

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2024

DOCKET NUMBER: AR20230011613

APPLICANT REQUESTS:

- his undesirable discharge be upgraded to honorable
- correction of his DD Form 214 (Report of Separation from the Armed Forces of the United States) to show his rank as corporal/E-4
- an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Service Documents
- DD Form 214 (duplicate)
- Articles (two)
- Department of Veterans Affairs (DVA) Letter
- U.S. Department of Justice Letter (partial)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. On 24 June 1953 he was handed an undesirable discharge without explanation, without a hearing of any kind, without charges of any kind, and without prior notice. This character of service, particularly in combat, requires that he receive an honorable discharge. Army Regulation (AR) 615-370 (Enlisted Personnel-Discharge Disloyal or Subversive) requires that prior to such discharge the Army Direct that the individual appear before a board of officers convened in accordance with Special Regulations (SR) 600-200-1 and AR 420-5." In addition to the rights afforded to him by the foregoing regulation, an undesirable discharge without a hearing violated his right to due process of law guaranteed to him by the constitution of the United States. The Army failed to

follow the law, the constitution, and its own regulation in issuing him an undesirable discharge.

b. The applicant lists post-traumatic stress disorder (PTSD) as related to his request.

c. As a result of this discharge, he has been deprived of substantial rights to pay and benefits. On 22 April 1953, he was promoted from private first class/E-3 to corporal. On 28 April 1953 he was presented at a formal ceremony, with a Bronze Star Medal with Valor for "heroism in ground combat." The nature of the discharge imposed upon him is unjust.

3. The applicant enlisted in the Regular Army on 17 February 1947 for a term of three years. His highest rank held was corporal/E-4, date of rank 22 April 1953.

4. The applicant served overseas for 2 years, 9 months, and 8 days.

5. The applicant was reported absent without leave (AWOL) on 17 March 1947 and present for duty (PDY) on 21 March 1947.

6. Court martial charges were preferred against the applicant on 22 March 1947. His WD AGO Form 115 (Charge Sheet) shows he was charged with AWOL from on or about 17 March 1947 until on or about 21 March 1947.

7. Before a summary court martial (SCMO) the applicant was found guilty of AWOL from on or about 17 March 1947 to on or about 21 March 1947. The court sentenced him to forfeit \$35.00 dollars pay. The sentenced was approved and order executed on 29 March 1947.

8. The applicant underwent a Report of Survey on 26 July 1948 for driving an Army vehicle to a canteen and parking the vehicle and entering the canteen. An unidentified (Filipino) person broke the chain and drove the vehicle out. Total cost \$1051.00. The applicant stated the vehicle was stolen from in front of the canteen.

9. Before a summary court martial on 12 August 1948 the applicant was found guilty of AWOL from on or about 30 July 1948 to on or about 31 July 1948 and willfully disobeying a lawful order on or about 31 July 1948. The court sentenced him to confinement at hard labor for six months and forfeit \$50.00 pay per month for a like period. The sentenced was suspended for three months on 19 August 1948.

10. Pretrial confinement was requested for the applicant on 7 September 1948.

11. SCMO Number 86, dated 8 September 1948, Headquarters Camp Rizal, Philippines Command, shows the applicant's sentence was vacated and said sentence would be carried into execution.
12. The applicant was confined on 8 September 1948 at the Philippine stockade area.
13. Before a summary court martial (SCMO No. 97) on 29 September 1948 the applicant was found guilty of willfully disobeying a lawful order on or about 6 September 1948 and wrongful attempt to sell two blankets, wool, valued at about \$16.00, property issued to him by the U.S. Government on or about 6 September 1948. The court sentenced him to confinement at hard labor for six months and forfeiture of \$50.00 pay per month for a like period. The sentenced was approved on 5 October 1948 and would be duly executed.
14. Pretrial confinement was requested for the applicant on 28 December 1948.
15. Clemency consideration for the applicant was recommended on 9 March 1949.
16. The applicant's indebtedness was cancelled on 18 March 1949.
17. SCMO Number 47, dated 24 March 1949, Headquarters, Camp Rizal, shows the unexecuted portion of the sentence promulgated in SCMO 97 was suspended.
18. The applicant was released on 25 March 1949 by reason of unexecuted portion of sentence suspended.
19. The applicant was confined by civil authorities on 25 December 1949, he was charged with being drunk in an automobile. He was confined by civil authorities in Tacoma Washington, on 26 December 1949.
20. The applicant was reported missing in action (MIA) in Korea since 30 November 1950. He was captured in Kuna Ri, North Korea.
21. The applicant was recommended for the Bronze Star Medal (Valor). General Orders Number 38, dated 12 February 1951, 2nd Infantry Division, shows the award of the Bronze Star Medal for heroic achievement on 16 September 1950 in the vicinity of Changnyong, Korea. Certificate for BSM available for review.
22. The Return of Prisoner of War (POW) Mail memorandum, dated 30 January 1953 shows the applicant was on the list of captured personnel received in the Department of the Army from the opposing forces on 18 December 1951. An official determination was made on 12 January 1953 placing the applicant in a captured status.

23. The Battle Casualty Report shows the applicant was returned to military control on 20 April 1953. He was delivered by communist forces to the United Nations custody under the agreement to exchange sick and wounded personnel.

24. A Clinical Record Brief shows the applicant was admitted to a U.S. Air Force Hospital on 1 May 1953. He was a POW from 1 December 1950 to 20 April 1953, no specific disease found. He had infestation of the colon, schizoid personality, mild and strain low back chronic, mild.

25. The applicant having been advised of his right to start a statement claim for total disability benefits under the National Service Life Insurance Act, did not desire to submit a claim on 6 May 1953.

26. A excerpt, labeled as conclusion, in the applicant's case requesting an upgrade of his character of service from undesirable to honorable, shows the following timeline:

- released by Chinese on 20 April 1953
- promotion to corporal on 22 April 1953
- ceremony and presentation of Bronze Star Medal on 28 April 1953
- repatriation to the U.S. on 1 May 1953
- sick Leave from 6 May 1953 to 6 June 1953
- undesirable discharge on 24 June 1953

27. On 9 June 1953 he was evaluated by the clinical psychology section. He exhibited no signs of marked anxiety, depression, or agitation. There were no indications of disturbed thought processes.

a. On 15 June 1953 he underwent a neuropsychiatric examination, which shows a mild schizoid personality.

b. On 16 June 1953 the examiner for physical profile considered the applicant to be in good health at the time.

28. Special Orders 117, dated 16 June 1953, issued by Letterman Army Hospital, shows the applicant was released from observation and treatment and assigned to the Medical Hold Detachment.

29. The Narrative Summary, final summary, dated 19 June 1953 shows the applicant's final diagnosis of observation, medical, POW, no specific disease found and infestation of colon. Line of Duty Yes.

30. The applicant's separation was contemplated under the provisions of AR 615-360 (Enlisted Men-Discharge-Unfitness (Undesirable Habits or Traits of Character)).

31. The available record is void of the applicant's election of rights and the separation authority approval memorandum.

32. The applicant was discharged on 24 June 1953, in the rank/grade of private (PVT)/E-1. His DD Form 214 shows he was discharged under the provision of AR 615-370 (Enlisted Personnel-Discharge Disloyal or Subversive) and Department of the Army Message 34270 for disloyalty. His service was characterized as undesirable. He completed 5 years, 8 months, and 29 days of net active service. He lost 230 days. He was awarded the Combat Infantryman Badge, Korean Service Medal with 4 Bronze Campaign Stars, and the United Nations Service Medal.

33. AR 615-370, in effect at the time, set forth the authority for the separation of enlisted personnel of the Army. This regulation provides for discharge, by administrative action of disloyal, or subversive military personnel below the grade of warrant officer, junior grade, when trial by court martial is not warranted.

34. The applicant provides:

a. A copy of his DD Form 214 and service documents as discussed above.

b. Articles regarding the applicant's discharge from the service. One article dated 29 June (year unknown) shows an Army spokesman said the applicant's discharge came under a section of the regulation that applied to "individuals who have been determined by investigation to be disloyal or subversive but in whose cases trial by court marital had been decreed not feasible or warranted."

c. U.S. Department of Justice, Foreign Claims Settlement Commission of the United States letter, dated 13 January 2023 shows the applicant sought assistance with filing a claim for POW compensation under the War Claims Act of 1948. Unfortunately, based on the information available it appears the Commission would be unable to adjudicate a claim submitted by the applicant for POW compensation because any such claim would be untimely filed.

d. DVA letter, dated 7 June 2023, shows, a Discharge Review Board determination dated 19 April 1954 denied an upgraded discharge. The discussion shows a Character of Discharge (COD) determination was completed on 31 May 2023, and discussed offenses that occurred in 1947 and 1948, which were not the cause of the undesirable" discharge. Furthermore, the COD decision omitted any discussion or reasoning relating to the cause of the "undesirable" discharge or the reasons identified for it in the service personnel records. One article dated 9 November (year unknown) describes a group of

men that preferred to remain POWs instead of being returned to the U.S. control due to procommunist propaganda.

35. A Review of Discharge, dated 30 September 1953 does not show the reason for the review. Letter, dated 5 November 1953, shows the Army carefully considered all of the facts of the applicant's case prior to discharging him from military service.

36. Docket Number 17993, Reason for Separation, shows the applicant was discharged under the provisions of AR 615-370 and DA Message 34270 for disloyalty.

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

38. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting his undesirable discharge be upgraded to honorable. He contends PTSD is related to his request for an upgrade. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 17 February 1947; 2) The applicant served overseas for 2 years, 9 months, and 8 days; 3) The applicant was reported MIA in Korea on 30 November 1950. He was captured in Kuna Ri, North Korea; 4) The applicant was released by the Chinese on 20 April 1953 and then promoted to corporal, presented a BSM, repatriated, and then put on sick leave 06 May-06 June 1953; 5) The available record is void of the applicant's election of rights and the separation authority approval memorandum. However, the applicant was discharged on 24 June 1953, in the rank/grade of private (PVT)/E-1. His DD Form 214 shows he was discharged under the provision of AR 615-370 (Enlisted Personnel-Discharge Disloyal or Subversive) and Department of the Army Message 34270 for disloyalty. His service was characterized as undesirable. He completed 5 years, 8 months, and 29 days of net active service. He lost 230 days. He was awarded the Combat Infantryman Badge, Korean Service Medal with 4 Bronze Campaign Stars, and the United Nations Service Medal.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined.

c. The applicant asserts he was experiencing PTSD while on active service, and it was related to his request for an upgrade. There is evidence the applicant was exposed to significant combat and was determined at some point to be a POW during his active service. These are both significant potentially traumatic experiences. He was provided a clinical psychological examination and a neuropsychiatric examination in

June 1953. He was found in the clinical psychology examination to not demonstrate any signs of marked anxiety, depression, or agitation. However, the neuropsychiatric examination reported a mild schizoid personality. At this time, this was likely a misdiagnosis of behavior typically demonstrated by individuals who underwent an extreme traumatic stressor like severe combat or being a POW. Also, the diagnostic term PTSD had not been developed yet by the DSM.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with service-connected PTSD or any other mental health condition, and he does not receive any service-connected disability. The applicant did provide civilian medical documentation, dated 25 October 2017. It was a psychological evaluation completed by a Licensed Clinical Psychologist from Virginia Beach, VA. The applicant was provided a complete psychological evaluation, and he was diagnosed with PTSD related to his combat experiences in Iraq. It was noted the applicant was experiencing PTSD while on active service, and he would benefit from individual therapy.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed with PTSD by a civilian psychologist as a result of his experiences in combat while deployed to Iraq.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed with PTSD by a civilian psychologist as a result of his experiences in combat while deployed to Iraq.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did go AWOL after extensive combat exposure. Going AWOL can be avoidant behavior, which is a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge Upgrade: Partial Grant. The applicant's separation packet is not available for review. His DD Form 214 shows was discharged on 24 June 1953, in the rank/grade of private/E-1, under the provision of AR 615-370 (Enlisted Personnel-Discharge Disloyal or Subversive) and Department of the Army Message 34270 for disloyalty. His service was characterized as undesirable. He completed 5 years, 8 months, and 29 days of net active service. He lost 230 days. The Board found no error or injustice in his available separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge. Therefore, the Board determined although his service did not rise to the level required for an honorable characterization (given his multiple court-martial convictions), a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

b. Grade: Grant. The Board noted that the applicant was advanced to corporal/E-4, on 22 April 1953. He was separated on 24 June 1953. He was separated in the rank of PVT/E-1 with a date of rank of 24 June 1953. Although his separation packet is not available for review, it is clear that his reduction resulted from his separation processing because the effective date of his E-1 pay grade on his DD Form 214 is the same as his separation date. Therefore, the Board determined that since his discharge upgrade is warranted, a restoration of his rank of CPL/E-4 is equally warranted.

3. 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:

1. In addition to the correction addressed in Administrative Note(s) below, the Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 19 September 1995, as follows:

- Grade: CPL/E-4, date of rank 23 June 1953
- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an honorable discharge.

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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):

A review of the applicant's record shows his DD Form 214, for the period ending 24 June 1953, is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 27 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized): Bronze Star Medal with Valor.

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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. 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.
4. AR 615-370, the regulation prescribes procedures whereby disloyal or subversive military personnel in all components except the National Guard not on Federal active service will be discharged from the military service, and disloyal or subversive persons applying for appointment or enlistment in any component of the Army will be rejected.

a. Activities and associations which may be considered as establishing reasonable grounds for the discharge of disloyal or subversive military personnel and for the rejection persons for military service will include, but are not limited to, one or more of the following:

b. Sabotage, espionage, or attempts or preparations therefor, or intimate and sympathetic association with or voluntary assistance to persons who there is a reasonable cause to believe may be spies or saboteurs.

c. Treason, sedition, or writings and/or acts which reasonably can be considered as intended to encourage treasonable or seditious opinions or actions.

d. Advocacy of revolution, force, or violence for the purpose of altering the existing constitutional form of government of the United States, or to effect an economic, political, or social change in the United States, or to participate in any revolution, or to use force or violence for such purpose.

e. Intentional disclosure of documents or information of a classified or nonpublic character to any person under circumstances which indicate disloyalty to the United States.

f. Acting or attempting to act in the interest of another government in preference to the interests of the United States, or knowingly failing to act in the interest of the U.S. Government when such conduct is calculated to serve the interests of another government.

g. Membership in, affiliation with, or sympathetic association with any foreign or domestic organization, association, movement, group, or combination of persons.

h. Investigations for disloyalty or subversion be conducted and reports forwarded as prescribed in governing regulations.

i. 4(a) Direct trial by court martial when sufficient evidence is indicated to warrant such trial. For the purpose of these regulations, trial by court martial will be considered to be warranted when the evidence included in the investigation forwarded to the Director of Intelligence, General Staff, U.S. Army, in accordance with the provisions of SR 600-220-1 clearly indicates that trial by court martial will result in conviction with sentence to dishonorable or bad conduct discharge and where the disclosure of the substance or source of pertinent evidence is not considered injurious to the interests of the U.S. Government.

j. 4(b) Direct undesirable discharge without further administrative action where the evidence is deemed conclusive but trial by court martial is not warranted.

k. 4(d) Direct that enlisted person appears before a board of officers in accordance with the-provisions of governing regulations, when it is deemed the evidence is not sufficient to take action.

l. 5(a) Boards of officer will be convened by commanders exercising general court martial jurisdiction in accordance with governing regulations.

5. AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 1-9d (Honorable discharge) states an honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

b. Paragraph 1-9e (General Discharge) 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.

6. Army Regulation 635-5 (Personnel Separations-Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. Item 3 (Grade-Rate-Rank and Date of Appointment) enter the rank.

7. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences.

8. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 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 grounds.

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//