

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20230015086

APPLICANT REQUESTS:

- an upgrade of his bad conduct 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)
- Self-Authored Statement
- Newspaper Article dated 23 June 1971
- Letter to Congressman dated 9 September 1975
- Character Reference (5)
- Certificates of award/training/promotion (14)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 22 March 1971

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:

a. He enlisted in the Army 17-years old, 2 weeks after graduating high school. He was a wide eyed enthusiastic black man with aspirations of becoming a career Soldier. He qualified for officer candidate school (OCS) and chose to enter the training. After completion of basic training and advanced individual training, he was given an option for deployment to Vietnam or attend OCS. He talked with his first sergeant and chose the orders for Vietnam. He knew if he went to OCS first, he would eventually be sent to Vietnam. He would gain knowledge and training from Vietnam which would help him when he went to OCS and maybe back to Vietnam.

b. Prior to his enlistment his home life was one of inclusion and acceptance of all people regardless of their race, religion, or social economic status. He was not exposed to racial strife or turmoil even in the 60's. His parents were able to keep them from experiencing that. He arrived in Vietnam January of 1969 and within a few short months racial bias, exclusion, and animosity between race within the ranks showed its ugly head. His first encounter was with the sergeant (SGT) in his hootch, SGT L\_. He made disparaging remarks about his race, how they were worthless, and how he hated my race and given the change he would see that his race was no longer around. The verbal altercation they had was heard throughout the hootch which consisted of 14 members and him being the only black person. The next morning the commander without mentioning name moved him to another hootch where the racial makeup was somewhat even.

c. The move did not remedy the racial situation in the company. A couple of months later a similar situation arose involving a white E-4 and himself and two other black servicemen. This led to the situation that led to his court martial and dishonorable discharge. The other two soldiers involved laid the blame squarely on his shoulders. He accepted complete responsibility for his actions and His decision to go along with what they had in mind. The outcome was the injustice of the situation and the error of this type of atmosphere being unchecked within the company.

d. Prior to his enlistment he had no interactions with law enforcement, no arrests, no detainments no convictions. After his release from the Leavenworth USDB and the military system he can proudly say that he still to this day has no interactions with law enforcement, no arrests, no detainments, no convictions. He has led a productive and respectful life as a husband, father, and grandfather. He spent 37 years in the same industry. Newspaper circulation and delivery in managerial positions.

e. His time spent in the military system instilled in him discipline, respect, patience, and the importance of the chain of command. He lives by these ideals to this day. He does not seek a restoration of rank, nor benefits or any type of monetary compensation. He does seek a discharge upgrade, deemed appropriate by the board with a corrected DD Form 214, which would validify his status as a veteran and allow him to hold his head high. He did enlist voluntarily; he did serve in Vietnam. In addition, in August of 1975 he attempted to re-enlist and sought the assistance of his congressman in this matter. His request to re-enlist was turned down.

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

a. The applicant enlisted in the Regular Army on 26 July 1968 at the age of 17 years old with the consent of his parent.

b. His DA Form 20 (Enlisted Qualification Record) shows in item 31 (Foreign Service): service in Vietnam from 14 January 1969 to 13 January 1970.

c. His DA Form 20 shows in item 33 (Appointments and Reductions):

- private (PVT)/E-1: 26 July 1968
- private (PV2)/E-2: 26 September 1968
- private first class (PFC)/E-3: 23 November 1968
- PVT/E-1: 6 November 1969

d. General Court-Martial Order Number 28, issued by Headquarters, 1st Infantry Division, APO San Francisco, dated 6 November 1969, shows:

(1) He was found guilty of one specification of aggravated assault by intentionally inflicting grievous bodily harm upon specialist five D\_\_ J\_\_ by penetrating chest wound close to his heart, a punctured diaphragm, lacerated liver, and other stab wounds in the neck, shoulder, and lower back with a knife, on or about 25 August 1969.

(2) The court sentenced him to reduction to the rank/grade of private (PVT)/E-1, confinement at hard labor for 4 years, forfeiture of all pay and allowances on and after the date of this action and to be discharged from the service with a bad conduct discharge. The sentence was adjudged on 7 October 1969.

(3) On 6 November 1969, the convening authority approved the sentence and except for the part of the sentence extending to a bad conduct discharge ordered it duly executed. The record of trial was forwarded for appellate review.

(4) On 20 July 1970, the U.S. Army Court of Military Review having found the approved findings of guilty, and the sentence correct in law and fact, and having determined based on the entire record that they should be approved, such findings of guilty and the sentence are affirmed

(5) Letter dated 8 October 1970 shows the applicant requested and was granted an appellate re-review of his case. Letter dated 17 February 1971 shows the Army Court of Military Review Under the provisions of the Uniform Code of Military Justice, Article 71(c), it is requested that action be taken in accordance with Appendix 15b, MCM, 1969 (Rev.).

e. General Court-Martial Order Number 75, issued by Headquarters, U.S. Disciplinary Barracks, Fort Leavenworth, KS on 19 January 1971, shows the sentence to forfeiture of all pay and allowances on and after the date of this action dated 6 November 1969, as is in excess of forfeiture of \$60.00 pay per month is suspended

until such time as the sentence is ordered into execution, unless the suspension is sooner vacated.

f. General Court-Martial Order Number 239, issued by Headquarters, U.S. Disciplinary Barracks, Fort Leavenworth, KS on 24 February 1971, shows the sentence to a bad conduct discharge, confinement at hard labor for 4 years, and reduction to PVT/E-1, dated 7 October 1969 has been finally affirmed. Article 71(c) having been complied with; the sentence will be duly executed. The prisoner will be confined in the United States Disciplinary Barracks, Fort Leavenworth, Kansas, and the confinement will be served therein, or elsewhere as competent authority may direct.

g. On 22 March 1971, the applicant was discharged pursuant to his court-martial sentence under the provisions with a bad conduct discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 11-1a. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was assigned Separation Code 292 and Reentry Code 4. He completed 1 year, 1 month, and 1 day of active service.

4. The applicant provides:

a. A Long Island press news article “Black Soldier set-up movement in Vietnam” dated 23 June 1971.

b. Letter addressed to the Honorable Thomas J. Downey dated 9 September 1975 in which he requested to have his reenlistment code change in order to reenlist in the Army.

c. Six certificates of various trainings and one certificate of promotion from the American Cadet Alliance dated from 26 May 1961 to 25 May 1962.

d. Five certificates of various trainings from Wilson Technological Center dated from 20 June 1968 to 6 December 2022.

e. Mandated Reporter Training: Identifying and Reporting Child Abuse and Maltreatment certificate of completion dated 27 July 2023.

f. U.S. Center for Safe Sport, refresher 2: preventing misconduct course completion on 8 August 2023.

g. Character reference letter dated 11 January 1975 from friends of over 10-years attesting to him being a courteous, clean-cut, jovial, and well-mannered young man. He has a wonderful religious background, and they would be proud to call him their son.

h. Character reference letter dated 14 January 1975 from the pastor at New Bethany Baptist Church who states the applicant is well liked and respected in the community. He and his family has been active in various activities in the community both before and since his military experience.

i. Character reference letter dated 27 September 2023 from his ex-partner which he has known for over 41-year. He has excellent character. He is hard working, honest, and a loyal person. He is good natured with a positive attitude. He is an upstanding citizen and member of society. He is a loving and generous father and grandfather. He was a dedicated husband, he spent 8-years of their 12-year marriage faithfully taking care of her until she lost her battle with cancer.

j. Character reference letter dated 30 September 2023 from his younger sister. She enlisted in the Army because of her brother. She developed confidence and had the same great character traits she sees in her brother. He stepped in to help her raise her two kids once her marriage ended before he had his own kids. He has excelled in any job, always accepting the managerial level. He has great work ethics and has never been unemployed. When his marriage failed, he was dedicated to being an active participant in his son's life. He made 10-hour round-trip drives to Maryland from New York twice a month to get his son for long weekends. He obtained custody of his son and has raised him into a fine young man. He cared for his wife with strength, dignity, and grace until she passed away. He is a man of outstanding character.

k. Character reference letter dated 12 October 2023 from a friend of 2-year. They were introduced to each other by his sister. They had both lost their spouse within four months apart. She has seen a loving father, doting grandfather, respected uncle, a congenial ex-husband, and a dependable brother. He is always seeking knowledge, studying, and taking classes for self-improvement. He has not let his sorrow or life's difficulty impeded on his pursuit for employment. When not involved with those activities, he comes to visit her and her and offers his assistance with various household tasks, cooks magnificent dinners for them, and attends the kids school functions and other extra-curricular events. He is a kind and patient gentleman, that takes the time to be involved with the routine trappings of a household with young teens. He provides a positive male influence for which she is grateful for her children to witness.

5. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, 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.

6. Regulatory guidance provides a Soldier will receive 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.
7. 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.

**BOARD DISCUSSION:**

1. The Board determined 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.
2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 trial by a court-martial was warranted by the gravity of the offense charged (aggravated assault). The applicant's conviction and discharge were conducted in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which he was convicted. He was given a bad conduct discharge pursuant to an approved sentence of a court-martial. The appellate review was completed, and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process, and the rights of the applicant were fully protected. The Board found no error or injustice in his separation processing. The Board noted the applicant's service in Vietnam. Additionally, the Board note the multiple character reference letters the applicant provided in support of a clemency determination. However, the Board determined these letters did not outweigh the serious misconduct he committed. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.

b. The Board also noted the applicant served in Vietnam and found his contention related to racial issues at the time credible. Furthermore, he provides multiple post discharge letters in support of a clemency determination. These letters speak of his character, support to his community, and involvement in the church. Therefore, the Based determined that given his serious court-martial offense, his service clearly did not

rise to the level required for an honorable discharge; however, a general, under honorable 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

■	■	■	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 amending the applicant DD Form 214 for the period ending 22 March 1971, as follows:

- Character of Service: Under Honorable Conditions (General)
- 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 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. 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.

c. Chapter 11 provided that an enlisted person would be given a BCD pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed. The service of Soldiers sentenced to a BCD was to be characterized as UOTHC.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, 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 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 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.

5. Army Regulation 15-185 states 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.

//NOTHING FOLLOWS//