

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 August 2024

DOCKET NUMBER: AR20140017380

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his under honorable conditions (general) discharge.

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

- Self-Authored Statement
- Docket Number AR201500173980, ABCMR denial letter, 27 May 2015
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 18 January 1962

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20140017380 on 21 May 2015.

2. The applicant states:

a. He volunteered in the Army to become a Deep Sea Diver. Due to a vision problem which he found out later it was not possible to become a Deep Sea Diver. After basic training he was assigned to Fort Monroe, VA as a Seaman on the Q647, a patrol boat that was the flag ship of General Mark Clark; he was very proud of this assignment.

b. As he had the highest mechanical aptitude on the base, he was pulled off the boat and sent to pinsetter school [REDACTED] to learn repair and operate bowling alley machines. He did not join the Army to work on bowling alley pinsetters.

c. After a short time, he was sent to France to another unit and sent to school to learn to work on another brand of pinsetter. During this time in France, he received a Dear John letter by his girlfriend and began to drink heavily, which led to poor judgement and many mistakes which he deeply regrets.

d. He has lived the past 60 years regretting this and would appreciate any considerations to change his discharge from general to honorable.

3. A review of the applicant's service records show:

a. On 28 August 1959, the applicant enlisted in the Regular Army.

b. On 23 May 1961, he was convicted by a summary court-martial of being absent without leave (AWOL) from 7 May to 15 May 1961. He was sentenced to a reduction to the pay grade of private (PVT)/E-1 and a forfeiture of \$60.00.

c. On 6 June 1961, he was again convicted by a summary court-martial of failure to go to his appointed place of duty at the time prescribed. He was sentenced to hard labor without confinement for 15 days and a forfeiture of \$50.00.

d. On 2 October 1961, unit punishment was imposed against him for breaking restriction.

e. On 18 October 1961, the applicant completed a psychiatric examination which shows a diagnosis of passive aggressive reaction and further states, the applicant since being in the Army finds that he resents being told what to do.

f. Special Court-Martial Order Number 58, 25 October 1961 shows a special court-martial convened.

(1) The applicant was arraigned, tried, and convicted of the following charges and specifications:

- Charge I, Violation of the UCMJ, Article 89. Specification: In that applicant did, on or about 18 September 1961, without proper authority, absent himself from his organization and did remain so absent until on or about 19 September 1961
- Charge II, Violation of the UCMJ, Article 134, Specification: In that applicant did, on or about 19 September 1961, wrongfully and falsely make with intent to deceive a certain writing

(2) His sentence included a reduction to the lowest enlisted grade, forfeiture of \$55.00 per month for 4 months, confinement at labor for one month, and a bad conduct discharge (BCD).

(3) The sentence was adjudged on 20 October 1961.

(4) On 25 October 1961, the sentence was approved but the execution of that portion thereof adjudging confinement at hard labor for one month, forfeiture of \$55.00 per month for four months, and reduction to the lowest enlisted pay grade is approved and will be duly executed, but the execution of that portion of the sentence adjudging confinement is suspended for three months and which time unless the suspension is sooner vacated, the unexecuted portion of the sentence will be remitted without further action.

g. Special Court Martial Order Number 55, dated 14 November 1961 shows so much of the order published in Special Court Martial Order Number 58, as suspends execution of the approved sentence to confinement at hard labor for one month, in the case of the applicant adjudged 20 October 1961 not subsequently modified is vacated. The applicant will be confined in the U.S. Army Stockade and the confinement will be served therein or elsewhere as competent authority may direct.

h. On 24 November 1961, the applicant's commander initiated action requesting board action be taken against the applicant under the provisions of Army Regulation 635-209 to separate him from the service. He cited as the basis for his request the applicant's disciplinary record, poor appearance, failure to obey orders, and his substandard pattern of conduct. Additionally, he was pending trial by court-martial for destruction of government property.

i. The applicant declined the opportunity to consult with counsel and waived a board hearing.

j. On 5 December 1961, the appropriate authority approved the recommendation for discharge and directed that he be furnished a General Discharge Certificate.

k. On 18 January 1962, he was discharged under honorable conditions (general) under the provisions of Army Regulation 635-209 for unsuitability due to apathy – defective attitude. He completed 2 years, 3 months, and 23 days of active service, and he had 28 days of lost time due to being AWOL and in confinement.

l. On 21 May 2015, in ABCMR Docket Number AR20140017380, the Board denied his request for an upgrade of his discharge.

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

5. Army Regulation 635-209, in effect at the time, set forth the basic authority for the separation of enlisted personnel by reason of unsuitability when it was determined that it was unlikely that an individual would develop sufficiently to participate in further military

training and or become a satisfactory soldier. An honorable or general discharge was authorized.

6. Army Regulation 635-200 paragraph 3-7a provides an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was/was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the lack of any mitigation evidence and/or post-service character evidence which would warrant consideration for clemency, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

2/5/2025

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

a. Chapter 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. 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.

2. Army Regulation 635-209, in effect at the time, set forth the basic authority for the separation of enlisted personnel by reason of unsuitability when it was determined that it was unlikely that an individual would develop sufficiently to participate in further military training and or become a satisfactory soldier. An honorable or general discharge was authorized.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction.

Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military BCM/NRs and DRBs 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//