

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 June 2024

DOCKET NUMBER: AR20230011640

APPLICANT REQUESTS: in effect:

- an upgrade of his under honorable conditions (general) characterization of service
- correction of Item 19c (Date of Entry) of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show his date of entry as 14 June 1962

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, 29 October 1962
- National Archives (NA) Form 13046 (Response to Request for Separation Documents/Information), 27 October 1993
- self-authored statement, 2 August 2023

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 dates of his service are reflected incorrectly on his DD Form 214 because he enlisted in the rank/pay grade of private (PV1)/E-1 on 14 June 1962 and was in for a few months, but his DD Form 214 shows his date of entry as 3 September 1962. He told his enlisting officer he passed the physical but was in a car accident in which he broke his back two weeks before he was scheduled to ship for Basic Combat Training (BCT). He could not attend BCT because of his back injury and has had seven back surgeries since then. He would like to know why he cannot get a Department of Veterans Affairs card and would like to get help with his medical issues.

3. On 10 May 1962, the applicant underwent a complete medical examination as part of his consideration for enlistment into the United States Army Reserve (USAR). His medical examination noted he was in an automobile accident in April 1962 and, as a result, suffered from bleeding gums, loose teeth, and had to wear braces. He was found qualified for enlistment in USAR.

4. The applicant enlisted in the USAR in the rank/pay grade of private (PVT)/E-1 on 14 June 1962, for a period of 8 years. The applicant requested and was granted a deferment for entry on active duty for attending BCT until September 1962. The highest rank/grade he held was PV1/E-1.

5. Between 9 July 1962 to 30 July 1962, the applicant underwent a complete medical examination and neurological examination/consultation as part of his consideration for retention in the USAR.

a. On 9 July 1962, the civilian doctor who treated the applicant while he was hospitalized after his automobile accident opined that the applicant was unfit for military service at the time and evaluation at a later date would be in order.

b. His medical examination on 17 July 1962, noted he suffered from severe dizziness and headaches as a result of a skull fracture he sustained in an automobile accident on 15 April 1962. He was found qualified for retention in the USAR and military service.

c. His neurological examination conducted on 30 July 1962 yielded normal results. The examining physician stated that although no neurological disease was found, his background history revealed a poor history of social and work adjustment and adaptation, and with mental status revealing some passive-dependent personality traits. The physician opined the applicant was a poor risk for effective duty in the military.

6. On 8 August 1962, the applicant was ordered to active duty for training for a period of 6 months with a reporting date of 3 September 1962.

7. The applicant underwent a neuropsychiatric evaluation 4 October 1962, and medical examination on 11 October 1962, as part of his consideration for discharge due to his poor performance. His Neuropsychiatric evaluation noted that he was diagnosed with a passive-dependency reaction, chronic, severe, characterized by helplessness, indecisiveness, and a tendency to cling to others. It was further noted that the applicant was free from a mental disorder, disease, or defect to distinguish right from wrong and adhere to the right. The evaluating psychiatrist opined that although the automobile accident in which the applicant was involved in April of 1962 resulted in a serious head injury at that time, there was no indication on physical or psychological examination that it is the basis of his present difficulty. A long-term view of his life history indicated a

persistent pattern of a passive kind of dependency on important family members and an incapacity view himself in a mature constructively assertive male role. The psychiatrist opined that retention in the service would result in more serious failure of performance or even the possibility of decompensation of his personality structure in the direction of becoming a medical casualty. Consideration for separation under the provisions of Army Regulation 635-209 (Personnel Separations-Discharge-Unsuitability) for unsuitability due to character and behavior disorder was recommended.

8. On 12 October 1962, the applicant's immediate commander rendered a certificate wherein he stated the applicant had proven himself to be an irresponsible, immature person. He either would not or could not perform any of the duties required of him in an acceptable manner. He resented any type of help and advice from the Permanent Party staff. He was a chronic liar. On one occasion he accused the commander of running him with a duffle bag full of clothing. However, when asked of this allegation by the investigating officer, he denied that anything similar to this ever happened. The applicant had been handled with much extra care and supervision; however, he had demonstrated that he either could not or would not become an average Soldier.

9. On 15 October 1962, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation 635-209, for unsuitability.

10. On the same day, the applicant acknowledged receipt of his commander's notification. He consulted with counsel and was advised of the reason for separation and the rights available to him. He understood if he was issued a general discharge, he may encounter substantial prejudice in civilian life. He waived his right to a hearing before a board of officers and elected not to submit statements in his own behalf.

11. The applicant's commander formally recommended the applicant's separation from the service, under the provisions of Army Regulation 635-209. As reasons for the proposed action, his immediate commander cited the applicant was unable to perform any duties which required physical effort. He could nor or would not apply himself sufficiently to absorb and retain the essentials of BCT. The intermediate commander and adjutant concurred with the recommendation.

12. On 22 October 1962, the separation authority approved the recommended discharge and directed the issuance of a General Discharge Certificate.

13. The applicant's DD Form 214 shows he was discharged from the USAR on 29 October 1962, under the provisions of Army Regulation 635-209, for unsuitability, with an under honorable conditions (general) characterization of service. His rank/pay grade was PVT/E-1 with a DOR of 14 June 1962, which accurately reflects his rank/pay grade on his date of enlistment in the USAR. Item 19b shows he entered active duty on

3 September 1962, which accurately reflects the date he was ordered to active duty for the purpose of attending BCT. He was credited with 1 month and 27 days of net active service during the period covered.

14. The applicant provides an NA Form 13046 that shows he requested and was furnished copies of his separation documents.

15. Regulatory guidance in effect at the time provided the service of Soldier's separated because of unsuitability under the provisions of Army Regulation 635-209, would be discharged with an honorable or general discharge as warranted by the individual's military record.

16. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

#### BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

2. The DD Form 214 is only used to document active duty service. In this case, the applicant's DD form 214 accurately reflects his active duty service for training from 3 September 1962 through 29 October 1962. His inactive time in the USAR prior to being ordered to active duty for training is accurately shown in item 24a(2) as 2 months and 20 days. The Board determined the entry date shown on the applicant's DD form 214 is not an error.

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.

12/9/2024

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), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

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 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. Army Regulation 635-209, then in effect, established the policy and provided procedures and guidance for the prompt elimination of enlisted personnel who are determined to be unsuitable for further military service. Action was taken to discharge and individual for unsuitability only when it was clearly established that it was unlikely that the individual would develop sufficiently to participate in further military training and/or become a satisfactory soldier, or the individual's psychiatric or physical condition is such as not to warrant discharge for disability. Individuals would be discharged by reason of unsuitability, with an honorable or general discharge as warranted by the individual's military record.

4. 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/NR) 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 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//