

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 March 2024

DOCKET NUMBER: AR20230010698

APPLICANT REQUESTS: an upgrade of his bad conduct discharge to under honorable conditions (General).

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- National Personnel Records Center (NPRC) Response Letter, dated 2 June 2023
- Hospice Letter, dated 25 March 2022
- Birth Certificate [REDACTED]
- DD Form 214 (Report of Separation from the Armed Forces of the United States), for the period ending 18 October 1954

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 he enlisted at 15 years old and was not fully mature or responsible. At that time, the Army had a toxic social atmosphere and was not favorable to Soldiers of color and he was "young, impressionable and absent a sense of fair play or brotherhood". So, he often had dealings with the wrong groups of people. The applicant is currently in hospice care and was unaware of this request for upgrade process even when he queried the different agencies before because he assumed they knew best. The applicant says he is humbled and loves his country. He has served honorably and received accolades for his service and asks for assistance in righting this injustice.
3. The applicant provides his request for official service records from NPRC and a letter from the hospice care facility indicating they are caring for the applicant.
4. The applicant's certificate of birth shows he was born in 1930.

5. He entered active service on 4 April 1946.
6. He served outside the Continental U.S. from 26 May 1946 to 30 June 1949 (presumably to Germany).
7. He was discharged from active duty on 30 June 1949 with a general discharge. His WD AGO 53-58 (Enlisted Record and Report of Separation General Discharge) shows he completed 1 month and 28 days of continental service and 2 years, 10 months, and 21 days of foreign service. It also shows he was awarded or authorized the World War II Victory Medal and Army Occupation Medal.
8. He again entered active service on 26 June 1951. He received foreign service credit of 1 year, 7 months, and 19 days (presumably to Korea).
9. The complete facts and circumstances surrounding the applicant's discharge are unavailable for the Board to review; however, his DD Form 214 shows in item 38 (Remarks):
 - 232 days lost
 - Offense: absence from unit; making false official statement; forgery
 - Sentence: 6 months
10. On 18 October 1954, he was discharged with a bad conduct characterization of service under the provisions of Army Regulation 615-364, paragraph 1b; by General Court Martial Order. His DD Form 214 shows he completed 2 years, 4 months, and 10 days of active service this period with 3 years, 2 months, and 16 days of prior service. He was awarded or authorized:
 - Korean Service Medal with three bronze service stars
 - Combat Infantryman Badge
 - United Nations Service Medal
 - National Defense Service Medal
11. By regulation, a member will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed.
12. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

1. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted.
2. The Board determined the applicant character of service should be upgraded to under honorable conditions (general) as a matter of compassion.

BOARD VOTE:

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| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> | |
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| ■ | ■ | ■ | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The Board concurs with the corrections addressed in Administrative Note(s) below and 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:

- voiding his DD Form 214 ending 18 October 1954
- issuing him a new DD Form 214 showing his characterization of service was upgraded to under honorable conditions (general)

6/6/2024

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:

A review of the applicant's service record shows his DD Form 214 omitted an entry in Item 27 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized). As a result, amend the DD Form 214 by adding in item 27:

- World War II Victory Medal
- Army Occupation Medal

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 (AR) 615-364 (Enlisted Personnel – Discharge Dishonorable and Bad Conduct), in effect at the time, sets forth the basic authority for the separation of enlisted personnel. An enlisted person will be discharged with a bad conduct discharge pursuant only to an approved sentence of a general or special court martial imposing a bad conduct discharge.

3. AR 615-360 (Enlisted Personnel Discharge General Provisions), in effect at the time, sets forth the basic authority for the separation of enlisted personnel. It states for:

a. Honorable Discharge – except as otherwise provided in these regulations and pertinent regulations listed, an Honorable Discharge Certificate will be furnished when the individual, during his current period of service, meets the following qualifications:

- has character rating of at least “very good” (except that ratings of “unknown” and ratings for periods of less than 2 months are not disqualifying)
- has efficiency ratings of at least “excellent” (except that ratings of “unknown” and ratings for periods of less than 2 months are not disqualifying)
- has been convicted by a general court-martial
- has not been convicted more than once by a special court-martial

b. General Discharge – individuals discharged under honorable conditions which do not qualify them for an honorable discharge will be furnished a general discharge.

4. 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.

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//