

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 November 2024

DOCKET NUMBER: AR20240004201

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

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

- DD Form 149 (Application for Correction of Military Record)
- General Discharge Certificate, 31 August 1965
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)

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 at the 407th Supply and Transport Company, Fort Bragg, NC, his first sergeant had a 5x6 foot confederate flag on the wall behind his head "displayed." All of the Soldiers of color (negros) were privates, and he was told one hour after arriving, you will not be E-4 when you leave. Six days before his expiration term of service 15 October 1962, he was forced to sign a general discharge. He is now 82 years of age, for over 60 years he has been ashamed to say what the Army did to him and men as himself. He desires his gravestone to say honorable.
3. The applicant was inducted into the Army of the United States on 14 September 1959. He held military occupational specialty 111.17 (Light Weapons Infantryman).
4. On 20 November 1959, he was honorably discharged to enlist in the Regular Army. He was issued a DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) that credited him with 2 months and 7 days of active service.
5. On 21 November 1959, he enlisted in the Regular Army for three years. His highest rank held was specialist (E-4) with a date of rank of 9 December 1960. His DA Form 20

(Enlisted Qualification Record) shows in item 29 (Foreign Service) he served in Okinawa, Japan from 10 June 1960 to 25 May 1962.

6. Special Orders Number 73, issued by 2nd Airborne Battle Group, 503d Infantry Combat Team, on 6 April 1961, shows he qualified marksman with automatic rifle.

7. DA Form 1049 (Personnel Action) shows on 7 November 1962, under the provisions of paragraph 8, Army Regulation (AR) 635-200 (Personnel Separations – General Provisions for Discharge and Release), he was recommended not to be allowed to reenlist in the Regular Army. His command certified the applicant had:

- Court Martials during current enlistment: None
- Time lost: None
- Unit punishments: 26 August 1962 - Dereliction of duty; 15 October 1962 - Failure to repair (Absent from place of duty without proper authority
- Reduced from specialist (E-4) to private first class (E-3) under the provisions of paragraph 31b, AR 624-200 (Appointment and Reduction of Enlisted Personnel: Promotions, Demotions, and Reductions, 1962) for Misconduct on 15 October 1962
- His conduct and efficiency were rated as fair

8. He was released from active duty and transferred to U.S. Army Reserves on 21 November 1962, in the rank of private first class (E-3). His DD Form 214 shows he the authority as Army Regulation 635-200 (Personnel Separation) and the Separation program Number as 201 (expiration of term of service). He completed 3 years and 1 day net service this period, 1 year, 11 months, and 19 days of which was foreign service in Japan. He was awarded or authorized the Parachutist Badge.

11. The applicant provides his General Discharge Certificate showing he was discharged on 31 August 1965.

12. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

13. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel.

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

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant was discharged from active duty due to expiration of his term of service (ETS). He received a general discharge. The Board determined relief is warranted for the following reasons: First, the Board noted that despite being inducted, shortly after his induction, the applicant voluntarily enlisted in the Regular Army. Second, the Board also noted that he completed close to 2 years of foreign service in Japan and that his misconduct was relatively minor in nature. Third, the Board noted that he completed his term of service and was separated due to ETS. Finally, based on his overall service, the Board determined his character of service is too harsh when compared to his overall service. Therefore, the Board determined that an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

In addition to the correction addressed in Administrative Note(s) below, 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 a DD Form 214 for the period ending 21 November 1962 to show his Character of Service: 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's service records shows he is entitled to an award not listed on his DD Form 214. As a result, amend his DD Form 214 ending on 21 November 1962 to show: Markman Marksmanship Qualification Badge (Rifle).

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 (AR) 635-200 (Personnel Separations – General Provisions for Discharge and Release) sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation from the Army with honor. The issuance of an honorable discharge is conditioned upon proper military behavior and proficient and industrious performance of duty, giving due regard to the rank or grade held and the capabilities of the individual concerned. An honorable discharge will be furnished when the individual meets the following qualifications:

- Has conduct ratings of at least “good”
- Has efficiency ratings of at least “fair”
- Has not been convicted by a general court-martial
- Has not been convicted more than once by a special court-martial

b. A general discharge is a separation from the Army under honorable conditions of an individual whose military records is not sufficiently meritorious to warrant an honorable discharge. A general discharge may be issued if an individual has been convicted of an offense by general court-martial or has been convicted by more than one special court-martial in the current enlistment period or obligated service or any extensions thereof.

3. 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.

//NOTHING FOLLOWS//