

IN THE CASE OF: ██████████

BOARD DATE: 17 April 2024

DOCKET NUMBER: AR20230009881

APPLICANT REQUESTS: in effect, the upgrade of his under other than honorable conditions discharge and the correction of his birth year on his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Two Certifications of Birth
- Department of Veterans Affairs (VA) Rating Decision

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, the birth year listed on his DD Form 214 is wrong; instead of ██████████ it should be ██████████. Additionally, he was supposed to receive a general discharge under honorable conditions. He affirms his leadership separated him under chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).
 - a. In addition to birth certifications, the applicant provides a VA Rating Decision that announced the VA's proposal to sever six formerly approved service connection approvals for disabling conditions and to discontinue entitlement to five types of VA compensation.
 - b. As its basis for this action, the VA stated, "following the grant of benefits, we received the entirety of your VA claims file, which contains an administrative decision that determined your character of discharge is dishonorable for VA purposes. The

honorable service noted in the Veterans Information Solution was recorded in error, as there is no record that your discharge was upgraded."

3. The applicant's requested relief to amend the birth year on his DD Form 214 is supported by sufficient evidence; as a result, that correction will be addressed in the "ADMINISTRATIVE NOTE(S)" section and not be further considered by the Board.

4. A review of the applicant's service records reveals the following:

a. On 31 December 1969, the applicant enlisted into the Regular Army for 3 years. Upon completion of initial entry training and the award of military occupational specialty 52A (Powerman), orders transferred him to Germany; he arrived in Germany, on 27 May 1970. Orders then further assigned him to a signal battalion, and he arrived at his new unit, on 1 June 1970. Effective 21 August 1970, his leadership promoted him to private first class (PFC)/E-3.

b. On 18 January 1971, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) because he had failed to obey the order of his commander (Captain (CPT) [REDACTED]) to report to the motor park, on 16 January 1971. The imposing commander (CPT [REDACTED]) punished the applicant with a forfeiture of \$26 for one month, a suspended reduction to private (PV2)/E-2, and 14-days' extra duty.

c. At some point prior to 18 May 1971, the applicant transferred to another signal company within the battalion. Effective 18 May 1971, the applicant's new unit promoted him to specialist four (SP4)/E-4; however, on 25 May 1971, the command revoked that promotion. The available service record is void of an explanation for this revocation.

d. On 15 September 1971, the applicant's platoon sergeant (Sergeant First Class (SFC) [REDACTED]) prepared a sworn statement, in which he reported that, since the applicant's arrival in his platoon, the applicant had "done very little on his assignments. He makes formations and keeps his area up but his attitude is one of total indifference. He seems to be under the idea that the whole world is against him and he must fight back the service."

e. On 5 October 1971, the applicant's first sergeant (1SG) provided a sworn statement. Starting from when the applicant came to the unit, the applicant, "proved that he cannot be of future value to this unit or the United States Army. He does not have any respect for military authority, and he is continually being counseled for various things such as disrespect, missing formations, and uniform and haircut violations. He is a bad influence on the other men in the unit. His sarcasm and immature attitude towards the United States Army shall not be tolerated longer than required."

f. On 5 October 1971, the applicant gave a sworn statement, wherein he asked the separation authority to consider him for a general discharge under honorable conditions. He stated:

(1) "I realize I can in no way condition this resignation, however my service in the military for a period of 22 months with only one Article 15 (NJP) on my record, I believe, should be taken into consideration when deciding the character of discharge I should receive."

(2) "I have seven brothers and sisters, and my parents are divorced, and my mother is out of work. I have been trying to compile the discharge paperwork for a hardship discharge but have been unable to get it all together." With a general discharge, the applicant believed he would have a better chance of financially supporting his family.

g. On 11 October 1971, the applicant's company commander verified the applicant had never discussed nor requested a hardship discharge.

h. The applicant's separation packet is unavailable for review; however, the applicant's service record includes his DD Form 214, which shows that, on 5 November 1971, the Army discharged the applicant under other than honorable conditions. The DD Form 214 additionally reflects the following:

- Item 5a (Grade, Rate, or Rank) and 5b (Pay Grade) – PV1/E-1
- Item 6 (Date of Rank) – 8 October 1971
- Item 11c (Reason and Authority) – AR 635-200, SPN (Separation Program Number) 246 (Discharge for the Good of the Service)
- Item 15 (Reenlistment Code) – "RE-4" (nonwaivable disqualification for reenlistment)
- Item 22a (1) (Statement of Service – Net Service This Period) – 1 year, 10 months, and 5 days
- Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – National Defense Service Medal and a marksmanship qualification badge

5. The absence of the applicant's separation packet means we are unable to determine the complete circumstances that led to his discharge; however, given the availability of the applicant's record copy DD Form 214, which lists the applicant's regulatory separation authority, the Board presumes the applicant's leadership completed his separation properly.

a. AR 15-185 (ABCMR) states the ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration

of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence must be sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

6. The ABCMR does not grant requests for upgraded characters of service solely to make someone eligible for Veterans' benefits; however, in reaching its determination, the Board can consider the applicant's petition, his evidence and assertions, and his service record in accordance with the published equity, injustice, or clemency guidance.

7. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

8. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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's punishment was too harsh for the minor infraction of failure. The Board

determined there is sufficient evidence that warrants clemency with an upgrade of the applicant's discharge to under honorable (general) conditions.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

In addition to the administrative notes annotated by the Analyst of Record (below the signature), 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 the applicant a DD Form 214 for the period ending 5 November 1971 showing his characterization of service as General Under Honorable Conditions.

4/19/2024

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.

ADMINISTRATIVE NOTE(S):

1. AR 635-5 (Separation Documents), in effect at the time, stated the purpose of a separation document is to provide the individual with documentary evidence of his/her military service. It is a vital record for interested government agencies that assist Veterans in obtaining the rights and benefits to which they are entitled. It is important that the information entered on the DD Form 214 is complete and accurate.

a. All available records will be used as a basis for the preparation of DD Form 214WS (Worksheet), including DA Form 20 (Enlisted Qualification Record) and orders.

b. The regulation stated the entry for item 9 (Date of Birth) was self-explanatory.

2. The applicant provides two certifications of birth that show his birth year as "XXX1," vice "XXX0."

3. Based on the foregoing, amend item 9 of the applicant's DD Form 214, ending 5 November 1971, by deleting the current entry and replacing it with the date of birth listed on the applicant's certifications of birth.

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, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 1-9d (Honorable Discharge) stated an honorable discharge was a separation with honor. Separation authorities should condition the issuance of an honorable discharge on proper military behavior and proficient duty performance. A separation authority could characterize a Soldier's service as honorable based on conduct ratings of at least "Good"; efficiency ratings of at least "Fair"; the Soldier could not have any general courts-martial, and the regulation allowed no more than one special court-martial conviction.

b. Paragraph 1-9e (General Discharge). A general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 permitted a Soldier to request discharge for the good of the service when they had committed an offense or offenses which, under the UCMJ and the Manual for Courts-Martial, United States 1969 (Revised Edition), included a bad conduct or dishonorable discharge as a punishment. The Soldier could submit such a request at any time after court-martial charges were preferred. Once approved, an undesirable discharge was normally furnished, but the discharge authority could direct either an honorable or a general discharge, if warranted.

3. AR 600-200 (Enlisted Personnel Management System), in effect at the time, stated in paragraph 7-30b (3) (Reduction Authority and Reasons – Reasons for Reduction – Approved for Discharge from Service with an Undesirable Discharge) that Soldiers approved for administrative separation with an undesirable discharge under other than honorable conditions were to be reduced to private/E-1 prior to discharge.

4. AR 601-280 (Army Reenlistment Program), in effect at the time, stated:

a. Table 1-3 (Reenlistment Eligibility (RE) Codes for Reenlistment in the Regular Army) showed the following:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for immediate reenlistment unless waiver consideration is permissible and is granted
- RE-4 – Not eligible for reenlistment. Nonwaivable disqualification

b. Table 2-3 (Persons Ineligible for Immediate Reenlistment) stated persons discharged under the provisions of chapter 10, AR 635-200 incurred a nonwaivable disqualification.

5. AR 635-5, in effect at the time, stated Soldiers separated per chapter 10, AR 635-200, received an SPN of "246."

6. AR 15-185 (ABCMR), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

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, 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.

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//