 31 July 2003. He was advised of the basis for the contemplated action to separate him abuse of illegal drugs and it effects of the rights available to him. He requested consideration of his case by an administrative separation board and an appearance before a board. He requested representation by counsel. He elected to submit a statement in his own behalf and understood he may encounter prejudice in his civilian life.

h. On 1 August 2003, the applicant voluntarily waived consideration of his case by an administrative separation board contingent upon receiving a general discharge. He elected to submit a statement in his own behalf; however, his statement is not available for review.

i. On 8 August 2003, the applicant's immediate commander formally recommended the applicant be separated under AR 635-200, paragraph 14-12c (commission of a serious offense) and that his service be characterized as other than honorable.

j. On 21 October 2003, a memorandum for the trial defense services states the applicant went AWOL from 8 October 2003 until 14 October 2003, additionally the following items were confiscated from the applicant's room during a legal search: pipe of Pyrex material, dime bag, pieces of wire apparently used for scraping the inside of the pipe, plastic straw cut to a length of approximately three inches presumably used for snorting drugs, and 36 white pills.

k. On 28 October 2003, the applicant's trial defense sent an email, signed by the applicant, stating he waived his rights to an administrative separation board, knowing he was being recommended for an under other than honorable characterization of service. The applicant additionally submitted a written waiver waiving consideration of his case by an administrative separation board and waiving an appearance before a board. He elected to not submit a statement in his own behalf and understood he may encounter prejudice in his civilian life.

l. On 3 November 2003, following a legal review for legal sufficiency, the separation authority approved the recommended discharge, and directed the applicant's service be characterized as other than honorable.

m. The applicant was discharged from active duty on 10 December 2003. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in the grade of E-1 under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct, an under other than honorable conditions characterization of service. He was assigned Separation Code JKK and Reentry Code 4. He completed 2 years, 4 months, and 6 days of net active service. It additionally shows:

(1) Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal, Army Service Ribbon, Overseas Service Ribbon, Expert Qualification Badge w/Grenade Bar, Sharpshooter Qualification Badge w/Rifle Bar and Submachine Gun Bars

(2) Item 29 (Dates of Time Lost During this Period): 13 May 2003 to 26 May 2003; 3 June 2003 to 17 June 2003; and 25 November 2003 to 8 December 2003

n. There is no indication the applicant applied to the Army Discharge Review Board within that Board's 15-year statute of limitations.

4. On 15 December 2023, the Board considered and denied his request to upgrade his discharge.

a. Prior to adjudicating his case, the Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting military records and documents. The medical reviewer found the applicant was reported to have a history of polysubstance abuse prior to his enlistment, and he was diagnosed and treated for depression during his teens. The applicant was admitted to inpatient substance abuse treatment and diagnosed with polysubstance dependence. There was evidence provided that the admitting provider was unable to rule out a recurrence of major depression or a substance induced mood disorder at the time of the applicant's admission. However, there was insufficient evidence available on future diagnostic clarification. There was also no additional information available on the applicant being diagnosed with a mental health condition beyond polysubstance dependence or additional behavioral health treatment for a mental health condition. Based on the available information, the Behavioral Health Advisor stated that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

b. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents available for review and evidence in the records. The Board considered the frequency and nature of the misconduct, the reason for separation and whether to apply clemency. Based on the available documentation and the multiple offenses leading to the applicant's separation, the Board concluded that any mitigation for the offenses was outweighed, and the applicant received an equitable and just discharge. As a result, the Board found insufficient evidence of an error or injustice which would warrant a change to the applicant's characterization of service.

5. By regulation (AR 635-200) a Soldier who is discharged under the provisions of AR 635-200, Chapter 14, for misconduct, an under other than honorable conditions characterization of service is normally appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

6. In reaching its determination, the Board can consider the applicant's petition, service record, and statements considering the published guidance on equity, injustice, or clemency.

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 pattern of misconduct leading to the applicant's separation, the lack of mitigation for such misconduct and the lack of any post-service character evidence which may warrant consider for clemency, 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
:X	:X	:X	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. Army Regulation 635-200 (Personnel Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3, section II (Type of Characterization or Description) provides a description of the states the following types of characterization of service or description of service are authorized: separation with characterization of service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions, and Uncharacterized (for entry level status) are authorized. These separation types will be used in appropriate circumstances unless limited by the reason for separation.

(1) Paragraph 3-7a states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

(2) 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.

b. Chapter 14 (Separation for Misconduct) establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

(1) 14-12c (2) – Soldiers are subject to discharge 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 is, or would be, authorized for the same or a closely related offense under the MCM. Specific instances of serious offenses include abuse of illegal drugs or alcohol.

(2) 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 such is merited by the Soldier's overall record.

2. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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. 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. 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.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, 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.

//NOTHING FOLLOWS//