

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230009550

APPLICANT REQUESTS: Correction of his records:

- show his date of Birth (DOB), year to be 1933 vice 1931
- by upgrading his undesirable discharge (UD) to an honorable discharge
- a change his reason for discharge to Convenience of the Government
- a reenlistment code change to RE-1 with a corresponding Separation Program Number/Designator

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Birth Certificate
- NGB Form 22 (Report of Separation and Record of Service)
- DD Form 214 (Report of Separation from the Armed Forces of the United States)

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 racial discrimination impaired his ability to properly serve.

a. He was a member of an all Black-American unit that was led by a white Officer from Mississippi, a card-carrying member of the KKK, who degraded the unit and him daily by calling us "nig****" and other southern derogatory terms and informed them that his personal mission was to kick out every one of them from the service, because they were inferior. As he (the applicant) was born and raised in New Jersey, he was not accustomed to this treatment. On a daily basis, this affected him mentally and physically, and he feared for his life. The officer informed the applicant that if he did not take the undesirable discharge, he would see to it that he was dishonorably discharged. In today's military, this kind of action would never be tolerated.

b. He joined the NJ National Guard, underage at 16 years old on 14 August of 1950 to serve his country in the Korean War. He served honorably from 14 August 1950 to 13 August 1953. For almost 70 years, he was unaware that the ABCMR was available to upgrade his military discharge until in 2021 he over-heard a conversation from another veteran. He has lived in shame all these years when I should not have been put through such injustice and outright discrimination. Further, he believes his command may have abused its authority by discharging him when he was assigned to the NJ National Guard, during his period of service.

c. He has been a solid citizen and working adult since his discharge and he is asking for justice to be served and his discharged upgraded, because it has been well documented that what he describes occurred to Black-American Soldiers during the period he served.

3. The applicant's official military record were partially destroyed in the 1973 fire at the St. Louis Storage Depot with the remaining documents being significantly damage with the loss of a quarter to a third of each of the remaining pages. Most of the dates for the different surviving documents are the portion of the damaged documents. [The abbreviation BR is used to indicate a portion of the burned document that is missing.]

4. The applicant's enlistment documents shows:

- a date of birth on XX Month 1933
- enlistment in the RA (Regular Army) on 12 April 1951
- 3 year period of obligated active service

5. A Summary Court-Martial Order Number 16 is only partially readable. It provides that on 7 July 1951, the applicant was seen entering the [BR] by other than the main gate. His punishment was 30 days confinement and forfeiture of [BR] for one month.

6. The readable portion of a Punishment Record Card lists four times that the applicant received unit punishments between 28 December 1951 and 5 June 1952. The offenses listed for the punishment that are readable show the offense, date of occurrence and the punishment as:

- insubordination toward a noncommissioned officer on 28 December 1951
- missing bed check on 5 January 1952
- misbehavior of a sentinel on 7 October 1952
- a fourth entry is unreadable and the remainder of the document is lost

7. Special Court-Martial Orders Number 29, issued by Headquarters, 29th Transportation Company on 31 March 1952, shows the applicant was found guilty of wrongfully using a pass of another Soldier and breaking restriction. His punishment was

confinement for 6 months (suspended for 6 months) and forfeiture of [BR] pay per month for 6 months. The case was adjudged on 29 March 1952. The order also indicates that there was one previous conviction.

8. The applicant was afforded a Neuropsychiatric Evaluation on [BR]. The attending physician diagnosed him as suffering from moderate emotional instability reaction with wide mood swings, [BR] outbursts, difficulty conforming to [BR]. The condition was considered to have existed prior to service. There were no disqualifying mental or physical defects sufficient to warrant disposition through medical channels. He was mentally responsible, able to distinguish right from wrong and to adhere to the right and had the mental capacity to understand and participate in board proceedings.

9. The applicant's unit commander recommended that a Board of Officers be convened to determine if the applicant should be separated from the service with an unfitness discharge. The commander stated that the applicant had been with the unit for 14 months during which time he had been given company punishment for minor infractions on four occasions, had been tried by court-martial on two occasions. The Commander considered the applicant a chronic troublemaker, unreliable and [BR] AWOL (absent without leave). The applicant had gone AWOL on the day after he counseled him. The commander stated he had counseled the applicant on several occasion misconduct and his frequent short periods of AWOL.

10. On 19 December 1952, the applicant appeared before a Board of Officers convened to determine if he should be separated for unfitness. The applicant and counsel were present during the entire proceedings. The Board's recommendations were that the applicant should be discharged from the service due to unfitness and given an UD.

11. The applicant was discharged under the provisions of Army Regulation 615-368 (Personnel Separations – Discharge – Unfitness)) on 18 December 1953 with an Undesirable characterization of service. The DD Form 214 issued at that time shows:

- his pay grade at separation as E-1
- his date of birth as XX Month 1931
- 1 year, 4 months, and 7 days of net service
- 480 days of lost time
- The semi-burned form does not reflect the Separation Code or Reenlistment Code

12. The applicant provided a copy of his birth certificate showing the date as XX Month 1933. He also provides an NGB Form 22 that shows:

- His date of birth as XX Month 1932
- Enlistment in the NJARNG on 14 August 1950
- No military occupational specialty or military training
- An honorable discharge on 3 August 1953
- A reason for separation of End of Term of Enlistment
- He was transferred to the Inactive National Guard on 11 October 1950

13. Neither the DD Form 214 nor the NGB Form 22 have a block for a RE code and he failed to provide any corroborating documentation of his alleged racial discrimination.

14. Separation for the Convenience of the Government is a very rare type of discharge, a service member is separated from the military for reasons that don't fall under any other category.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Date of Birth: Deny. The available evidence shows during his active service, the applicant used the year of birth 1933 and during his ARNG service, he used the year of birth 1932. The Board did not find evidence he used the requested year of birth 1931 during his military service. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect conditions and circumstances that existed at the time the records were created, unless there is sufficient evidence that shows a material error or injustice.

b. Discharge Upgrade: Deny. Although the applicant's complete records are not available, the Board found sufficient evidence of misconduct in the form of infractions on four occasions, two courts-martial convictions, and AWOL. The available evidence indicates he was discharged for unfitness and his chain of command convened a board of officers to review his case prior to discharge. The applicant asserts, in effect, they discharged him because of racial issues. However, the Board noted that the applicant and his counsel were afforded the opportunity to plead his case before a board of officers which found him unfit for service and recommended his separation for unfitness with an undesirable discharge. The Board found no error or injustice in his available separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. 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.

c. Narrative Reason: Deny. The Board noted that the applicant's narrative reason for separation was assigned based on the fact that he was discharged under AR 615-368 due to unfitness. The underlying reason for his discharge was his continued misconduct which triggered the board of officers to find him unfit for service. The only valid narrative reason for separation permitted under chapter AR 635-318 is Unfitness and the appropriate separation program number was "78" (Unfitness), which had a corresponding Reenlistment Code of 4. Again, the Board found no error or injustice.

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 615-368, in effect at the time, stated, when a Soldier demonstrated he was totally unfit for further retention in military service for any of the below listed reasons, and rehabilitation was impractical, the commander was to recommend the Soldier for discharge and require him to appear before a board of officers. The DD Form 214 for Soldiers discharged for unfitness had to include the following remark in item 8: "AR 615-368 SPN 78." The following were reasons for separation under this regulation:

- habits or traits of character manifested by antisocial or amoral behavior, chronic alcoholism, criminalism, drug addiction, pathological lying, homosexuality, sexual perversion, or misconduct
- unclean habits
- repeatedly committing petty offenses not warranting trial by courts-martial
- habitual shirker
- recommended for discharge by a medical examiner's board because of psychopathic personality disorder

3. Army Regulation 615-360, in effect at the time, prescribed policies and procedures for the discharge or release from active duty of enlisted personnel. Commander had the authority to issue discharge certificates reflecting the Soldier's character of service, based on the commander's evaluation of the Soldier's service and character during his overall enlistment period.

a. An honorable discharge was furnished when the Soldier's record showed:

- character ratings of at least "very good"
- efficiency ratings of at least "excellent"
- no general court-martial convictions
- not more than one special court-martial conviction
- subsequent honest and faithful service over a greater period could outweigh disqualifying entries in the service record

b. A general discharge under honorable conditions was given to Soldiers who did not qualify for an honorable discharge.

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. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity.

5. 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/NRs) 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. 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, BCM/NRs 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. 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//