

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240009516

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- restoration of his rank to specialist four/E-4

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

- DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States) in lieu of DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 15 February 1984

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 an outstanding Soldier and top mechanic in his unit. He made a big mistake and asks for restitution.
3. The applicant enlisted in the Regular Army on 16 October 1979. He was promoted to the rank/grade of specialist four/E-4 effective 1 May 1981.
4. He accepted nonjudicial punishment (NJP) on 16 August 1983, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) on or about 26 July 1983, for wrongfully use marijuana. His punishment was reduction to the grade of private/E-2 and 30 days of extra duty. He elected to appeal and to submit matters on his behalf on 2 September 1983. (Note: His matters in rebuttal were not available for review). His appeal was denied on 8 September 1983.

5. He accepted NJP on 19 September 1983, under the provisions of Article 15 of the UCMJ, on or about 2 September 1983, for wrongfully communicating to a fellow superior Soldier a treat to "really xxxx you up" or words to that effect. His punishment was a verbal reprimand and 14 days of extra duty. He elected not to appeal.
6. He accepted NJP on 6 December 1983, under the provisions of Article 15 of the UCMJ, on or about 7 November 1983, for wrongfully using marijuana. This offense having been committed outside the United States in violation of Article 134, UCMJ. His punishment was reduction to the grade of private/E-1 and 45 days of extra duty. He elected not to appeal.
7. He accepted NJP on 4 January 1984, under the provisions of Article 15 of the UCMJ, on or about 24 December 1983, for failure to go at the time prescribed to his appointed place of duty, and on or about 1 January 1984, being found sleeping at his as a sentinel. His punishment was forfeiture of \$100 per month for one month and 14 days of extra duty. He elected not to appeal.
8. On 23 September 1983, he was enrolled into the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) based on command referral.
9. On 4 January 1984, the applicant was determined to be a rehabilitation failure by the ADAPCP Clinical Director. The basis for this action was his progress was unsatisfactory as he admitted to continued use and has a total to two positive urinalyses. His potential for successful rehabilitation was described as poor and therefore, was recommended he be considered for a Chapter 9 discharge.
10. On 13 January 1984, his commander notified him of his intent to initiate separation actions under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 9, based on his ADAPCP rehabilitation failure.
11. On the same date, he acknowledged receipt of the notification letter and consulted with legal counsel. He was advised of the basis for the contemplated actions to separate him and of the rights available to him. He elected not to submit a statement in his own behalf.
12. On 26 January 1984, his immediate commander recommended him for discharge under the provisions of Army Regulation 635-200, Chapter 9, for alcohol or drug abuse rehabilitation failure.
13. On 27 January 1984, the separation authority approved the recommended discharge and directed he receive a General Discharge Certificate.

14. He was discharged on 15 February 1984, under the provisions of Army Regulation 635-200, Chapter 9, by reason of drug abuse – rehabilitation failure. His DD Form 214 shows his rank/grade as private/E-1, his service was characterized as under honorable conditions (general), and he completed 4 years and 4 months of net active service this period.

15. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination 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.

a. Upgrade of his under honorable conditions (General) discharge. Deny. The applicant was enrolled in the Army Substance Abuse Program. His commander declared him an alcohol rehabilitation failure based on the recommendation from the ADAPCP clinical director and the applicant's admittance of continued use and two positive urinalyses. He was discharged from active duty due to alcohol rehabilitation failure with an under honorable conditions (General) discharge. The Board found no error or injustice in his separation processing. Based on a preponderance of evidence, the Board determined that the characterization of service the applicant received upon separation was not in error or unjust.

b. Restoration of his rank to SPC/E-4. Deny. The applicant was reduced in rank/grade to PVT/E-2 on 16 August 1983 under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for wrongfully using marijuana. The applicant was reduced in rank/grade to PVT/E-1 on 6 December 1983 again under the provisions of Article 15 of the UCMJ for wrongfully using marijuana. The Board found the applicant's reductions in rank/grade to be proper and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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

Signed by:

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 600-85 (The Alcohol and Drug Abuse Prevention and Control Program), prescribes policies and procedures needed to implement, operate, and evaluate the ADAPCP.

a. Paragraph 3-4 provided that command identification occurred when a commander observed, suspected, or otherwise became aware of an individual whose job performance, social conduct, interpersonal relations, physical fitness, or health appeared to be adversely affected because of abuse of alcohol or other drugs (apparent or suspected). When abusers or suspected abusers were identified, they were to be interviewed by their unit commander or designated representative. If appropriate, they were to be referred to the ADAPCP for an initial screening interview.

b. Paragraph 3-5 provided that when a service member had a positive urinalysis as a result of drug screen testing, mandatory referral for ADAPCP screening and medical evaluation was required to determine whether the positive urinalysis was the result of administrative error, medically prescribed use of the substance, or actual drug abuse.

3. Army Regulation 635-5 (Separation Documents), prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparation of the DD Form 214. It stated the DD Form 214 is a synopsis of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. The detailed instructions for preparing the DD Form 214 stated for items 4a (grade, rate or rank) and 4b (pay grade), to enter the separating Soldier's active duty grade or rank and pay grade at the time of separation.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. Chapter 9 contains the authority and outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who has been referred to the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter will be characterized as honorable or general under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required.

5. 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), on 25 July 2018, 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 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.

//NOTHING FOLLOWS//