

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230012153

APPLICANT REQUESTS:

- reconsideration of his earlier requests to upgrade his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Letter, 11 August 2023

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR20130022178 on 12 August 2014 and AR20150015439 on 18 July 2016.
2. The applicant states he is asking the Board for this upgrade because he believes the Army treated him unfairly.
3. A review of the applicant's service records show:
 - a. On 9 November 1962, he enlisted in the Regular Army.
 - b. Upon completion of initial entry training and the award of military occupational specialty 760.00 (Supply Clerk), orders transferred him to Fort Benning, GA (now renamed Fort Moore) to complete airborne training; he arrived at the airborne training unit (45th Company, 4th Student Battalion), on 5 July 1963.
 - c. On 25 July 1963, the command transferred him to 46th Company; on 30 July 1963, he was reassigned to 47th Company. On 2 August 1963, the supporting Mental Hygiene Consultation Service completed a Report of Neuropsychiatric Evaluation pertaining to the applicant. The report stated:

(1) "The above-named 17 year old, single, Caucasian, enlisted man with 6-months' service was referred by his unit for profile evaluation because of depression, worry, loss of memory, enuresis, and nervousness."

(2) Pertinent History. "As described by this individual, his family background is characterized by strife and illness...His family was in a low social economic level...patient and his older sister had to work when very young. Both parents have been sick for some time and are attempting to live off social security supplemented by what their son is able to spare. As reported by this enlisted man, his life experiences indicate emotional and financial deprivations...Because of truancy, he was in trouble with civil authorities...He enlisted in the service because he heard it was a good life. His military adjustment as reported by the individual and his unit has been difficult because of limited resources to draw upon. He was marginal in BCT, didn't complete signal school because of nervousness and (an) inability to gain (a) security clearance, failed (a) transportation course because of bad eyes, and successfully completed supply school. Currently, it is questionable because he is having difficulty in airborne training. This individual's major area of concern is being reassigned to a unit where he can feel less anxious and function at a higher level."

(3) Findings. "There are no disqualifying mental defects sufficient to warrant disposition through medical channels."

(4) Diagnosis. "3203. Inadequate personality, chronic, manifested by inability to perform routine tasks in an adequate manner, anxiety, immaturity, and impaired insight and judgment. Predisposition: moderate. Precipitating stress: None. Impairment. Moderate to marked. LOD (line of duty) No, EPTS (existed prior to service)."

(5) Recommendation. "While the final decision regarding disposition in this case, of course, rests with his command, it is recommended that he be separated from the service as expeditiously as possible under the provisions of AR (Army Regulation) 635-209 (Personnel Separations – Discharge – Unsuitability) for unsuitability by reason of given diagnosis."

d. On 9 August 1963, 47th Company reported the applicant as absent without leave (AWOL); on 26 August 1963, the applicant returned to military control. On 30 August 1963, the applicant accepted nonjudicial punishment, under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for having been AWOL from 9 to 26 August 1963 (17 days).

e. On 31 August 1963, the applicant's unit again reported him as AWOL and dropped him from unit rolls, on or about 2 October 1963. On 24 October 1963, after being apprehended, the applicant returned to military control; on or about 30 October

1963, orders reassigned him to the Special Processing Detachment at Fort Belvoir, VA and military authority placed the applicant in confinement.

f. On 16 December 1963, and consistent with the applicant's plea, a special court-martial found the applicant guilty of having been AWOL from 31 August until 24 October 1963 (54 days). The court sentenced the applicant to 3-months' confinement, and, on 19 December 1963, the special court-martial convening authority approved the sentence and ordered its execution.

g. Orders, dated January 1964, directed the applicant to report in February 1964 to the U.S. Army Overseas Replacement Detachment at Fort Dix, NJ. On 5 February 1964, military authority released the applicant from confinement. On 6 February 1964, a special court-martial order suspended the unexecuted portion of the applicant's confinement until 15 March 1964. On 5 March 1964, the Special Processing Detachment reported the applicant as AWOL and on 7 April 1964, dropped him from unit rolls.

h. On 13 April 1964, after being apprehended by civil authority, the applicant returned to military control and orders reassigned him to the Special Processing Detachment at Fort Belvoir; effective 15 April 1964, the command placed the applicant in confinement. On 17 April 1964, a special court-martial order vacated the applicant's suspended confinement punishment.

i. On 21 May 1964, consistent with the applicant's plea, a special court-martial convicted the applicant of AWOL from 5 March until 13 April 1964 (39 days). The court sentenced the applicant to 6-months' confinement. On 5 June 1964, the special court-martial convening authority approved the sentence and ordered its execution.

j. The applicant's separation packet is unavailable for review; however, his service record includes his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) which shows on 14 August 1964, he was discharged under other than honorable conditions. The DD Form 214 also shows he completed 11 months and 4 days of active duty service. It shows:

(1) Top of the form – "RE3" "RE-3B"

(2) Items 3a (Grade, Rate, or Rank) and 3b (Date of Rank) – Private (PV1)/E-1; 19 December 1963.

(3) Item 11c (Reason and Authority) – AR 635-208 (Personnel Separations – Discharge – Unfitness); Separation Program Number (SPN) 28B.

(4) Item 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized) – Marksman Marksmanship Qualification Badge with Rifle Bar.

(5) Item 32 (Remarks) – "Paragraph 9 (Classes Ineligible for Enlistment or Reenlistment Unless Waiver is Granted), AR 601-210 (Qualifications and Procedures for Processing Applicants for Enlistment and Reenlistment in the Regular Army) applies."

k. On 2 November 2013, the applicant petitioned the ABCMR, requesting an upgraded characterization of service.

(1) The applicant argued he was hurt during airborne training; his stomach bothered him and he twisted his back. Because he did not know what to do and was afraid, he decided to go AWOL; he added that his grandmother had also passed away and the Army would not let him go home. The applicant asked for the Board's sympathy because he was old and disabled.

(2) On 12 August 2014, the Board considered the applicant's statements and his service record and voted to deny relief. The Board stated, "Although specific facts and circumstances surrounding his discharge are not available for review, the presumption of regularity must be applied. He must show to the satisfaction of the Board or it must otherwise satisfactorily appear that the record is in error or unjust. He has failed to submit evidence that would satisfy that requirement."

l. In or around September 2015, the applicant requested reconsideration of his upgrade request. He maintained that the reason he got "off track" was because his grandmother died and his command would not let him go to her funeral. On 18 July 2016, the Army Review Boards Agency administratively closed the applicant's request, citing the lack of new evidence.

4. AR 15-185 additionally states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of

service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for unfitness. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. The Board noted the applicant's contention that the Army treated him unfairly. The Board concluded the applicant suffered from depression and/or anxiety while on active duty; although they existed prior to service, that may have contributed to his violations of the Uniform Code of Military Justice, including absenting himself from his unit. The Board determined an under honorable conditions (General) characterization of service was warranted based on the foregoing.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20130022178 on 12 August 2014. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 14 August 1964 to show:

- item 11c (Reason and Authority): Army Regulation 635-200
- item 13a (Character of Service): Under Honorable Conditions (General)
- item 13b (Type of Certificate Issued): DD Form 257A



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, USC, section 1556 (Ex Parte Communications Prohibited) requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicant's (and/or their counsel) prior to adjudication.

2. AR 635-208, in effect at the time, established policies and procedures for the elimination of enlisted Soldiers who were found to be unfit for further military service.

a. Commanders took action under this regulation when it was clearly established that, despite reasonable attempts to rehabilitate or develop the individual into a satisfactory Soldier, further effort was unlikely to succeed, or rehabilitation was impracticable and disposition under other regulations was inappropriate.

b. The regulation listed the following reasons for separation under this provision:

- frequent incidents of a discreditable nature with civil or military authorities
- sexual perversion, to include lewd and lascivious acts, indecent exposure, or other indecent acts
- drug addiction or possession of a habit forming narcotic or marijuana
- an established pattern of shirking
- an established pattern showing dishonorable failure to pay just debts

c. For Soldiers separated for unfitness, the regulation required separation authorities to reduce the Soldiers to the lowest enlisted grade, and the Soldiers were normally issued an undesirable discharge unless particular circumstances warranted a general or an honorable discharge.

3. AR 635-200 (Personnel Separations – General Provisions for Discharge and Release), in effect at the time, provided the following guidance with regard to issuance of honorable and general discharges:

a. Honorable Discharge.

(1) Separation authorities furnished an honorable discharge to Soldiers who met the following qualifications; the Soldier had to have:

- Conduct ratings of at least "Good";
- Efficiency ratings of at least "Fair";
- No general court-martial convictions; and
- No more than one special court-martial conviction

(2) Notwithstanding the foregoing criteria, a Soldier could still receive an honorable character of service, despite the presence of disqualifying entries, when the separation authority determined the Soldier's subsequent honest and faithful service, performed over a greater period, outweighed those disqualifying entries.

b. General Discharge. Separation authorities awarded a general discharge under honorable conditions to Soldiers whose service did not qualify them for an honorable discharge.

4. AR 635-5, in effect at the time, prescribed policies and procedures for the completion of the DD Form 214.

a. Paragraph 16 (Entry at Top of Form). The "Remarks" section of each enlisted person's service record was to be checked for eligibility for reenlistment and those codes were to be entered at the top of the DD Form 214. The regulation additionally listed the RE codes:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless a waiver is granted
- RE-3B – Not eligible for reenlistment unless a waiver is granted; applicable to enlisted personnel who incurred lost time during their last period of service; additionally, the
- RE-4 – Not eligible for reenlistment

b. Appendix I (SPN and Authority Governing Separations) showed Soldiers separated under the provisions of AR 635-208 for unfitness because of frequent involvement in incidents of a discreditable nature with civil or military authorities received the SPN "28B."

5. AR 601-210, in effect at the time, prescribed eligibility criteria for the enlistment and reenlistment in the Regular Army. Paragraph 9c (Classes Ineligible for Enlistment or Reenlistment Unless Waiver is Granted – Applicants Having Time Lost) stated prior servicemen whose time lost totaled 60 days or more during their last term of active service required a waiver from The Adjutant General.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post Traumatic Stress Disorder (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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

8. 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.

9. AR 15-185, currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body.

(1) It 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).

(2) 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.

b. An applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//