

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 September 2024

DOCKET NUMBER: AR20240001051

APPLICANT REQUESTS:

- an upgrade of the former service member's (SM) under other than honorable conditions characterization of service to honorable
- 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)
- National Personnel Record Center (NPRC), letter dated 22 March 2023
- Selective Service Registration Card
- Certified Transcript of Birth, New York
- Notification of Appointment of Registrar of Vital Statistics
- Durable General Power of Attorney

FACTS:

1. The applicant, a descendant of the service member who served in the Regular Army, requests the reissuance of a DD Form 214 to document the service members service to this Nation.

2. The applicant states he is requesting a DD Form 214 for his father, the SM, to facilitate applying for benefits from the Department of Veterans Affairs. His mother, the wife of the SM, died in February and the SM now has to take care of himself. The DD Form 214 was burned in a fire on 12 July 1973. The form needs to be provided to the VA in order for the SM to receive home care. Additionally, he is requesting the SM's discharge be upgraded to honorable rather than "other than." There was no error or injustice, an unfortunate fire was responsible for challenges the SM is now experiencing in an attempt to get benefits. Th SM is 90 years old.

3. The applicant provides:

a. A letter from NPRC dated 22 March 2023 shows the service member's record were among those burned in the fire. However, enclosed was the Selective Service Registration Card with the service member's name and number.

b. A Certified Transcript of Birth from the State of New York listed the applicant as the SM's son. The document was notarized and identified as a true copy.

c. A Notification of Appointment of Registrar of Vital Statistics, attached with the Certified Transcript of Birth.

d. A Durable General Power of Attorney lists the applicant as his father's agent until revoked by the SM or terminated by his death.

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 Certificate of Military Service.

5. The partially reconstructed record provided by the National Personnel Records Center contains a Certification of Military Service which shows the applicant served in the Regular Army under selective service number 50 62 34 810 from 23 February 1951 to 12 February 1952, in the rank of private. He was given an under other than honorable conditions characterization of service.

6. By regulation (AR 15-185):

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.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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 limited record of service of the former service member. The Board majority determined that although there was limited evidence to show the applicant's service and record of misconduct to determine the characterization of service; he volunteered to serve during a difficult period of service in the 1950s and that warranted some relief. The Board minority determined there was insufficient evidence to support a characterization of service upgrade. The Board majority concluded a discharge upgrade to under honorable conditions (General) was warranted.

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:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> | |
|--------------|--------------|--------------|----------------------|
| : | : | : | GRANT FULL RELIEF |
| : | ■ | ■ | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| ■ | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the former service member's NA Form 13038 (Certification of Military Service) for the period ending 12 February 1952 to show his service was terminated by under honorable conditions (General).
2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading the former service member's discharge to honorable.

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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, USC, section 1552(b), provides that applications for correction of military records must be filed within three years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the three-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.
 - 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.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) states:
 - a. 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 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
4. Army Regulation 635-8 (Separation Processing and Documents) currently in effect, states the DD Form 214 is a summary of the Soldier's most recent, period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty serve at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

//NOTHING FOLLOWS//