

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 April 2025

DOCKET NUMBER: AR20240010334

APPLICANT REQUESTS: in effect, Certificate of Military Service to show honorable for entire service.

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

- DD Form 149 (Application for Correction of Military Record)
- Certification of Military Service which shows a dishonorable discharge for service from 1 July 1954 – 10 March 1955
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) which is mostly illegible but shows an honorable discharge for service from 25 April 1951 – 25 June 1953
- Certificate of Death proving next of kin
- Funeral home statement of account addressed to applicant's daughter

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 Certification of Military Service shows dishonorable discharge where the discharge that was mostly unreadable has the name and most of the service number in the upper left hand corner clearly states honorable. The dates on the Certificate of Military Service also shows from 1 July 1954 to 10 March 1955 where the discharge certificate shows 25 April 1951 to 25 June 1953. To correct his record of service. The family is trying to receive burial benefits but cannot while showing dishonorable.
3. A review of the applicant's service record shows:
 - a. He was inducted into the Army of the United States on 25 April 1951.

b. He was honorably discharged on 25 June 1953. He served 1 year, 11 months, and 16 days service for pay purposes. He also had 1 year, 6 months, and 6 days foreign service. He was awarded or authorized:

- Korean Service Medal with 3 bronze service stars
- United Nations Service Medal

c. Review of the Staff Judge Advocate (SJA) shows under military record:

- He volunteered for induction on 1 July 1954
- He was absent without leave (AWOL) from this station from 6 - 20 July 1954, receiving punishment under article 15,
- There is evidence of one previous conviction by summary court martial for being AWOL from 10 August 1954 to 30 August 1954 for which he was sentenced on 7 September 1954 to confinement at hard labor for one month and partial forfeiture

d. On 28 January 1955, at Fort Leonard Wood, MO, the applicant was found guilty by a general court-martial (GCM) for being absent without leave in desertion from on or about 4 November 1954, until he was apprehended on or about 25 December 1954.

e. The court sentenced him to be dishonorably discharged from the service, to forfeit all pay and allowances, and to be confined at hard labor for 18 months.

f. On 7 February 1955, the SJA recommended the sentence be approved.

g. On 9 February 1955, the convening authority approved the sentence. The Record of Trial was forwarded to The Judge Advocate General of the Army for appellate review.

h. On 24 February 1955, the Board of Review having found the findings of guilty, and sentence as approved by proper authority correct in law and fact and having determined, on the basis of the entire record, that they should be approved, such findings of guilty and sentence were affirmed.

i. GCM Order Number 214, issued on 10 March 1955, shows the appellate review had been finally affirmed; Article 71(c) having been complied with; the BCD will be executed.

j. DD Form 214 for this period of service is void of his record. Certification of Military Service shows he was dishonorably discharged on 10 March 1955 in the rank of private.

4. 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 partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The Board found a dishonorable discharge was too harsh for minor AWOL infractions, The Board determined his character of service should be upgraded to under honorable condition (general) and he should be issued a new statement of service to reflect this upgrade.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ 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:

- voiding his dishonorable discharge statement of service for the period 1 July 1954 to 10 March 1955
- issue him a new statement of service for the period 1 July 1954 to 10 March 1955, showing he received an under honorable conditions characterization of service

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 any additional relief.

5/6/2025
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<div style="display: flex; align-items: center;"> CHAIRPERSON <div style="background-color: black; width: 150px; height: 20px;"></div> </div>

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) Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for separation of enlisted personnel.

a. A Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier'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.

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

d. A Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

4. 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. 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//