

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20240002364

APPLICANT REQUESTS: reconsideration of her previous request for an upgrade of her deceased father's Blue Discharge to an Honorable Discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Plaque and Certificate
- 2018 DOD Memorandum, Guidance to Military Discharge Review Boards and Boards for Correction of Military/ Naval Records Regarding Equity. Injustice, or Clemency Defeminations (Wilkie)

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 AR20230001956 on 26 October 2023.

2. The applicant states she is seeking an upgrade from a Blue Discharge to an Honorable Discharge for her father. The Blue Discharge given to her father in 1945 was predicated on racism and homosexuality. Her father defended himself after being groped by a homosexual white man. She also adds in a personal statement:

a. She is deeply disappointed in the Board's decision to deny the upgrade of her father's military record. The Board stated that a preponderance of evidence (legally, the lowest bar used to establish guilt) was used to render this conclusion. In fact, the Blue Discharge she provided and a burnt document was the evidence viewed to adjudicate the case. Sadly, this is a miniscule amount of evidence for such a major adjudgment. She is thankful her father didn't let societal rejection and the stigma of a Blue Discharge fill him with bitterness or malice. Instead, her father aspired to live by the Army values of loyalty, duty, respect, selfless service, honor, integrity, and personal courage. Her father loved the Army values and traits so much that he instilled them in her and six siblings.

b. She is a US Army veteran. She has also served over 30 years in support of the Department of Defense as a civil servant. She is retired now. However, during her last 12 years of duty, she held a top-secret security clearance with the Air Force Office of Special Investigations. Her husband is a 20-year retired US Army veteran and a 19-year retired [REDACTED] State Police Officer. Her son is a US Army 82nd Airborne retired veteran, with five deployments in support of the Persian Gulf War campaigns. Her daughter is married to a US Army veteran. The Army is ineffaceably within her family, and this is wholly due to her father's ability to love an Army who betrayed him.

c. For ten years following his release from being wrongly incarcerated, her father was unable to sustain meaningful employment. He was relegated to working in the tobacco or cotton fields like a slave. He also had to move back home with his parents in [REDACTED]. In 1955, during the Black Migration to the North, her father moved to [REDACTED], in hopes of a new start. He began working construction jobs. He didn't just build houses; he was adept in drawing blueprints, electrical, plumbing and all aspects of designing and erecting a house. Apparently, the construction site foremen cared more about her father's laboring skillset than his Blue Discharge. Although his salary was paid in cash, he was constantly employed to build houses. Her father's imprint is probably on hundreds of houses in some capacity that he helped build, but he was never a homeowner. Being issued a Blue Discharge and stripped of all VA benefits, her father never owned a home. She remembers, as she was growing up, living in some wonderful houses, though. They were all rentals. It was during her freshman year in high school that they moved from a five-bedroom house into a two-bedroom apartment.

d. Her father became ill and couldn't work. It was probably the onset of prostate cancer, which eventually killed him. He didn't have health care insurance, so he never went to see a doctor. It was during this time when she saw her father display one of his most selfless acts. There were lots of children living in that 80-unit apartment complex. While school was in-session, the children would partake in the free breakfast and lunch programs. However, during the summer, the children would have nothing to eat. Her father began buying lots of extra fruit, just apples and bananas, and handing them out to the children. He soon offered self-made bologna and cheese sandwiches. He also negotiated with a local supermarket to donate small containers of milk. Hence, the All-American Gardens Free Summer Breakfast and Lunch Program began. In the early 1980's, the All-American Gardens Free Summer Breakfast and Lunch Program was funded by an earmarked grant provided by the city. Prepackaged food trays were purchased with the funding and my father continued handing them out to the children. About 15 years after its inception, in 1992, her father was recognized for implementing and sustaining the free breakfast and lunch program for inner-city children. She is still very proud of her father. This is a testimony of the character he possessed.

e. father's Blue Discharge created much hinderance and hardship in his life. She hopes that her correspondence has shown the Board who her father really was, a kind,

generous, patriotic, and giving man. Now is the time to reevaluate and reconsider your decision and upgrade her father's military record. She does not believe it is too much to ask the US Army to upgrade her father's discharge. In lieu of the fact that her father was illiterate and dependent on everyone to tell him the truth while serving. He was serving during a time when the Army was extremely racist. Her father's case speaks to the very reasons listed by the Under Secretary of Defense for Personnel and Readiness' guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records, on 25 July 2018, (Wilkie Memorandum). If now, in 2024, isn't the right time to correct her father's military records, she asks the Board to tell her what era would be appropriate for her or her children or her grandchildren or even their unborn children should request for his record to be upgraded?

3. The service member's (SM's) military record is not available for review. A 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. This case is being considered using limited documentation which includes:

- WD AGO Form 53 (Report of Separation) previously provided the applicant.
- partially reconstructed record provided by National Personnel Records Center

4. The SM's WD AGO Form 53 (Report of Separation) shows:

a. He was inducted into the Army of the United States (AUS) and entered active duty at Fort Bragg, NC, on 14 March 1944. He served in military occupational specialty 345 (Truck Driver).

b. He was separated on 5 March 1945 at Fort Leonard Wood, MO. Item 24 (Cause of Separation) shows he was discharged under the provisions of Army Regulation 615-366 (Enlisted Men Discharge - Release from Active Duty), Section III, Paragraph 11b, due to conviction by Civil Court. An apparent typographic error in item 26 (Date of Separation) shows his date of separation is shown as 5 March 1944.

- His type of discharge was "Blue,"
- His service was characterized as "Fair."

5. In the previous case, there were partially burned documents that show:

a. A request for verification of all active service was submitted. It was further requested that if the discharge was other than honorable, to please furnish a statement of the underlying facts and circumstances. The response shows the cause of the SM's discharge was due to conviction by civil court. Time lost prior to date of expiration of enlistment was to be made good under the 107th Article of War. Time actually in

confinement under sentence or while awaiting trial and disposition of case, if trial resulted in conviction was from 12 November 1944 until 4 March 1945 (113 days).

b. A request was initiated for the specific offense for which the SM was convicted and resulted in his other than honorable discharge. The response shows the SM was arrested on 12 November 1944 by civilian authority in [REDACTED] and charged with assault with a deadly weapon with intent to kill. He was convicted in Superior Court and sentenced to serve 15 months on the roads.

c. A Certification of Military Service rendered by the National Personnel Records Center, National Archives and Records Service, on 11 December 1981 shows the SM was a member of the AUS from 14 March 1944 to 5 March 1945. His service was terminated by an under other than honorable discharge and he held the rank of private at the time of his separation.

6. The SM's available record is void of any indication that he was discharged due to either his race or homosexuality.

7. On 26 October 2023, the Board considered upgrading his discharge but denied it. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, the SM's record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no evidence of post service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the SM received upon separation was not in error or unjust.

8. The WD AGO Form 56 (Discharge from the Army of the United States (Blue)), called the Blue Discharge, was used between 1925 and 1947. The "Blue" title came from the fact that it was printed on blue paper. It was called simply "Discharge" as distinguished from the other discharges at that time, the Honorable Discharge and the Dishonorable Discharge. The Blue Discharge was not characterized, in the current use of that term, in that it was not stated to be either honorable or dishonorable. The Blue Discharge was issued to individuals whose service was not dishonorable but who were not entitled to a "testimonial of honest and faithful service" as indicated by an honorable discharge. The Blue Discharge was given to enlisted members for a variety of reasons to include minority (underage), fraudulent enlistment or induction, inaptness, lack of adaptability for military service, habits, or traits of character rendering retention in the service not desirable, civil confinement, and disability not in the line of duty. On 16 December 1944 a policy revision of the Blue Discharge was announced, due to the exigencies of war,

which eliminated character of service as a separation criterion. This occurred during the SM's incarceration for his civil conviction.

9. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and the SM's service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, the SM's record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency.

2. A majority of the Board found the applicant's description of the SM's post-service life and achievements compelling in support of clemency. Based on a preponderance of the evidence, a majority of the Board determined partial relief is warranted and the SM's character of service should be changed to under honorable conditions (general).

3. The member in the minority noted the seriousness of the crime for this the SM was convicted by a civilian court and found the crime to be a bar to clemency in this case. The member in the minority determined the SM's "Blue Discharge" is not in error or unjust.

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 a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing his character of service as under honorable conditions (general).
2. The Board further determined 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 an honorable character of service.

12/16/2024

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 615-366 (Enlisted Men Discharge - Release from Active Duty), in effect at the time, provided the authority for separation of Soldiers who were convicted by civil authorities. When discharge was recommended and approved a Blue Discharge (WD AGO Form 56) would be issued.
2. Army Regulation 345-470 (Military Records, Discharge Certificate), 10 May 1934, with changes 1-5, in effect at the time, stated that discharge certificates would show the reason for discharge. It would also show the person's character as a Soldier and as a man in one of the following terms: Excellent, Very Good, Good, Fair, or Poor. For the Blue Discharge, the choice was limited to Fair or Poor.
3. 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/NR), on 25 July 2018 [Wilkie Memorandum], 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. 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. 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//