



action was forceful; however, he was provoked. The dishonorable discharge was extreme primarily due to inadequate counsel. The FSM should have insisted on a more robust defense and the calling of witnesses. The action taken was too harsh when compared to today's standards and safeguards.

b. The applicant states the FSM provided for his wife and five children as best he could. The FSM was not given the opportunity to advance due to his lack of education and dishonorable discharge. This plagued him to the extent he became an alcoholic. The applicant's concern is the U. S. Armed Forces negligence in assuring a fair hearing for the FSM. The applicant believes that in today's world more would have been presented in a court-martial of this nature.

3. The FSM was inducted into the Army of the United States on 9 January 1946. He was honorably discharged on 17 December 1946. He completed 9 months and 10 days of net active service this period.

4. He reenlisted on 18 December 1946 for three years.

5. Charges were preferred against the FSM on 23 June 1947; however, the charges are not available for review.

6. Before a general court martial at Fort Richardson, Alaska on 23 July 1947, the FSM was found guilty of, with intent to do him bodily harm, committing an assault upon Private First Class/E-3 [REDACTED] by cutting him on and about the face, with a dangerous instrument, a broken bottle on or about 15 June 1947. The court sentenced him to be dishonorably discharged from the service, forfeiture of all pay and allowances due or to become due, and confinement at hard labor for three years. The sentence was approved on 25 September 1947. The record of trial was forwarded for appellate review.

7. The War Department Board of Review on 8 September 1947 examined the trial in the FSM's case and found it to be legally sufficient to support the sentence.

8. The FSM was discharged on 25 September 1947. His Certification of Service shows he was dishonorably discharged.

9. 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.

10. The Data for First Clemency Consideration, dated 2 March 1948, shows the FSM, who had elected to remain silent, stated [REDACTED], an MP, came into the bar, jerked his cap down over his eyes and the FSM struck him with a bottle he was holding in his hand. The opinion of the psychiatrist shows no psychiatric disorder. Clemency was not recommended.

11. The sentence to confinement in excess of two and one-half years was remitted on 25 March 1948.

12. The unexecuted portion of the sentence was remitted on 15 February 1949 and provided no reason for revocation of the parole prior to 14 May 1949.

13. The applicant provides:

a. Service Documents discussed above, and the applicant sought congressional assistance.

b. The Certificate of Death shows the FSM's date of death as [REDACTED].

c. The FSM's daughter's birth certificate, date filed [REDACTED].

d. Permission to Act on Behalf of the FSM's Family letter, dated 17 August 2023. [REDACTED] had permission to act on behalf of the FSM's family.

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

#### BOARD DISCUSSION:

The Board carefully considered the applicant's statement, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the FSM's record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the FSM received upon separation was not in error or unjust.

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.

2/15/2024

X [REDACTED]

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CHAIRPERSON  
[REDACTED]

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 sets forth the basic authority for the separation of enlisted personnel. Currently in effect provides 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.

c. Chapter 11 provided that an enlisted person would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

3. 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.

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 (BCM/NR) 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 type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

//NOTHING FOLLOWS//