

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240005807

APPLICANT REQUESTS:

- In effect, an upgrade of his under other than honorable conditions discharge
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Informal Conference Report
- DD Form 214 (Armed Forces of the United State 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 the Army of the United States inducted him when he was 18 years old, and by 19, he was one of the few Black Soldiers who had graduated from officer candidate school (OCS).

a. After leaving OCS, the Army sent him to Fort Sill, OK, but there was no effort to help him assimilate as an officer, and no one assigned him a mentor. They essentially left him on his own, "regardless of background or social upbringing."

b. In support of his request, he provides a report from an informal VA conference, held to determine his eligibility for Veterans' benefits, given his under other than honorable conditions discharge. During the conference, the applicant summarized events that contributed to his adverse separation.

(1) The applicant disclosed that, "everything started on a night he and some friends went off base and went to a club (what they thought was a civilian club). He met

a young lady, and they were conversing, and another lady came and sat between them and then became irate while he was speaking to the other lady, as the two women were 'together'...words were exchanged."

(2) As the applicant got up to leave, he brushed up against the woman with whom he had been arguing; he subsequently realized he had blood on his shirt, and he felt pain in his shoulder. He later learned someone had shot him. The applicant believes the police took him to the hospital.

(3) At the hospital, the doctors discovered him he been shot in the neck and gave him a tracheotomy. The doctors also told him a bullet was lodged in his shoulder, and they could not remove it due to the risk of further damage to his nerves.

(4) The applicant maintained his service prior to the shooting was honorable. He recalled that when he returned from the hospital, his company commander told him, "We're better off without you"; as a result, the applicant felt ostracized. The commander wanted him to sign some paperwork, but the applicant refused. The applicant asserted he had had no nonjudicial punishments or courts-martial while on active duty. He also recalled testifying against the woman who shot him, and it turned out she was a lieutenant; he did not know what happened to her after that.

3. The applicant's service records, to include his separation packet, are unavailable for review; however, the applicant provides a copy of his DD Form 214, which shows the Army separated him under other than honorable conditions, per Section V (Resignation for the Good of the Service), Army Regulation (AR) 635-120 (Personnel Separations – Resignations and Discharges) on 8 March 1968. It also shows he entered active duty on 19 June 1967 and completed 8 months and 20 days of active service and 11 months and 14 days of other service.

a. At his separation, the applicant held the rank/grade of second lieutenant (2LT)/O-1.

b. Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized): National Defense Service Medal.

c. Item 30 (Remarks) states paragraph 9 (Classes Ineligible to Enlist or Reenlist unless Waiver is Granted), AR 601-210 (Qualifications and Procedures for Processing Applicants for Enlistment and Reenlistment in the Regular Army) applies.

4. The absence of the applicant's separation packet means we are unable to determine the complete circumstances of his discharge; however, given the availability of the applicant's record copy DD Form 214, the Board presumes the applicant's leadership completed his separation properly.

a. AR 15-185 (ABCMR), currently in effect, states the ABCMR decides cases on the evidence of record; it is not an investigative body. Additionally, the ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence must be sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. The regulation additionally states that applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

5. There is no indication the applicant petitioned the Army Discharge Review Board to review his discharge within that board's 15-year statute of limitations.

BOARD DISCUSSION:

1. 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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service and the reason for separation. The applicant was discharged for the good of the service. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant provided no matters for clemency consideration. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

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:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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.

5/5/2025

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. 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) 635-120 (Personnel Separations – Resignations and Discharges), in effect at the time, prescribed policies and procedures for officers who tendered their resignations or were discharged by the Army.

a. Section I (General). Headquarters, Department of the Army made the final decision on officer separations; the Secretary of the Army directed approval and The Adjutant General issued orders.

b. Section V (Resignation for Good of the Service). An officer whose conduct rendered him subject to trial by court-martial could submit a resignation for the good of the service.

(1) The regulation required the officer exercising summary court-martial jurisdiction to investigate the charges against the officer, and the general court-martial convening authority was to state whether he did or did not intend to proceed with a trial.

(2) The command was to forward all documentation to Headquarters, Department of the Army for a determination. When approved, the officer normally received an under other than honorable conditions character of service.

c. An honorable discharge was a separation with honor; commanders issued an honorable discharge certificate based on the officer's proper military behavior and proficient duty performance. A general discharge was a separation from the Army under honorable conditions, where the officer's military record was not sufficiently meritorious to warrant an honorable discharge

3. AR 15-185 (Army Board for Correction of Military Records (ABCMR), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR Hearings). Applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//