

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 March 2024

DOCKET NUMBER: AR20230012646

APPLICANT REQUESTS: an upgrade of his bad conduct discharge to general, under honorable conditions.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record).

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 is requesting an upgrade of his bad conduct discharge because he is 94 years old and in need of medical assistance. He has had mental issues since getting hit in the head while in the service. Additionally, he believes he was unjustly discharged under a bad conduct discharge in 1951. He contends that his African American identity significantly influenced the outcome and requests a more favorable discharge status, preferably general, under honorable conditions. He further noted his head injury led to persistent employment challenges thereafter. During his time in service, there was significant racial tension, and he does not believe that his actions were unwarranted after being called racial epithets repeatedly. Additionally, he was informed his service records were burned in a fire.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 15 December 1947. At the time of his separation, he held military occupational specialty 0062, Food Service Apprentice.
 - b. The complete facts and circumstances surrounding his discharge are not available for review. However, his DD Form 214 (Report of Separation from the Armed Forces of the United States) shows he was discharged from active duty on 28 March 1951, with bad conduct characterization of service. It also shows he completed 2 year 4 months, and 29 days of active service. His narrative reason for separation listed as

“Sentence of courts-martial, paragraph 1b, Army Regulation (AR) 615-354 (Enlisted Personnel - Discharge Dishonorable and Bad Conduct”. It also shows he was awarded or authorized: World War II Occupation Medal.

- Item 26 - Foreign and/or Sea Service: 1 year, 1 month and 14 days
- Item 38 – Remarks: General Court Martial Order (GCMO) #334 dated 30 October 1950 (desertion) 315 days lost

c. The Standard Form No. 64 (Office Memorandum, United States Government) shows an issue was posed if the type of discharge the applicant received constituted a bar to entitlement to benefits under the Public Laws administered by the Administration. The decision states in part:

(1) In response to the request for a copy of the general court-martial there was copy of general court-martial was received from Veterans Service Department, Order No. 334, dated October 30, 1950, from the Headquarters, 9th Infantry Division, Fort Dix, NJ, showing that the veteran was tried by a general court-martial for desertion. The applicant was found guilty of this offense and sentenced to one year's confinement at hard labor, to forfeit all pay and allowances and to be discharged from the service with a bad conduct discharge. The sentence was adjudged on October 19, 1950, approved on October 30, 1950, but the period of confinement was reduced to six months.

(2) It is not shown or alleged from the evidence of record that the Veteran was insane at the time of the commission of the offense for which he was tried and convicted. Therefore, based on the facts in this case and under provisions of operable regulations, it is the opinion of the undersigned that the Veteran is not entitled to benefits under the Public Laws administered by this Administration based on his period of active military service, that is from December 15, 1947, through March 28, 1951.

4. The applicant's military records are not available to the Board for review. A fire destroyed approximately 18 million service members' records at the National Personnel Records Center in 1973. It is believed his records were lost or destroyed in that fire. However, there were sufficient documents remaining in a reconstructed record to conduct a fair and impartial review of this case. This case is being considered using reconstructed records, which primarily consist of a DD Form 214.

5. On 3 April 2024, the applicant was notified by the Army Review Boards Agency that he was required to provide a copy of medical documentation to support his claim of mental health issues. The applicant was provided 30 days to submit supporting documentation with a suspense of 3 May 2024. The applicant has not provided a response to date.

6. By regulation (AR 15-185), 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.

7. By regulation (AR 615-360), 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.

8. 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.

9. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 28 March 1951 bad conduct discharge and, in essence, a referral to the disability evaluation system (DES). On his DD 149, he had indicated that Other Mental Health Conditions is an issue related to his requests. He states:

“I am looking to have my bad conduct discharge upgraded, as I need medical assistance. I am 94 years old and have had mental issues after getting hit on the head while in service.

I feel that I was unjustly discharged under a bad conduct discharge, as this happened back in 1951 . I am an African American and feel that this had a huge play in why I was discharged. At the very least I should have been discharged under honorable conditions (General).”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 15 December 1947 and was discharged on 28 March 1951 under the provisions provided in paragraph 1b or AR 615-364, Enlisted

Personnel Discharge - Dishonorable and Bad Conduct. The DD 214 shows he was awarded the World War II Occupation Medal.

d. A 23 September 1954 Character Discharge Review shows the applicant was found guilty of desertion and sentenced to one year's confinement, to forfeit all pay and allowances, and to be discharged from the service with a bad conduct discharge. His period of confinement with hard labor was reduced to 6 months.

e. No medical documentation was submitted with application and his period of Service predates the EMR.

f. There is no probative evidence the applicant had a mental health or other medical condition which would have failed the medical retention standards of chapter 3, AR 40-501, Standards of Medical Fitness, and been a cause for referral to the DES prior to his discharge.

g. JLV shows the then 93-year-old applicant was first seen at a Veterans Hospital Administration (VHA) facility (Tampa, Florida) in January 2023. He was admitted as a humanitarian emergency for delirium and hypertensive crisis (blood pressure 230's / 120's).

h. Because of his agitation and delirium/poor cognitive functioning, he was evaluated by both psychiatry and neuropsychology. Psychiatry diagnosed him with Unspecified Neurocognitive Disorder - Delirium vs. other Major Neurocognitive Disorder.

i. Excerpts from the neuropsychology assessment in which the provider concludes the applicant is not competent to care for himself:

"His pattern of remarkable executive dysfunction prevented full exploration or comprehension of various discharge dispositions.

Mr. [Applicant] was unable to make an informed and rational decision about his discharge disposition or his related desire to live independently. This is predicated on his inability to understand the facts regarding his medical and cognitive health, his financial affairs and housing, and ongoing health needs, as well as inability to appreciate any potential risks or pitfalls related to the above.

Opinion (Medical): In my opinion Mr. [Applicant] DOES NOT have the capacity to make independent medical decisions.

Potential for Compensation: Mr. [Applicant] presents with remarkable cognitive impairment that inhibit his capacity to make complex decisions. While some confusion may be attributable to a delirium process that may ameliorate, given a suspected concurrent neurodegenerative process, prognosis for cognitive recovery and increased independence in decision-making is poor."

- j. He has infrequently been at the VHA in Tampa since that time.
- k. A 17 June 2024 administrative note shows he continues to be homeless.
- l. There is no medical basis upon which to base a discharge upgrade under liberal consideration policies.
- m. It is the recommendation of the ARBA medical advisor that the board consider clemency under guidelines established in the 25 July 2018 Memorandum – Subject: Guidance to Military Discharge Review Boards and Boards for Correction of Military I Naval Records Regarding Equity, Injustice, or Clemency Determinations.
- n. In comparison to today's AWOL discharges under Chapter 10 of AR 635-200, this now 95-year-old applicant's Bad Conduct discharge after 6 months hard labor is unduly harsh. While it cannot be shown in his case, many cases previously adjudicated by the ABCMR have shown that race severely affected the treatment and discharges of Black American Soldiers.
- o. There is little doubt his bad conduct discharge has negatively affected most aspects of his life (employment, VA health care, access to housing, etc.) for more than 73 years.
- p. It is the ARBA medical advisor's opinion that strong consideration of a clemency discharge upgrade certainly warranted.

BOARD DISCUSSION:

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 DoD guidance for liberal consideration of discharge upgrade requests. The applicant's records are not available for review. His DD Form 214 shows he was convicted by a general court-martial of desertion and received a bad conduct discharge. The Board found no error or injustice in his available separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical reviewer's finding insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Nevertheless, given the applicant's total service of 2 years and 5 months, with 1 year and 1 month of foreign service, and given the passage of time, and as a matter of compassion, the Board determined an upgrade to general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined that such upgrade did not

change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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 amending the applicant a DD Form 214 for the period ending 28 March 1951 as follows:

- Character of Service: General, Under Honorable Conditions
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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.

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 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. 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.
3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), currently in effect, sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of the acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.
 - b. Paragraph 3-7b (General discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Paragraph 3-7c (Under Other Than Honorable Conditions) states a discharge under other than honorable conditions are an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexuality, security reasons, or for the good of the service.
 - d. Paragraph 3-11 (DD Form 259A (Bad Conduct Discharge Certificate) states 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.

4. 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 post-traumatic stress disorder (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.
5. 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 DRBs and BCM/NRs 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, 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, on 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.
6. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.
7. 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/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 based on 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//