

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20230014267

APPLICANT REQUESTS:

- reconsideration of his prior request for an upgrade of his undesirable discharge to under honorable conditions (General)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Report of Investigation, 22 December 1954
- Certificate of Military Service
- North Carolina State Archives Information Sheet
- Waiver of Indictment, 10 January 1955
- Criminal Docket Entries
- National Personnel Records Center (NPRC) Letter, 7 September 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's cases by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC93-10522 on 27 October 1992 and Docket Number AR20160009563 on 8 February 2018.

2. The applicant states he believes the status of his discharge was unjust for the following reasons.

a. He voluntarily enlisted on 5 June 1952 during the Korean War period. Shortly after completing his basic combat training and advanced individual training, he was deployed for 13 months to the front lines of the Korean War with the 8th U.S. Army, 96th Field Artillery Battalion. He was exposed to the dangers of combat and environmental dangers due to the cold weather injuries and lack of cold weather equipment. He was often under fire from the enemy as he attempted to provide hardwire ground

communications in his role as a Signal Corp specialist. He sustained an injury to his hand while engaging the North Korean enemy.

b. He completed his tour in Korea and was transferred to Fort Bragg, NC. He was admitted to the hospital as an inpatient to remove lead from his hand. He also received outpatient treatment for ringing in his ears, numbness in his feet, and shell shock, what he believes is not post-traumatic stress disorder (PTSD). He experienced tremors and nightmares. He was a good Soldier until the reported incident. He had been denied off post privileges for 8 weeks and during an authorized pass he elected to celebrate. He used alcohol to help him deal with the tremors, nightmares, and PTSD. On the night of 18 December 1954, he was extremely cold, had consumed a significant amount of alcohol, and while off post tried to find himself somewhere to sleep to avoid the cold weather. He only remembers being awakened by a Police Officer who informed him that he had broken the window to the grocery store, but he did not recall. He only remembered trying to seek shelter. His discharge resulted in an injustice because the war caused him to suffer with ongoing medical conditions and experiences which impaired his decisions on the date of his apprehension.

c. Prior to joining the military, he lived a poverty stricken area of South Carolina. As mentioned in the police report, he was unable to pay the \$500 bond after arrest and was incarcerated. He was assigned a court appointed attorney who advised him of two options, he could either spend 25 years in jail, or because of his military service, he could plead guilty, and it could be reduced to 1 year and 18 months. He pled guilty to breaking and entering without fully understanding his rights. He can only recall the glass being broken from the grocery store, but no physical property was taken as outlined in the report. The 22 December 1954 report includes the term "larceny" but that is contradictory to what is written in the report which noted, "no property involved." Additionally, the MP report is listed as complete prior to his court date and failed to take his medical condition into consideration.

d. He joined the US. Army in 1952, at a very young age, to depart Florence, South Carolina and learn a military trade which would allow him to better myself. He served with honor on the front lines of the Korean War to support his country. He was promoted through the ranks from private to private first class. He had no prior incidents of misconduct on or off post. Currently, as a result of his existing medical conditions and the recent changes in policy reference liberal consideration for PTSD, the stress of serving in a very hostile environment on the front-lined during combat, he humbly requests reconsideration of his discharge for an upgrade to general from undesirable. He is now retired from employment and is under treatment for his ongoing tremors and nightmares.

3. The applicant provides:

a. The below listed documents to be referenced in the service record:

- Report of Investigation, 22 December 1954
- Certificate of Military Service

b. A North Carolina State Archives information sheet shows a fee was charged to search and provide archived documents pertaining to the applicant's criminal charges.

c. A Waiver of Indictment dated 10 January 1955, shows the applicant waived the bill of indictment and pled guilty to breaking and entering on 18 December 1954. His punishment included confinement for a term of twelve (12) months to be assigned to work on the public roads under the supervision of the State Highway and Public Works Commission.

d. The Cumberland County Criminal Docket #195 shows numerous entries listing the offense and punishment decided for each case, if any, to include the applicant.

e. A letter from NPRC dated 7 September 2023 shows a Certification of Military Service was provided for official purposes since there were no other files on record.

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 report of investigation and the Certification of Military Service.

a. He enlisted in the Regular Army on 5 June 1952.

b. ABCMR Docket Number AC93-10522 shows the applicant served in Korea from November 1952 to December 1953.

c. A report of investigation shows at approximately 0100 hours on 18 December 1954, the applicant while under the influence of alcohol, smashed the glass door of a grocery store. He gained entry therein and while in the store he was apprehended. The applicant admitted entering the store but denied any intentions of stealing. On 20 December 1954, the applicant was charged with breaking and entering, he waived preliminary hearing, and was offered bond. The applicant was unable to pay the bond and was incarcerated.

d. On 24 October 1955, he was discharged with an undesirable characterization of service. His Certification of Military Service lists his last rank as private first class.

5. On 13 January 1983, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. On 27 October 1993, the ABCMR rendered a decision in Docket Number AC93-10522. The Board determined the applicant had not presented and the records did not contain sufficient justification to conclude that it would be in the interest of justice to grant the relief requested or to excuse the failure to file within the time prescribed by law. The applicant's request for relief was denied.

7. On 8 November 2018, the ABCMR rendered a decision in Docket Number AR20160009563. The Board noted fire destroyed approximately 18 million service members' records at the National Personnel Records Center in 1973. It is believed that his records were lost or destroyed in that fire. The evidence presented did not demonstrate the existence of a probable error or injustice. The Board determined the overall merits of the case are insufficient as a basis to amend the decision of the ABCMR as set forth in Docket Number AC93-10522 on 27 October 1993.

8. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a reconsideration of his prior request for an upgrade of his undesirable discharge to under honorable conditions (general). The applicant's previous requests to the ABCMR are summarized in Docket Number AC93-10522 on 27 October 1992 and Docket Number AR20160009563 on 8 February 2018. He contends he experienced Posttraumatic Stress Disorder (PTSD) that mitigates his misconduct. 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 (RA) on 05 June 1952, 2) the applicant served in Korea from November 1952 to December 1953, 3) a report of investigation shows on 18 December 1954, while under the influence of alcohol, the applicant smashed the glass door of a grocery store where he gained entry and was apprehended. He admitted to entering the store but denied any intentions of stealing anything. He was charged with breaking and entering on 20 December 1954. As he was unable to pay the bond he was incarcerated. 4) on 24 October 1955, the applicant was discharged with an undesirable characterization of service, 5) on 13 January 1983, the Army Discharge Review Board (ARDB) denied his request for an upgrade. On 27 October 1993, the applicant's petition to the ABCMR was denied due to insufficient justification to grant relief. On October 2018, the ABCMR noted that a fire destroyed approximately 18 million service member's records at the National Personnel Records

Center in 1973 and that the applicant's records were believed to have been lost or destroyed in that fire. However, the evidence did not demonstrate existence of a probable error or injustice and the applicant was denied relief.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A review of JLV was void of medical information and the applicant did not provide any medical records as part of his application.

d. The applicant provided a self-statement as part of his application dated 27 October 2023. The applicant noted that while he was serving in Korea during the Korean War he was exposed to combat and was also often treated for cold weather injuries. He noted that he suffered a wound to his hand while in Korea and once he was transferred to Ft. Bragg (now known as Ft. Liberty), he received treatment for 'ringing in his ears, numbness in his feet and shell shock' (now known as PTSD), which he said caused tremors and nightmares. He further asserted that he used alcohol to cope with tremors, nightmares, and PTSD. Regarding the incident that led to his arrest and eventual discharge from the military, the applicant asserted that he only recalls seeking shelter from the cold weather and to recover from his tremors and nightmares. In his statement he also indicated that after being discharged from the military and retiring from his civilian position, he was prescribed Thorazine (antipsychotic) to help with his tremors and nightmares due to his time on active duty.

e. Review of the investigative report dated 20 December 1954 for the breaking and entering incident documented that the files of the office were examined by the investigator and disclosed 'no previous record of subject.' It also noted that no property was involved.

f. As part of his application, there were several character references that were available for review from his previous petitions to the Board from former employers and family members. Overall, the letters describe the applicant as a dependable, professional, giving, and hard-working person. The records show he also earned several certificates post-discharge to include obtaining an Engineer's License dated 16 November 1982 and was acknowledged as employee of the month on two occasions (1985).

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence that the applicant had a condition or

experience in-service that mitigated his misconduct. There were no in-service or post-discharge medical records available for review. It is noted by this Advisor that the applicant's records were incomplete due to a fire that likely destroyed much of his military service record. Per the applicant's self-assertion, he reported that he self-medicated with alcohol to cope with symptoms of PTSD following his service to Korea and it is noted that alcohol was involved in the incident which ultimately led to his arrest and discharge due to breaking and entering in a grocery store. The available records do not indicate that the applicant had any other history of misconduct aside from his civil conviction for breaking and entering and character references describe the applicant as a dependable, professional, and hard-working individual. However, the applicant contends PTSD was related to his discharge and his self-assertion alone merits consideration by the Board.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends PTSD was related to his reason for discharge.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no in-service or civilian medical records available for review. Although there is no evidence to support the applicant's assertion of PTSD, per Liberal Guidance, his self-assertion alone is worthy of consideration by the Board. It is noted that the applicant's military service files were likely destroyed in a fire at the National Personnel Records Center in 1973 and therefore are incomplete. Due to his characterization of service, he is ineligible for VA services. Per the applicant's self-assertion, he reported that he self-medicated with alcohol in order to cope with his symptoms of PTSD following his service to Korea, to which alcohol was involved in the breaking-and-entering incident that ultimately led to his discharge. It is of note that during the applicant's time in service, PTSD was not a diagnosable condition and was not recognized until 1980, over 20 years following the applicant's discharge. Review of the available records do not show any other history of misconduct in-service or post-discharge and character references that were available for review indicate the applicant was a professional and hard-working individual. Although there is no medical evidence available for review indicating that the applicant has been diagnosed with PTSD, it is acknowledged that alcohol use is a common form of self-medicating for individuals suffering from what is now known as PTSD. However, even if the applicant's self-assertion were considered fact, PTSD does not interfere with one's ability to distinguish between right and wrong and adhere to the right. As such, BH mitigation would not be supported for the identified misconduct of breaking and entering.

i. Separately, the Wilkie Memorandum specifies factors to be taken into consideration when considering clemency. With regard to this applicant, it is noted that the misconduct occurred over 70 years ago and there is no other evidence of in-service misconduct nor post-discharge misconduct. Furthermore, his characterization of service precludes him from receiving medical care through the VA. Although there is no evidence available to support the applicant's assertion of PTSD which he attributed to his service in Korea, it is noted that his only documented episode of misconduct occurred following his service tour to Korea. As such, it is recommended that the totality of the applicant's case be reviewed as it pertains to clemency.

#### 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board notwithstanding the advising official finding insufficient evidence that the applicant had a condition or experience in-service that mitigated his misconduct. The opine noted there is no medical evidence available for review indicating that the applicant has been diagnosed with PTSD, it is acknowledged that alcohol use is a common form of self-medicating for individuals suffering from what is now known as PTSD.

2. The Board, however determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct. The Board applauds the applicant's post service achievements, earning several certificates to include obtaining an Engineer's License and being recognized on two occasions as employee of the month. The Board noted, his character letters of support attest to his professionalism, dependability and him being a hard worker. The Board agreed that clemency is warranted based on liberal consideration, how the applicant has changed his life in a positive way over the past 70 years as a leader and professional within his community. As such the Board granted relief to upgrade the applicant's discharge to under honorable (general) conditions.

3. 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 a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing his characterization of service as General Under Honorable Conditions.

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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. 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.

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

a. Paragraph 3-7a states 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.

b. Paragraph 3-7b states 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.

3. 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.

4. 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.

5. 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.

6. Section 1556 of Title 10, United States Code, 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 applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//