

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2024

DOCKET NUMBER: AR20230006583

APPLICANT REQUESTS: an upgrade of his characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Note from the Applicant, undated
- Letter from the National Personnel Records Center (NPRC), 19 July 2022
- NA Form 13038 (Certificate of Military Service), 19 July 2022
- Letter of Support, undated

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 asking that his discharge be upgraded to honorable. He purchased a car from another Soldier and was accused of auto theft. He is not sure if he had a court-martial or Article 15 (nonjudicial punishment) proceedings. The person that was assigned to represent him told him to plead guilty. Him being a naïve 19-year-old, plead guilty. His military records were destroyed in the 12 July 1973 fire, and he is unable to get any information concerning the actions that were taken against him. He denies doing anything illegal. He did nothing wrong to deserve an undesirable discharge and there are no military records to indicate he was guilty of any misconduct or any violation of the Uniform Code of Military Justice. He would like his discharge upgraded to either honorable or general.
3. The applicant's complete military records are not available for review. A fire destroyed approximately 18 million service members' records at the NPRC in 1973. It is believed that the applicant's records were lost or destroyed in that fire. However, there are sufficient documents to conduct a fair and impartial review of this case.

4. The applicant provides the following:

a. A letter from the NPRC, dated 19 July 2022, which states the record that the applicant needed to answer his inquiry was not in their files. If the record was there on 12 July 1973, it would have been in the area that suffered the most damage in the fire on that date and may have been destroyed. The fire destroyed the major portion of records of the Army military personnel for the period 1912 through 1959. The NPRC provided the applicant with a Certification of Military Service, and stated the document verifies military service and may be used for any official purpose.

b. A Certificate of Military Service dated 19 July 2022, which shows he was a member of the Regular Army from 11 January 1954 to 17 June 1955. His service was terminated by Undesirable Discharge. The last grade, rank, or rating he held was private.

c. A letter of support from [REDACTED] which states he has known the applicant for over 30 years. The applicant is always willing to go above and beyond for friends and family members and can be counted on to help friends and family with projects around the house and neighborhood. During retirement, the applicant got a job driving a bus for the school district and he took great pride and enjoyment in making sure the kids were safe and arrived at school on time.

5. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge.

6. The Board should consider the applicant's argument and/or evidence 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. The Board considered the applicant's statement. The Board noted the lack of record and facts contained on the applicant; however, found no evidence to support an error or injustice in the separation proceedings and designated characterization of service assigned during separation. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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.

10/28/2024

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. 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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel, and stated.

a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

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

3. 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.

4. 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.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//