

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 July 2024

DOCKET NUMBER: AR20230003555

APPLICANT REQUESTS:

- correction of his records to show in effect, an upgrade of his under honorable conditions (general) discharge, restoration of his rank, back pay with a triple payment under the False Claims Act, entitlement to Veterans' Preference as a disabled Veteran, and entitlement to additional Department of Veterans Affairs (VA) Benefits.
- He also requests a personal appearance before a traveling panel of the Board.

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

- DD Form 293 (Application for the Review of Discharge) in lieu of the DD Form 149
- Personal statement titled "Government Breach of Contract in Bad Faith Acknowledged"
- DD Form 4 (Enlistment Contract)
- Special Orders Number 174, dated 28 August 1975 (2 copies)
- Letter of Commendation
- Duty Band Roster August 1976
- Reassignment orders 304-003, dated 1 October 78
- Service Medical records 22 October to 29 November 1978
- Special Court-Marital Order Number 14, dated 19 April 1978
- Separation Authority approval Chapter 14 19 April 1979
- DD Form 214 (Report of Separation from Active Duty) (2 copies)
- Identify Theft Affidavit 18 June 2009
- Registration for Veterans' Preference 18 February 2017
- Department of Veterans Affairs (VA) request for medical records
- VA letter providing records 28 February 2020
- VA Competency Decision, dated 27 October 2021
- VA Evidence Center Complaint 4 May 2020
- VA Competency determination - 27 October 2021
- Oakland Physiatry report - 10 March 2022
- Detroit Police Accident Report, dated 11 July 2022
- VA Claims Intake Center Form (undated)

- Michigan Compiled Laws (MCL) Section 750.273
- Title 15 U.S. Code § 1601 (Congressional findings and declaration of purpose)
- Return receipts for letters to the Department of Justice [letters not included]
- Uniform Commercial Code, Article 3, Part 5 § 3-505. Evidence of Dishonor

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 authority granted by Title 10, U.S. Code, Section 1552 (Correction of Military or Naval Records) is not unlimited. The ABCMR has the authority to correct only Army records. The Board has no authority to correct records created by the Department of Defense, other branches of the Services, Department of Veterans Affairs, (VA) or any other governmental agency. Therefore, issues and documentation related to VA benefits and other non-military related documentation will not be further addressed.
3. The ABCMR does not have Traveling Boards and personal appearances are at the discussion of the Chairman of the ABCMR Board.
4. The applicant's official service records are not currently available for review. The information below is taken from the documentation provided by the applicant.
5. The applicant's statement is difficult to read and jumps from point to point without a cohesive argument. In effect the applicant states;
 - a. His recruiter lied about his prior employment and desired military occupation; his company commander lied and omitted, concealed, and neglected facts leading to his discharge and without all facts and they cannot be considered valid.
 - b. Paperwork in his military and VA records show proof of racism (hate) and a determination to scar and damage his name, title, rank; deny him due compensation, entitlement, and due process. He was illegally separation just under 5 months post-surgery repair following a racial motivated attack and injury. His incapacitation and incompetence were not considered because of blind ignorance by racism by a Caucasian Officers and Noncommissioned Officers (NCO's).
 - c. His DD Form 214 does not mention that Special Court-Martial Order Number 14 exonerated him and returned him to duty, and it was not signed by a General. The unauthorized signature of a Warrant Officer was inappropriate thereby causing his DD Form 214 to be compromised. .

d. His DD Form 214 shows fraud, it fails to show or mention Special Court Martial Order Number 14 and was not endorsed by a General. His company commander lied, made false charges (claims) that led to him being maliciously convicted by a special court martial and incarcerated for 72 days. This was racist and evil, yet he did the time, but although he was exonerated his military rank, title and entitlements were never restored.

e. An unauthorized signature on the DD Form 214 is shown in Box 31, the Warrant Officer was inappropriate, it should have been signed by a general, causing his DD Form 214 to be compromised.

f. Any official who esteems him or herself to be more authority over his name, title and entitlement shall he personally liable as well as making the government liable for misconduct and any charges he has herein. This notice is not to be predicated as a standard to use as an amendment to his claims to delay further repetitively of his due, process for compensation. This is confirmation for clarification that no further misinterpretations occur.

g. His contract at entry was breached and was evil and fraudulent behavior making his musical service throughout his military career compensable.

6. The applicant enlisted in the Regular Army on 20 April 1975 and completed training in the military occupational specialty (MOS) 13B (Cannon Crewman). The available entrance documentation does not indicate what his desired MOS was.

7. The applicant received a letter of commendation as an "Outstanding Soldier at AIT" on 2 December 1975 and is shown to have been a member of the "Camp Pack Duty Band" in 1976.

8. A copy of the applicant's trial by a Special Court-Martial (Special Court-Martial Number 53, dated 29 September 1977) is not of record nor is the Army Court of Military Review's finding and affirmation of his sentence.

9. Headquarters, 1st Cavalry Division Special Court-Martial Order Number 14, dated 19 April 1978 states:

In the special court-martial case of Private E-1 Theodis Williams, XXX-XX-2917, US Army, Correctional Holding Detachment, U.S. Disciplinary Barracks, Fort Leavenworth, Kansas (formerly a member of Battery A, 1st Battalion, 21st Field Artillery, 1st Cavalry Division, Fort Hood, Texas 76545), the proceedings of which were promulgated in Special Court-Martial Order Number 53, this headquarters, dated 29 September 1977, pursuant to Article 66, the findings of guilty by exceptions and substitutions of Specification 2,

Charge I, were affirmed; and the findings of guilty by exemptions and substitutions of Specification 1, Charge I, the findings of guilty of Specifications 1 and 2, Charge II, and the sentence (with qualification that the sentence may be reassessed without rehearing) have been set aside. Those portions of the findings so set aside are dismissed. The sentence (as qualified), based on the record of trial as a whole and the decision of the Army Court of Military Review, is reassessed to provide for a bad conduct discharge, confinement at hard labor for three months, and forfeiture of \$249.00 pay per month for three months, but the bad conduct discharge is changed to the lesser punishment of confinement at hard labor for three months (thereby making the period of confinement as approved a total six months). The sentence as thus reassessed and changed will be duly executed, but the unexecuted portion of the sentence to confinement at hard labor is suspended for six months, at which time unless the suspension is sooner vacated, the suspended portion of the sentence will be remitted without further action-. The accused will be credited with confinement served from 6 July 1977 to 19 September 1977 and any other portion of the punishment served or executed under the sentence of this case. All rights, privileges, and property of which the accused has been deprived by virtue of the findings of guilty so set aside will be restored. The accused is currently on excess leave at XXXXXXXXXXXXX.

10. Contrary to the applicant's contention the (total) sentence was not set aside and he was not exonerated of all charges by the above orders. Further, by reference, the court-martial order appears to indicate that the applicant had been reduced to E-1 prior to the court-martial action.

11. The applicant was in some sort of altercation on 21 October 1978 resulting in a fracture to the left zygoma and was transferred to Brooke Army Hospital for treatment for a fracture of the left orbital floor and left zygomatic fracture. He underwent surgery on 2 November 1978 for repair of multiple fractures and removal of a bone fragment.

12. The applicant appears to have been processed for discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14. Except for the separation authorities approval dated 19 April 1979) the available records of the processing were not provided.

13. The separation authority directed that the applicant be discharged under Army Regulation 635-200, paragraphs 4-33b(1) and 14-38d with a general discharge.

14. The applicant was discharged on 20 April 1979 with a general discharge in the grade of E-1. His DD Form 214 shows:

- he had 3 years, 5 months, and 11 days of net active service with 72 days of lost time
- his period of excess leave is not recorded on the DD Form 214
- his awards are listed as the Air Assault Badge, Expert Qualification Badge with Hand Grenade Bar and the Marksman Qualification Badge with Rifle Bar

15. The VA determined the applicant was incompetent to handle in affairs on 28 June 2012 and revised this decision on 27 October 2021, granting him a 100% disability evaluation.

16. The applicant has provided no evidence that he was incompetent at the time of his discharge, the first record of incompetency was made 33 years after his discharge.

17. While it is a known fact that there was considerable racism during the period of the applicant's service, there is no documentation of the alleged racist actions by his command or that the incident resulting injuries were rascally motivated.

18. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

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 and available military records, the Board determined the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination.

2. The Board found the facts and circumstances surrounding the applicant's discharge are absent to determine if there was an error or an injustice regarding the applicant's discharge. Furthermore, although not specifically requested, the Board noted some evidence which may show the applicant served in Korea. However, the applicant's

records lack sufficient information to confirm the applicant's service and his eligibility for the Korea Defense Service Medal (KDSM) for foreign service in Korea. If the applicant has more evidence of service in Korea, he may submit a reconsideration for the KDSM. The applicant was discharged and provided an under honorable conditions (General) characterization of service. The Board agreed due to the absence of the fact and circumstances surrounding the applicant's discharge the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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. 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 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.

3. Further, the regulation states the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases 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.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. 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.

d. Paragraph 14-33b(1), provided for separation for patterns of misconduct due to frequent incidents of discreditable nature with civil or military authorities.

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 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.

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.

//NOTHING FOLLOWS//