

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240006216

APPLICANT REQUESTS: correction of the deceased Service Member's (SM) DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show the following:

- an upgrade of his under other than honorable conditions discharge to honorable
- a change in his reenlistment (RE) code
- restoration of rank by way of promotions
- awards and decorations
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Character letter, 24 July 2023
- DD Form 214
- DA Form 29-541 (Certificate Showing Residence and Heirs of Deceased Veteran or Beneficiary)
- National Personnel Records Center (NPRC) Letter, 28 March 2022
- Marriage License
- Birth Certificate
- Death Certificate

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. The SM's character of service should be upgraded from under other than honorable conditions discharge to honorable with a subsequent upgrade of the RE

code. Additionally, the SM should be restored to his former rank by way of promotions and provided all awards and decorations to which he is entitled.

b. The provided documents show that the SM was not a racist. After a full investigation conducted by himself, Command Sergeant Major (CSM), U.S. Army (Retired) MST. and his older brother Sergeant First Class, U.S. Army (Retired) KRT., it is clear there was an injustice or possible clerical error on their father's DD Form 214.

c. The applicant and his brother were unaware their father served and were made aware of this situation on his grandfather's deathbed. It is his belief that the SM volunteered to join the U.S. Army during the Vietnam War and in his personal and professional opinion, it speaks volumes of his father's character.

d. The applicant marked traumatic brain injury (TBI) and Reprisal/Whistleblower on the DD Form 149 as conditions related to the request.

3. The applicant provides:

a. A character letter from the SM's spouse which shows in part she was married to the SM while he was in the Armed Forces. She was pregnant with their first son during the discharge process. One of the SM's best friends while in the military was Mr. EG, an African American gentleman from St. Louis, MO. The SM brought Mr. EG to his hometown when he was released from active duty and further arranged to get Mr. EG to his home, about 70 miles away. The SM's efforts confirm he was not prejudiced or biased, his discharge was in error and should be corrected.

b. The below listed documents serve as verification of the SM's and applicant's identity, in addition to the relationship to the SM.

- DA Form 29-541
- Marriage License
- Birth Certificate
- Death Certificate

c. A letter from NPRC dated 28 March 2022, shows the applicant requested and received the available service records pertaining to the SM.

4. The SM's service records are not available for review. An exhaustive search was conducted to locate the service records, but they could not be found. The only documents available were the documents provided by the applicant. These documents are sufficient for the Board to conduct a fair and impartial review of this case. This case is being considered using reconstructed records, which primarily consist of a DD Form 214.

5. A review of the applicant's DD Form 214 shows:

a. He enlisted in the Regular Army on or about 30 June 1971.

b. The SM was credited with receiving a military occupational specialty (MOS) as a 64C, Motor Transportation Operator effective 25 October 1971.

c. Five periods of lost time were listed for a total of 168 days, as follows:

- 13 September 1971 to 16 September 1971 (4 days)
- 16 December 1971 to 2 January 1972 (18 days)
- 10 February 1972 to 27 February 1972 (18 days)
- 1 March 1972 to 15 June 1972 (107 days)
- 23 June 1972 to 13 July 1972 (21 days)

d. On or about 19 July 1972, the SM was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 7 months and 5 days of active service with 168 days lost. The applicant was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 (For the Good of the Service) with RE code 4. There are no awards or decorations listed and the SM's rank is listed as private, E-1 (PV-1).

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

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (AR 635-5), 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 service 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.

9. By regulation (AR 635-200), a member who has committed an offense for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. A discharge under other than honorable conditions is normally considered appropriate.

10. 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.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his late fathers under other than honorable conditions (UOTHC) discharge to honorable, a change in his reenlistment code, restoration of rank by way of promotions, and awards and decorations. The applicant's request for restoration of rank by way of promotions, and awards and decorations are outside of the scope of this Advisory and will not be addressed. On the DD Form 149, the applicant indicated Traumatic Brain Injury (TBI) and Reprisal/Whistleblower concerns are related to the request. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The Service Members (SM's) service records are not available for review and the only documents available were the documents provided by the applicant. This case is being considered using reconstructed records, which primarily consist of a DD Form 214, 2) the SM enlisted in the Regular Army (RA) on or about 30 June 1971, 3) there were five periods of lost time: 13 September 1971 to 16 September 1971; 16 December 1971 to 2 January 1972; 10 February 1972 to 27 February 1972; 1 March 1972 to 15 June 1972; and 23 June 1972 to 13 July 1972, 4) the SM was discharged on or about 19 July 1972 under the provisions of AR 635-200, Chapter 10 (For the Good of the Service) with an RE code of 4.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP, casefiles, and supporting documents. There were no medical records provided by the applicant for review. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no in-service medical records available for review.

d. A search of JLV was void of any information pertaining to the SM and there was no VA or civilian medical records provided or available for review.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the SM had a condition or experience during his time in service that mitigated his discharge. However, the applicant contends that the SM's discharge was related to TBI, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends the SM's discharge was related to TBI.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There were no medical records available for review and the applicant provided no medical documentation supporting his assertion of TBI. In absence of documentation supporting his assertion there is insufficient evidence to establish the SM's misconduct was related to or mitigated by TBI and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that the SM's discharge was related to TBI, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the FSM's separation and the lack of mitigation found within the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting any of the requested changes to the FSM's military record.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//
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 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 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 635-5 (Separation Documents), in effect at the time, 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

service 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.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

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.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service, in lieu of court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

5. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including RA RE Codes.

- Re Code of "1" (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaiverable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on

applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

8. 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.

9. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the

Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//