

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 June 2024

DOCKET NUMBER: AR20240010180

APPLICANT REQUESTS: an upgrade of his undesirable discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 22 July 2024
- Self-authored Statement
- General Services Administration (GSA) Documents 30 January 1979 and 13 February 1979
- Police letter of record, 1986
- National Personnel Records Center (NPRC) Statement of Military Service

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 he feels that after 67 years of carrying his regret, he has done good in his life and has been a good human being. He had one judicial punishment, and he has tried to make up for it ever since. He has been involved in his community at his church for over 20 years and never been in any trouble.
3. The applicant provides:
  - a. GSA documents showing his records could not be located possibly due to the 1973 St. Louis NPRC fire.
  - b. A (city) police letter showing good moral character and no record of infractions.
  - c. An NPRC Statement of Military Service.
4. A review of the applicant's service records show the following:

a. The applicant's complete military records are 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 the applicant's records were lost or destroyed in that fire. However, there were sufficient documents remaining in a reconstructed record to conduct a fair and impartial review of this case. These records consist of files provided from a partial reconstructed record by the National Archives and Records Administration (NARA) and NPRC.

b. The available record contains a history of the applicant's military service, listing his units of assignment with conduct and efficiency ratings, and further reflecting:

- on 26 November 1954, he enlisted in the Regular Army
- on 9 June 1955, he was assigned to 15th Engineer Battalion, Germany
- he completed overseas service in Germany from May 1955 to 20 November 1956
- on 21 November 1956, he was assigned to 15th Engineer Battalion, Fort Carson as a supply clerk
- he attained the highest rank of specialist 3

c. An extract of military records of previous convictions reflects:

- on 17 May 1957, he was tried by summary court-martial
- he was found guilty of failure to obey a lawful order and breaking restriction
- he was sentenced to reduction to private and forfeiture of pay for 1 month
- the sentence was approved on 18 May 1957

d. A summarized record of trial by special court-martial, dated 19 June 1957, reflects:

- he was assigned to 15th Engineer Battalion, Fort Carson
- he was tried and found guilty of unspecified charges
- his sentence consisted of confinement at hard labor for 5 months and forfeiture of pay for 5 months
- the sentence was adjudged on 19 June 1957
- the convening authority approved the sentence on 22 June 1957

e. The facts and circumstances leading to a discharge are not available for review. A copy of the unit morning report, c. 1981 is unreadable.

f. A NARA statement of military service dated 5 March 1979, reflects he:

- was in the Regular Army
- was discharged on 17 September 1957 at the rank of private

- received an Undesirable Discharge Certificate

5. On 4 June 1982, in Army Discharge Review Board (ADRB) Case Number AD81-15643, the ADRB determined his discharge was both proper and equitable and voted not to change his characterization of service. This OSA Form 172 (Office of the Secretary of the Army) further reflects:

- the authority for discharge was Army Regulation 635-208 (Personnel Separations – Discharge – Undesirable Habits and Traits of Character), paragraph 1c
- the reason for discharge was undesirable habits and traits
- the facts and circumstances of the discharge process were not available in his military records
- the applicant testified that he stole an automobile
- the Official Military Personnel Record was apparently destroyed in the fire at St. Louis in 1973
- an extract of the unit morning report reflects he was discharged under provisions of Army Regulation 635-208, paragraph 1c

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

#### BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the two years of honorable service completed prior to the misconduct leading to the applicant's separation and the post-service character evidence provided by the applicant, the Board concluded there was sufficient evidence to grant clemency by upgrading the applicant's characterization of service to General, Under Honorable Conditions.

2. Based upon the available documentation showing part of the applicant's misconduct being the stealing of an automobile during his period of military service, the Board concluded upgrading to Honorable was not warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|      |      |      |                      |
|------|------|------|----------------------|
| :    | :    | :    | GRANT FULL RELIEF    |
| :XXX | :XXX | :XXX | 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 reissuing the applicant a new Certification of Military Service showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

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 upgrading the applicant's characterization of service to Honorable.

**//SIGNED//**

**X**

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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 635-208 (Personnel Separations – Discharge – Undesirable Habits and Traits of Character), in effect at the time (21 May 1956), provided procedure and guidance in the elimination from the service of enlisted personnel having undesirable habits and traits of character.

a. Paragraph 1b provided an individual will be discharged from the service under these regulations when it is clearly established that for any of the causes mentioned below, an individual demonstrates that he is undesirable for further retention in the military service and his rehabilitation is considered impossible after reasonable attempts to accomplish same have failed.

b. Paragraph 1c provided recommendation for discharged because of undesirability will be made in the case of an enlisted person who gives evidence of habits and traits of character manifested by antisocial or amoral trend, chronic alcoholism, criminalism, drug addiction, pathological lying, or misconduct; repeatedly commits petty offenses not warranting trial by courts-martial, is a habitual shirker, is recommended for discharge by a disposition or other board of medical officers.

c. Paragraph 5 provided for the reason and authority for discharge. The reason and authority for discharge to be entered in item 8 of the DD Form 214 (will be, if discharged because of undesirable habits or traits of character, Army Regulation 635-208, SPN 78.

d. Paragraph 6 provided for reduction upon discharge. Upon determining that an enlisted person is to be discharged from the service with an undesirable discharge under the provisions of these regulations, the authority accomplishing the discharge will, if the individual concerned is in a grade above E-1, automatically reduce such individual to grade E-1 as prescribed in section V, Army Regulation 624-200.

e. Paragraph 7 provided the form of discharge certificate to be given. When discharged because of undesirable habits or traits of character, a DD Form 258A (Undesirable Discharge Certificate) will be furnished.

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, 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.

//NOTHING FOLLOWS//