

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 January 2025

DOCKET NUMBER: AR20240009030

APPLICANT REQUESTS:

- issuance of a DD Form 214 (Certificate of Release or Discharge from Active Duty) reflective of his honorable period of service
- an upgrade of characterization of service from "Other than Honorable Conditions" to "Honorable" or "Under Honorable Conditions (General)"
- a personal appearance (video/telephone)

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

- DD Form 149 (Application for Correction of Military Record)
- University of Illinois Chicago letter
- DD Form 214, 22 October 2002
- DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the U.S.), 14 November 2001
- DD Form 215 (Correction to DD Form 214 – Certificate of Release or Discharge from Active Duty), 14 July 2008
- DD Form 4 and allied documents, 22 December 1998
- Army Board for Correction of Military Records (ABMCR) Docket Number AR20060007907
- Memorandum – Subject: Separation Under Provisions (UP) Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), Chapter 14, paragraph 14-12c., 10 October 2002
- Memorandum – Subject: Separation UP of AR 635-200, Chapter 14-12c. (Commission of a Serious Offense), 13 September 2002
- Memorandum – Subject: Separation UP of AR 635-200, Chapter 14-12c. (Commission of a Serious Offense), 11 September 2002
- Memorandum – Subject: Separation UP of AR 635-200, Chapter 14-12c. (Commission of a Serious Offense), 3 September 2002
- Memorandum – Subject: Unconditional Waiver of Administrative Separation Board, 30 September 2002
- Memorandum – Subject: Conditional Waiver of Administrative Separation Board, UP Chapter 14, AR 635-200, 5 September 2002

- Memorandum – Subject: Separation UP of AR 635-200, Chapter 14-12c. (Commission of a Serious Offense), 3 September 2002
- Memorandum – Subject: Separation UP of AR 635-200, Chapter 14-12c. (Commission of a Serious Offense), 3 September 2002
- Memorandum – Subject: Recommendation for Separation UP AR 635-200, Chapter 14, paragraph 14-12c. (Commission of a Serious Offense), 23 September 2002
- Memorandum – Subject: Referral of Respondent, 23 September 2002
- Memorandum – Subject: Notification to Appear Before an Administrative Separation Board, 25 September 2002
- DA Forms 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ))
- DA Form 3822-R (Report of Mental Status Evaluation), 8 August 2002
- Memorandum – Subject: Notification of Intention to Separate AR 635-200, 11 July 2002
- Enlisted Record Brief
- Legal Action Request Form and allied documents

**FACTS:**

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 in pertinent part that he never received a DD Form 214 upon completion of his initial period of active-duty service prior to reenlisting. Legal counsel provides that the applicant's discharge qualifies as an injustice which warrants an upgrade under the standards set forth by the Wilkie Memorandum.
  - a. After enlisting in the Army on 10 June 1999, with duty as a Food Service Specialist (92G), the applicant was deployed to Egypt. Upon his return, he tested positive on three occasions for the use of marijuana and was subsequently involuntarily discharged with an "Under Other than Honorable Conditions" characterization of service. Since then, the applicant has faced numerous difficulties in life resulting in a clear understanding of the severity of his misconduct.
  - b. Following his discharge, the applicant has worked in a variety of career fields (physical security and commercial transportation). The applicant has been denied military benefits (Veterans Administration Home Loan, Educational Assistance (G.I. Bill) and health care) due to his characterization of service and basically receives no support despite his previous service to this country. He has expressed remorse for his actions and noted that at the time of his misconduct he shared the mental coping difficulties that

he was experiencing following the loss of his friend due to an accident occurring overseas.

c. Counsel contests that, in July 2018, the Under Secretary of Defense for Personnel and Readiness (Honorable R- W-) issued a memorandum referred to as the "Wilkie Memorandum" providing guidance to the Board regarding equity, injustice, or clemency determinations. The Wilkie Memorandum authorizes this Board to grant relief in order to ensure fundamental fairness. Under the relevant guidance of this document the applicant should be entitled to an "Honorable" characterization of service.

d. Counsel further provides that the applicant was separated from service under AR 635-200, paragraph 14-12( c )(2), for "commission of a serious offense." Counsel contests that using marijuana does not qualify as a "serious offense," and today, 22 years later, the use of marijuana is less severe. Further, under the Wilkie Memorandum, it provides that "while marijuana use in the military is still unlawful, it is now legal under state law in some states and it may be viewed, in the context of mitigating evidence as less severe today than it was decades ago." Regarding the positive test results, counsel argues that the applicant was not offered rehabilitation following his initial positive tests. It was not until separation proceedings were initiated that rehabilitative counseling was provided.

e. In conclusion, the applicant acknowledges that his time in service was not perfect, but notes that a flawless service record is not required to receive an honorable discharge characterization. He served his country and made a few youthful mistakes that continue to plague him today. For the last 22 years, the applicant has lived with these mistakes and his discharge should be upgraded to accurately reflect the nature of his service and to provide him access to the healthcare and benefits that he not only deserves but needs. Considering the liberal consideration standard, a discharge upgrade to Honorable, or in the alternative, to Under Honorable Conditions (General).

3. A review of the applicant's available service records reflects the following:

- a. On 10 June 1999, the applicant enlisted in the Regular Army for 3 years with duty as a 92G.
- b. On 1 March 2001, the applicant was advanced to the rank/grade of specialist (SPC)/E-4.
- c. On or about 7 July 2001, the applicant deployed to Sinai.
- d. On 14 November 2001, the applicant reenlisted for 4 years.
- e. On or about 18 January 2002, the applicant returned from Sinai.

f. On or about 25 January 2002, the applicant tested positive during a urinalysis for the wrongful use of marijuana. He was subsequently counseled by his Squad Leader for this infraction on 4 March 2002 and further recommended nonjudicial punishment under the provisions of the UCMJ.

g. On 21 March 2002, the applicant's battalion commander advised him that he was considering punishment under Article 15, UCMJ for his wrongful use of marijuana.

h. On 1 April 2002, the applicant requested an appeal of the Article 15.

i. On or about 8 April 2002, after review of the applicant's request, the brigade commander denied his appeal. The applicant was therefore reduced from SPC to private (PVT), required to forfeit pay for 2 months, restricted and extra duty.

j. On 11 July 2002, the applicant was notified that he was being considered for separation action under the provisions of AR 635-200, chapter 14-12c. He was authorized and must undergo a complete physical and mental health evaluation.

k. On 17 July 2002, the applicant's battalion commander advised him that he was considering punishment under the provisions of Article 15, UCMJ for his wrongful use of marijuana (on or about 4 May and 4 June 2002) and for failing to be at his prescribed place of duty on 5 June 2002.

l. On 18 July 2002, the applicant underwent a complete medical examination.

m. On 23 July 2002, the applicant was counselled for failing a second urinalysis. He was further advised that if he was found guilty of this offense, he would be recommended for punishment under Article 15 of the UCMJ; the applicant subsequently requested an appeal of the Article 15.

n. On 1 August 2002, after review of the applicant's request, the brigade commander denied his appeal. The applicant was therefore required to forfeit pay for one month, restricted and required to perform 45 days of extra duty.

o. On 6 August 2002, the applicant was counselled by his Shift Leader for failing a urinalysis for the 3rd time. He was further advised that separation action was required after the second offense.

p. On 3 September 2002, the applicant's company commander advised him that he was initiating separation action due to him testing positive three times for the wrongful use of marijuana. His commander further recommended that he receive an "Under Other Than Honorable" characterization of service and undergo a complete medical examination. The applicant acknowledged receipt of this notification.

q. On 11 September 2002, the applicant's battalion commander recommended that he be discharged under the provisions of AR 635-200, Chapter 14-12c. (Commission of a Serious Offense) with an "Other Than Honorable" characterization of service.

r. On 13 September 2002, the applicant's brigade commander recommended that he be discharged under the provisions of AR 635-200, Chapter 14-12c. (Commission of a Serious Offense) with an "Other Than Honorable" characterization of service.

s. On 30 September 2002, having consulted with legal counsel, the applicant voluntarily waived his rights to an administrative separation board. He acknowledged the possibility of experiencing substantial prejudice in his civilian life if a discharge under Other Than Honorable Conditions was issued. He further acknowledged that he may not be eligible for any or all benefits as a veteran under both Federal and State law.

t. On 10 October 2002, the applicant's waiver of an administrative separation board was approved. Rehabilitative rights under AR 635-200, paragraph 1-16 was therefore waived. The Commanding General, Headquarters 10th Mountain Division (Light Infantry) and Fort Drum directed that the applicant be discharged in accordance with AR 635-200, Chapter 14, paragraph 14-12c. (Commission of Serious Offense) with an Under Other than Honorable Conditions characterization of service.

u. On 18 October 2002, Headquarters 10th Mountain Division (Light Infantry) and Fort Drum issued Orders Number 291-1027 reassigning the applicant to the U.S. Army transition point pending separation processing.

v. On 22 October 2002, the applicant was discharged from the Army. DD Form 214 reflects the following:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized):
  - National Defense Service Medal
  - Armed forces Expeditionary Medal
  - Army Service Ribbon
  - Multinational Force and Observers Medal
  - Marksman Marksmanship Qualification Badge with Rifle Bar
  - Army Lapel Button
- Item 18 (Remarks) – Immediate Reenlistments this period – 14 November 2001 – 22 October 2002
- Item 24 (Character of Service) – Under Other Than Honorable Conditions

- Item 25 (Separation Authority) – AR 635-200, Paragraph 14-12c. (2)
- Item 26 (Separation Code) – "JKK" (Misconduct – Drug Abuse)
- Item 27 (Reentry Code) – 4
- Item 28 (Narrative Reason for Separation) – Misconduct

w. On 1 February 2007, ABCMR Docket Number AR20060007907 the ABCMR reviewed and approved the applicant's request for a change of his Reentry Code from "RE-4" to "RE-3". A DD Form 215 was issued reflective of this change.

4. The applicant provides the following a:

- a. Memorandum – Subject: Recommendation for Separation UP AR 635-200, Chapter 14, paragraph 14-12c. (Commission of a Serious Offense), dated 23 September 2002, reflective of the Staff Judge Advocate advising the applicant of the Commanding General's disapproval of his conditional waiver and that his case would be heard before an Administrative Separation Board.
- b. Memorandum – Subject: Referral of Respondent, dated 23 September 2002, reflective of the Commanding Generals direction to the Administrative Separation Board in that the board is empowered to adjudicate an Other Than Honorable discharge, and the applicant should be separated before the expiration of his current term of service in accordance with AR 635-200, Chapter 14-12c, (Commission of a Serious Offense).
- c. Memorandum – Subject: Notification to Appear Before an Administrative Separation Board, dated 25 September 2002, advising the applicant of the conduct of the separation board on 16 October 2002, to determine if he should be discharged from the Army for serious misconduct - testing positive for marijuana use.
- d. DA Form 3822-R dated 8 August 2002, reflective of the results of the applicant's mental status evaluation noting his cannabis abuse. He was deemed mentally responsible for his behavior and possessed the mental capacity to participate in administrative or judicial proceedings. He possessed normal behavior, was fully oriented, had unremarkable mood or affect, clear thinking, and normal thought.
- e. Enlisted Record Brief reflective of the applicant's pertinent personnel information to include assignment and award history.
- f. Legal Action Request Form and allied documents reflective of the separation packet constructed during the applicant's separation processing to include positive urinalysis results, performance counselling, Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice,

or Clemency Determinations and personal statement. These documents are provided in their entirety within the supporting documents for the Board member's review.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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. Upon review of the applicant's request and available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct on repeated drug use. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.
2. The Board agreed, the applicant and his counsel did not demonstrate by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. However, during deliberation, the Board determined the applicant had a prior period of honorable service which is not currently reflected on his DD Form 214 and recommended that change be completed to more accurately show his period of honorable service by granting a partial relief to correct the applicant's records.
3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

**BOARD VOTE:**

Mbr 1    Mbr 2    Mbr 3

:        :        :        GRANT FULL RELIEF

            GRANT PARTIAL RELIEF

:        :        :        GRANT FORMAL HEARING

:        :        :        DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to amend the applicant's DD Form 214 for the period ending 22 October 2002 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 990610 UNTIL 011113

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an upgrade of characterization of service from "Other than Honorable Conditions" to "Honorable" or "Under Honorable Conditions (General)."

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, USC, 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. AR 635-200 (Personnel Separations Enlisted Personnel) 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. Chapter 14-12 provides that Soldiers are subject to action per this section for the following:
  - a. (Paragraph 14-12a.) - Minor disciplinary infractions - A pattern of misconduct consisting solely of minor military disciplinary infractions.

b. (Paragraph 14-12b.) A pattern of misconduct - A pattern of misconduct consisting of one of the following:

- discreditable involvement with civil or military authorities
- discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army

c. (Paragraph 14-12c.) 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 Military Courts Martial this would include the abuse of illegal drugs as a serious misconduct. However, relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under a or b, above, as appropriate.

d. The separation reason in all separations authorized by this paragraph will be "misconduct-abuse of illegal drugs." Voluntary (self) identification/referral in accordance with AR 600-85 (Army Substance Abuse Program), paragraph 3-2, does not require initiation of separation proceedings under this section.

e. 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.

f. Paragraph 3-7b provides that 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. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

- 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 on the basis of equity, injustice, or clemency grounds, Boards 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.

4. AR 635-5 (Separation Documents) provides policies and procedures regarding separation documents. Chapter 2 (Preparing and Distributing Separation Documents) provides that a DD Form 214 will not be prepared for Enlisted Soldiers discharged for immediate reenlistment in the Regular Army. Item 18; For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" (specify dates). However, for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter "Continuous Honorable Active Service From" (first day of service which DD Form 214 was not issued) Until (date before commencement of current enlistment).

5. AR 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 may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's 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//