

IN THE CASE OF: ██████████

BOARD DATE: 16 November 2023

DOCKET NUMBER: AR20230004095

APPLICANT REQUESTS: Reconsideration of his previous requests for upgrade of his dishonorable discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Exhibit 3-Self-Authored Letter, dated 27 February 2012
- Attorney Brief
- Exhibit 1-DD Form 214 (Report of Separation from the Armed Forces of the United States), for the period ending 12 April 1955
- Exhibit 2-Stipulation in the Case of the United States (U.S.) versus Private First Class (PFC) [Applicant], dated 15 February 1955
- Exhibit 4- Charge Sheet (one page)
- Exhibit 5-National Archives (NA) Form 13038 (Certification of Military Service), issued on 15 January 2009
- Exhibit 6, 7-ABCMR Record of Proceedings AR20120017644, AR20200004149
- Exhibit 8-Certificate of Parole
- Exhibit 9-Office of the Probation Officer, 29 May 1962
- Exhibit 5-DD Form 260A (Dishonorable Discharge Certificate)
- Exhibit 10-Application for Restoration, dated 29 May 1962
- Exhibit 11 and 12-Applicant Letters
- Exhibit 13, 14, 18-21, 23-29-Character Letters
- Exhibit 15-18-Certificates
- Exhibit 22-Photographs

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 Numbers:

- AR20120017644 on 11 April 2013
- AR20200001067 on 11 March 2020

- AR20200004149 on 9 December 2020

2. The applicant states he suffered unknowingly from the disease of alcoholism. He was a blackout alcoholic, and he has no recollection of the crime of taking a weapon from a guard on duty, for which he was convicted. His counsel had him say nothing because he said he could not remember anything and that he must have had too much to drink. He was never tested. Had he been aware of his alcoholism and aware that there was hope for him he would surely have advised his defense counsel and gone to Alcoholic Anonymous (AA) meetings. Diminished capacity was the defense his counsel used.

3. Counsel reiterates the above and while the applicant made a mistake while in the Army, he has dramatically turned his life around and has valiantly overcome many obstacles. He has helped others through AA. He received an education, retired from a fulfilling career after 35 years, raised a wonderful family, and overcame alcohol addiction, and now acts as a cornerstone in his community by being a motivational speaker. He only seeks to remove the one source of his shame from his records, and this can be accomplished by upgrading his character of discharge so he can be recognized as a Veteran upon his death. The applicant only seeks to restore his honor and reclaim his good name for the sake of his family, community, and for his personal pride.

4. The applicant enlisted in the Regular Army on 29 April 1953 for three years.

5. The applicant served in Korea for 8 months and 27 days.

6. A Record of Previous Convictions, dated 2 February 1955, shows before a summary court martial the applicant was found guilty of being absent without leave from on or about 14 April 1954 to on or about 19 April 1954. The court sentenced him to restriction, and forfeiture of \$46.00 pay. The sentence was adjudged and approved on 22 April 1954.

7. Charges were preferred against the applicant for violations of the Uniform Code of Military Justice on 2 February 1955. His DD Form 458 (Charge Sheet) shows he was charged with lifting a weapon to his superior officer on or about 30 January 1955 and assaulting Private 2/E-2 [REDACTED], a sentinel in the execution of his duty, by forcibly taking his weapon from his hands.

8. Before a general court-martial on or about 15 February 1955, the applicant was found guilty of:

- lifting a weapon against his superior officer, who was then in the execution of his office, on or about 30 January 1955

- assaulting a sentinel in the execution of his duty by forcibly taking his weapon from his hands on or about 30 January 1955
- the court sentenced him to confinement at hard labor for 20 years, forfeiture of all pay and allowances, and to be dishonorably discharged from the service
- the sentence as provides for dishonorable discharge, forfeiture of all pay and allowances and confinement at hard labor for one year and six months was approved on 18 February 1955 and the record of trial was forwarded for appellate review

9. A Stipulation, dated 15 February 1955, shows the applicant grabbed the sentinel's carbine and took it from his hands. The applicant was told to surrender the weapon by Captain/CPT [REDACTED]. The applicant told him not to come any closer and pointed the weapon at CPT [REDACTED]. CPT [REDACTED] grabbed the carbine (weapon) out of his hands.

10. The applicant's Request for Final Action, dated 11 April 1955, shows he did not desire to petition for or prosecute an appeal to the U.S. Court of Military Appeals. He requested for his own convenience that appropriate action be taken to finalize the sentence as affirmed by the Board of Review without further delay.

11. General Court-Martial Order Number 155, dated 12 April 1955, Headquarters, Central Command, noted that the sentence in the applicant's case had been affirmed and ordered the dishonorable discharge duly executed.

12. The applicant was discharged on 12 April 1955. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 615-364 (Enlisted Personnel-Discharge-Dishonorable and Bad Conduct), General Court Martial Order Number 155. His service was characterized as dishonorable. He completed 1 year, 9 months, and 20 days net service for pay purposes. He had 63 days lost time. His awards included the Korean Service Medal, United Nations Service Medal, and the National Defense Service Medal.

13. A memorandum, subject: Clemency, dated 24 August 1955, shows as a result of a consideration in the applicant's case the Secretary of the Army announced restoration to duty had been disapproved, clemency had been disapproved, and release on parole had been approved.

14. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code (USC), Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

15. The applicant provides:

a. Exhibits 1-DD Form 214 (Report of Separation from the Armed Forces of the United States), for the period ending 12 April 1955 discussed above.

b. Exhibit 2, 4-7 service documents, including a stipulation in the case of the U.S. versus the applicant, wherein he details what occurred on the night of 30 January 1955, discussed above.

c. Exhibit 8-Certificate of Parole, dated 24 August 1955, shows the applicant was to be released on parole on or before 9 October 1955.

d. Exhibit 9-Office of the Probation Officer letter, dated 29 May 1962, shows the applicant completed his period of paroled supervision in a highly satisfactory fashion on 14 August 1956.

e. Exhibit 10-Application for Restoration letter, dated 29 May 1962, shows the applicant requested restoration to duty in order to earn an honorable discharge.

f. Exhibit 11 and 12-Applicant letters regarding the period of 1956 through 2017, show his post service employment and family's service in the military and accomplishments.

g. Exhibit 13, 14, 18-21, 23-29-Character letters that attest to the applicant's fine aptitude for electrical work, leadership qualities, mechanical ability, diligence and his being conscientious. He was an active member of AA, committed to fighting alcohol and helping others. His daughter states the applicant provided for their family. His son respects the high standards that the applicant holds for himself.

h. Exhibit 15-17-Various certificates.

16. On 4 May 2012, ARBA notified the applicant that his records were on loan to another agency and that the ABCMR could not make a fair, impartial, and equitable determination of facts without his official records and closed his case without further action.

17. On 9 August 2012, the ABCMR noted the applicant failed to provide a copy of his separation document and returned his application due to failure to provide the necessary documentation needed to process the case.

18. On 11 April 2013 and 18 September 2015, the ABCMR determined his request for reconsideration did not meet the one-year criteria after the ABCMR's original decision and returned the case without action.

19. On 11 March 2020 and 9 December 2020, the ABCMR determined the evidence presented by the applicant does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of the case were insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20120017644 on 11 April 2013.

20. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

21. MEDICAL REVIEW:

a. Background: The applicant is requesting a reconsideration of his previous requests for upgrade of his dishonorable discharge. The applicant asserts alcoholism as a mitigating factor in his misconduct and discharge.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- The applicant enlisted in the Regular Army on 29 April 1953.
- The applicant served in Korea for 8 months and 27 days.
- A Record of Previous Convictions, dated 2 February 1955, shows before a summary court martial the applicant was found guilty of being absent without leave from on or about 14 April 1954 to on or about 19 April 1954.
- Charges were preferred against the applicant for violations of the Uniform Code of Military Justice on 2 February 1955. He was charged with lifting a weapon to his superior officer on or about 30 January 1955 and assaulting Private 2/E-2 [REDACTED] a sentinel in the execution of his duty by forcibly taking his weapon from his hands. Before a general court-martial on or about 15 February 1955, the applicant was found guilty of the charges. He was sentenced to hard labor, forfeiture of all pay and allowances, and dishonorable discharge.
- The applicant was discharged on 12 April 1955. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 615-364 (Enlisted Personnel-Discharge-Dishonorable and Bad Conduct), General Court Marital Order Number 155.
- The Clemency letter, dated 24 August 1955, shows as a result of a consideration in the applicant's case the Secretary of the Army announced restoration to duty had been disapproved, clemency had been disapproved and release on parole had been approved.
- This appears to be the applicant's fifth application. Please see his record for previous applications and results.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), DD Form 214, documents from his service record and separation, as well as a self-authored statement, attorney brief, parole and probation documents, applicant letters, character letters, certificates and photos. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV) however no data was available. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant asserts that alcoholism is a mitigating factor in his discharge. He asserts he was experiencing alcoholism and blackouts, to include the night of the misconduct that led to his confinement and dishonorable discharge. The applicant's time in service predates use of electronic health records (EHR) by the Army, hence no EHRs are available for review. His service record and supporting documents did not contain any service treatment records (STR), nor were any medical evaluations associated with his discharge included in his file. Hence, there is insufficient evidence of any psychiatric concerns. The applicant has self-asserted alcoholism, and per his record, there is evidence of significant alcohol use on the night of the misconduct.

e. The applicant could not be found in JLV, hence no EHR's were available for review. Per the records available, it does not appear the applicant was ever seen or treated at a VA and is not service connected. No other mental health records were provided to substantiate his assertions.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence, outside of self-report, to support the applicant had a condition at the time of service that mitigated his discharge. However, per liberal consideration guidelines, his contention is sufficient to warrant the board's consideration.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts alcoholism as a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts it was present during his time in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No, however, consideration of clemency is recommended. The applicant asserts alcoholism was a mitigating factor in his misconduct. Records reflect he had been out drinking prior to the misconduct, he was reportedly black out drunk, has no memory of what occurred, believed he was protecting his female fellow soldier, and did not hurt anyone. As

presented in his initial defense, and in his brief, the applicant was likely of “diminished capacity” when he grabbed the weapon and pointed it at the other soldiers. However, alcohol use disorder is not typically a mitigating condition as a stand-alone diagnosis and there is no evidence of any other mental health concerns. Of note, though, the applicant has continuously taken full responsibility for his actions, has expressed significant remorse, has gone on to get sober, have a successful life, and create positive change around him.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's claim regarding alcoholism and the review and conclusions of the ARBA Behavioral Health. A majority of the Board found relief is warranted.

2. A majority of the Board found the evidence of post-service good behavior and self-improvement compelling evidence in support of relief. A majority of the Board determined the applicant’s character of service should be changed to under honorable conditions (general).

3. The member in the minority concurred with the conclusion of the ARBA Behavioral Health advisor that alcohol use disorder is not typically a mitigating condition as a stand-alone diagnosis and found it should not be considered mitigating in this case. Based on a preponderance of the evidence, the member in the minority determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	:	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	█	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as under honorable conditions (general).

2/16/2024

X 

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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
2. AR 615-364, in effect at the time, set forth the basic authority for the separation of enlisted personnel for dishonorable and bad conduct. Paragraph 1a provided that individuals would be discharged with a dishonorable discharge pursuant only to an approved sentence of a general court-martial and that the appellate review must be completed and affirmed before the sentence was ordered duly executed.
3. AR 635-200 (Personnel Separations-Enlisted Personnel) set 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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//