

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240008075

APPLICANT REQUESTS: an upgrade of his character of service from under other than honorable conditions to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Daughter's statement
- Durable General Power of Attorney (POA)
- Applicant's Birth Certificate and Social Security Cards
- Some Dangerous Signs and Symptoms of Post Traumatic Stress Disorder (PTSD) document
- Standard Form (SF) 89 (Report of Medical History), 16 November 1960
- SF 88 (Report of Medical Examination), 16 November 1960
- DD Form 4 (Enlistment Record - Armed Forces of the United States), 29 November 1960
- DA Form 24 (Service Record)
- DA Form 20 (Enlisted Qualification Record)
- Special Court-Martial Order Number 25, 7 October 1961
- Special Court-Martial Order Number 37, 29 November 1961
- Statement from Specialist Four (SP4) M\_ J\_ B\_, 23 January 1962
- DD Form 458 (Charge Sheet), 23 January 1962
- Post Stockade Fort Hood Memorandum - Subject: Court-Martial Charges Against [Applicant], 27 January 1962
- DA Form 26 (Record of Court Martial Conviction)
- DD Form 493 (Extract of Military Records of Previous Convictions)
- SF 89, 26 February 1962
- Medical documents
- Special Court-Martial Order Number 13, 1 March 1962
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 7 March 1962
- Quest Diagnostics Clinical Laboratory Report, 19 September 2018
- Blank email, 17 January 2024
- National Personnel Records Center (NPRC) letter to daughter, 29 February 2024

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 daughter of the applicant states:

a. Her dad has other mental health conditions of a diagnosis of Huntington's disease. His diagnosis has effected his life since childhood. On 31 March 1963, her dad and mom got married. In February 1964 she was born, 1965 brother H\_ was born, 1966 sister S\_ was born. Dad was a maintenance man; he also repaired automatic doors and had a country music band. Dad started to act out and he and mom divorced in 1989. He was not able to hold down a job and ended up going through Area Temps services for work where he had many different jobs. At 59 years of age, he filled for SSI and has been an introvert ever since.

b. She noticed some behavioral issues and became his Health Care POA and Durable General POA on 10 January 2009. She loved assisting with his care over the years, but he is now house bound, he has no means to pay for his care and she has had to take a leave from her job to take care of him. She holds the benefits for her family and does not want to lose them.

3. A review of the applicant's service record shows:

a. On 29 November 1960, the applicant enlisted in the Regular Army for 3 years. He completed training requirements and was award his military occupational specialty.

b. His record contains DA Form 24 (Service Record) which shows he was absent without leave (AWOL) from on or about 6 to 24 September 1961 (19 days) and confined from 29 November 1961 to 6 March 1962 (98 days).

c. On 7 October 1961, the applicant was convicted by a special court-martial of being AWOL from on or about 6 to 25 September 1961. This was in violation of the Uniform Code of Military Justice (UCMJ), Article 32. His sentence consisted of reduction to the grade of private/E-1 and confinement at hard labor for 4 months and forfeiture of \$40.00 a month for a like period. The period of confinement was suspended for six months.

d. On 29 November 1961, his suspension to confinement was vacated and he was ordered to be confined in the Post Stockade Fort Hood, TX.

e. On 22 December 1961, a Mental Hygiene Consultation Service certificate shows the applicant underwent a psychiatric evaluation. He was seen and examined by a military psychiatrist in the Stockade Psychiatric Screening Program on 30 November 1961. In pertinent part, the psychiatric evaluation shows:

(1) The applicant's diagnosis was passive-dependency reaction, chronic, severe, manifested by preoccupation with perceived family obligations, moderate withdrawal and apathy, inability to cope with military stress, and negativistic motivation for continued service.

(2) His stress was mild, with an unknown predisposition, and his impairment was marked for military service. His condition existed prior to service and was not in the line of duty. There were no disqualifying mental or physical defects sufficient to warrant discharge under the provisions of Army Regulation (AR) 635-40A (Physical Evaluation for Retention, Separation or Retirement for Physical Disability).

(3) The applicant was mentally responsible to distinguish right from wrong, adhere to the right and cooperate in his own defense if such was necessary. There, was no psychiatric contraindication to any administrative action deemed appropriate.

(4) The applicant's condition was not amendable to hospitalization, treatment, disciplinary action, training, transfer or change of duty. No further attempt at rehabilitation of the applicant should have been made. The psychiatrist recommended that he be separated from the military service under the provisions of AR 635-209 (Discharge Unsuitability).

f. On 23 January 1962, SP4 M\_ J\_ B\_ provided a Sworn Statement and stated, he told the applicant and other prisoners to get on the truck. All of the above-named prisoners which included the applicant refused to obey his order. He then took the detail back to the Stockade and reported the incident.

g. On 27 January 1962:

(1) The Fort Hood Post Stockade commander recommended the applicant be tried by special court-martial.

(2) DD Form 458 (Charge Sheet) shows court-martial charges were preferred against the applicant for disobeying a lawful order to get on the truck on or about 22 January 1962. This was in violation of the UCMJ, Article 92.

h. On 31 January 1962, the applicant acknowledged he had been advised that he was being recommended for elimination from the service for unfitness under the provisions of AR 635-208 (Personnel Separations – Discharge – Unfitness). He also

acknowledged he had been counseled and advised as to the reasons for this action and informed that as a result of this action he may receive an undesirable discharge. He was counseled as to the effects of this type of discharge, and that it may deny him Veteran's Benefits to which he might otherwise be entitled.

(1) He was advised of his rights to be represented by military or civilian counsel, and he elected not to be represented by counsel; and

(2) He elected not to appear before a board of officers and did not desire to submit a statement in his own behalf.

i. His record also contains multiple statements submitted by supervisors and leaders within his chain of command recommending he be discharged from the Army.

j. On an unknown date, his immediate commander formally recommended he be eliminated from service under the provisions of paragraph 3a, AR 635-208, with an Undesirable Discharge Certificate. The reasons for elimination were based on the applicant being court-martialed for violation of Article 82, UCMJ; his subsequent conduct thereafter; and preferred court-martial charges by the Post Stockade confinement officer for violation of a lawful order. The immediate commander stated:

(1) The applicant was counseled by his Section Chief about his lack of interest in his work. He was transferred to different sections to be under different noncommissioned officers to see if he could improve. The counseling and changing of sections did no good, whatsoever.

(2) Discharge under the provisions of AR 635-209 was not recommended because of incidents of a discreditable nature toward the military service, and unfitness.

k. On 13 February 1962, the intermediate commander recommended immediate elimination under the provisions of AR 635-208 with an undesirable discharge.

l. On 23 February 1962, the approving authority approved the applicant's discharge from service, without appearance before a board of officers, under the provisions of AR 635-208, and directed he be issued an Undesirable Discharge Certificate.

m. On 26 February 1962, the applicant underwent a medical examination and was found to be qualified for separation.

n. On 7 March 1962, the applicant was discharged under the provisions of AR 635-208, by reason of unfitness. His DD Form 214 shows his character of service as "Under Other Than Honorable Conditions" and he was issued an Undesirable Discharge Certificate. He completed 11 months and 12 days net service with a total of 117 days

lost under Title 10, U.S. Code, section 972. Item 11c (Reason and Authority) lists separation program number 28B (frequent incidents of a discreditable nature with civil or military authorities).

o. On 15 November 1973, the applicant was notified that his petition to the Army Discharge Review Board (ADRB) was denied. The ADRB determined he was properly discharged.

4. In support of his petition to the ABCMR, the applicant and his daughter provides:

a. Durable General POA dated 10 January 2009 appointing his daughter as his lawful attorney-in-fact, to act for him and in his name and any and all business, financial, legal and other matters.

b. Applicant's Birth Certificate and Social Security Cards, which show his date and place of birth, and Social Security Number.

c. Some Dangerous Signs and Symptoms of PTSD document showing a list of signs and symptoms.

d. SF 89 dated 16 November 1960, which shows he underwent a medical examination for enlistment in the Army and explained and provided his current and past medical conditions and history.

e. SF 88 dated 16 November 1960, which shows he underwent a medical examination and was found to be qualified for enlistment in the Army.

f. DA Form 26 (Record of Court Martial Conviction) which shows he was charged and convicted by a special court-martial for being AWOL from on or about 6 to 25 September 1961.

g. DD Form 493 (Extract of Military Records of Previous Convictions) which shows he was charged and convicted by a special court-martial for being AWOL from on or about 6 to 25 September 1961.

h. SF 89 dated 26 February 1962, which shows he underwent a medical examination for separation from the Army and explained and provided his current and past medical conditions and history. The physician also provided a summary and explanation of all pertinent data.

i. Quest Diagnostics Clinical Laboratory Report dated 19 September 2018 showing the applicant tested positive for Huntington Disease mutation.

j. Blank email dated 17 January 2024.

k. NPRC letter to daughter dated 29 February 2024, which indicates NPRC provided a copy of the applicant's Official Military Personnel File and medical records.

5. The Board should consider the applicant's overall military service and statement in accordance with the published equity, injustice, or clemency determination guidance.

6. MEDICAL REVIEW:

a. The applicant is the daughter of the former Service Member (FSM), and she is applying to the ABCMR requesting an upgrade of the FSM's under other than honorable conditions discharge. She contends the FSM experienced mental health conditions including PTSD that mitigate his misconduct. 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 FSM enlisted in the Regular Army on 29 November 1960; 2) On 7 October 1961, the FSM was convicted by a special court-martial of being AWOL from 6-25 September 1961; 3) On 27 January 1962, court-martial charges were preferred against the FSM for disobeying a lawful order; 4) On 7 March 1962, the FSM was discharged, by reason of unfitness. His character of service was "Under Other Than Honorable Conditions," and he was issued an Undesirable Discharge Certificate. He completed 11 months and 12 days of net service with 117 days lost.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the FSM's available military service and records. The VA's Joint Legacy Viewer (JLV) and hardcopy military and civilian medical records were also examined.

c. The applicant asserts the FSM was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. The FSM underwent a psychiatric evaluation on 22 December 1961. He was noted to be experiencing family stress and difficulty adapting to his military duties. However, he was not diagnosed with a mental health condition and was recommended for administrative separation from the military.

d. A review of JLV provided insufficient evidence the FSM has ever been diagnosed with a mental health condition, and he does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the FSM had a mental health condition or experience that mitigates his misconduct.

## f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts the FSM experienced mental health conditions including PTSD which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the FSM experienced mental health conditions including PTSD that mitigates his misconduct while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the FSM was experiencing a mental health condition including PTSD, while he was on active service. The applicant was noted to be experiencing family stress at home and difficulty adapting to his military duties during his psychiatric evaluation, and he did engage in avoidant behavior such as going AWOL. This type of behavior can be a natural sequelae to some mental health conditions including PTSD. However, the presence of misconduct, reported stress, and difficulty adapting to military duties are not sufficient evidence of the presence of a mitigating mental health condition. Yet, the applicant contends the FSM was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration the contention alone is sufficient for 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 short term of honorable service prior to the misconduct leading to the applicant's separation and the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes

(2) Did the condition exist or experience occur during military service? Yes

(3) Does the condition or experience actually excuse or mitigate the misconduct? No

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

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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 (AR) 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. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. AR 635-208, in effect at the time, set forth the policy for administrative separation for unfitness. Paragraph 3 states, individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: (a) frequent incidents of a discreditable nature with civil or military authorities, (b) sexual perversion, (c) drug addiction, (d) an established pattern of shirking, and/or (e) an established pattern showing dishonorable failure to pay just debts. This regulation prescribed that an undesirable discharge was normally issued unless the particular circumstances warranted a general or honorable discharge.

5. 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.

a. 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.

b. 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. 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//