

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2025

DOCKET NUMBER: AR20240010406

APPLICANT REQUESTS: An upgrade of his under other than honorable conditions discharge to a general (under honorable conditions).

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, in effect, he is homeless and without any medical assistance. His support group, family, has passed away and he is on his own struggling and in need of assistance. The applicant has worked as a translator and a teacher's assistant, and completed The Inspire for Change Program. He is trying to be a better person.
3. A review of the applicant's service record shows:
  - a. He enlisted in the United States Army Reserve on 14 August 2006; entered active duty on 28 August 2006. He was released on 24 February 2007, with an uncharacterized character of service. He was honorably discharged from the U.S. Army Reserve on 1 September 2007.
  - b. He enlisted in the Regular Army on 22 August 2007.
  - c. DD Forms 2624 (Electronic Copy of Specimen Custody Document – Drug Testing), dated:

- 4 December 2007, reflects the applicant tested positive for MDA (methylenedioxymphetamine) 1761 during an Inspection Unit (IU) urinalysis testing conducted on 27 November 2007
- 22 January 2008, reflects the applicant tested positive for THC 19 (marijuana) during an Inspection Unit (IU) urinalysis testing conducted on 10 January 2008
- 21 February 2008, reflects the applicant tested positive for MDMA (methylenedioxymethamphetamine) during an Inspection Unit (IU) urinalysis testing conducted on 8 February 2008

d. On 14 January 2008, he received nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ), for wrongfully using methylenedioxymphetamine (ecstasy) (between 25 and 27 November 2007) (Field Grade). The applicant was reduced to rank/grade private/E-1.

e. DD Form 689 (Individual Sick Slip), 9 February 2008, reflects:

- He was on a profile and 48-hours Quarters for the conditions fever, diarrhea, and vomiting
- The form is endorsed by A.S., medical officer
- The medical officer indicated he did not see the applicant on 7 or 8 February 2008, nor did he give the applicant a profile

f. Offer to Plead Guilty, 9 May 2008, reflects the applicant agreed to plead guilty to preferred charges and waive his rights to an administrative separation board provided the convening authority refer his case to a summary court-martial.

g. Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 20 June 2008. The applicant was charged with:

- Violation of Article 12a, Uniform Code of Military Justice (UCMJ):
  - Wrongful use of MDMA, plea, guilty
  - Wrongful use of marijuana, plea, guilty
- Violation of Article 107, UCMJ, False official statement, plea, guilty
- Sentence: None entered

h. Five DA Forms 4856 (Developmental Counseling Form) reflect the applicant was counseled on five occasions for illegal drug use, being flagged, being barred from reenlistment, and forging an official military document.

i. On 13 August 2008, his commander notified him of his intent to separate him under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separation – Active Duty Enlisted Administrative Separations), chapter 14-12c (2) due to commission of a serious offense for being convicted by summary court-martial for wrongful use of MDMA, and making a false official statement. He acknowledged on 13 August 2008.

j. He was advised by consulting counsel of the basis for the contemplated action to separate him and its effects; of the rights available to him; and the effects of any action by him waiving his rights. The applicant waived consideration of the case before an administrative separation board as part of an Offer to Plead Guilty in a summary court-martial proceeding.

k. His chain of command recommended approval and that his character of service be under other than honorable conditions.

l. On 30 September 2008, the separation authority approved separation under AR 635-200, Chapter 14, paragraph 14-12c(2); he directed an under other than honorable conditions discharge.

m. Accordingly, he was discharged under other than honorable conditions on 30 September 2008, he completed 1 year, 1 month, and 10 days net active service this period.

4. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

#### 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. Upon review of the applicant's petition, available military records, the Board determined there is insufficient evidence of in-service mitigating factors to over the misconduct of testing positive on multiple occasions for THC. The noted the applicant provided no post service achievements or character letters for the Board to weigh a clemency determination.

2. The Board agreed the applicant has not demonstrated 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 to a general under honorable conditions discharge. The Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period of 1 year, 1 month, and 10 days net active service this period. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. Therefore, relief was denied.

BOARD VOTE:

Mbr 1   Mbr 2   Mbr 3

:   :   :   GRANT FULL RELIEF

:   :   :   GRANT PARTIAL RELIEF

:   :   :   GRANT FORMAL HEARING

██████████ 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.

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. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.
3. Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel, it states:
  - a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service has generally met standards of acceptable conduct and performance of duty for Army personnel.
  - b. 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.
  - c. An under other than honorable conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.
  - d. Chapter 14 establishes policy and prescribes procedures for separation personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civilian authorities, desertion, and absence without leave. It states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort 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 such is merited by the Soldier's overall record. Paragraph 14-12c(2) terms abuse of illegal drugs as serious misconduct. 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 paragraph 14-12a or 14-12b as appropriate.

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 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

- a. 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.

//NOTHING FOLLOWS//