

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 June 2025

DOCKET NUMBER: AR20240011129

APPLICANT REQUESTS: upgrade of the deceased former service member's (SM) under honorable conditions (General) discharge.

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

- DD Form 293 (Application for the Review of Discharge)
- Self-authored letter
- DD Form 214 (Report of Separation from Active Duty) for period ending 17 November 1975
- Death Certificate shows the FSM's date of death as 2 June 2013

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, the spouse of the SM states, in effect, she is trying to obtain tax credit for her property in Carrol County, NH. The county will only grant exemptions for Veterans honorably discharged. She really appreciates any help.
3. A review of the SM's service records reflects the following:
  - a. He enlisted in the Regular Army on 23 April 1975.
  - b. He accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice on 21 October 1975, for failing to obey a lawful order, on or about 15 October 1975. His punishment included reduction to E-1, forfeiture of \$75.00 per month for one month, and 14 days extra duty and restriction.
  - c. The SM's commander notified him on 3 November 1975, that he was initiating actions to separate him from service under the provisions of Army Regulation 635-200

(Personnel Separations – Enlisted Personnel), paragraph 5-37. The commander noted the FSM demonstrated deficiencies in the following areas:

- attitude toward military service was one of apathy and disrespect
- inability to adapt socially or emotionally
- motivation
- lack of self-discipline
- failure to demonstrate promotion potential

d. He acknowledged receipt of the separation action on 6 November 1975. He voluntarily consented to discharge from the Army and waived his right to submit a statement in his own behalf. He indicated he understood that if he was issued a general discharge under honorable conditions, he may expect to encounter substantial prejudice in civilian life and acknowledged that he had been provided the opportunity to consult with an officer of the Judge Advocate General's Corps. He declined to consult with counsel.

e. His commander formally recommended his discharge from the Army. On 10 November 1975, the separation authority approved his separation from military service, with a General Discharge Certificate.

f. The SM was discharged on 17 November 1975. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 5-37. His service was characterized as under honorable conditions (General). He completed 6 months and 25 days of net active service this period.

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

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the SM'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 SM's statement and record of service, the frequency and nature of the misconduct and the reason for separation. The SM was discharged for failure to demonstrate promotion potential. The Board majority found that based on the short length of time between his arrival to the unit and separation; little effort was made to rehabilitate the Soldier. The Board majority determined relief was appropriate to amend his characterization of service. The Board minority found no error or injustice in the separation proceedings and therefore denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:XX	:XX	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:XX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the former service member's DD Form 214, for the period ending 17 November 1975 to show in item 24 (Character of Service): honorable.

X //signed//

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 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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. Paragraph 5-37 provided for the discharge of enlisted personnel whose performance of duty, acceptability for the Service, and potential for continued effective service fall below the standards required for enlisted personnel in the Army because of the existence of one or more of the following conditions: enlisted personnel who fail to be advanced to the grade of E-2 after 4 months of active duty, or enlisted personnel who fail to demonstrate potential to justify advancement to the grade of E-3. The philosophy of this policy is that commanders will be able to anticipate and preclude the development of conditions which clearly indicate that Soldiers concerned are becoming problems to an extent likely to lead to board or punitive action which could result in their separation under conditions which would stigmatize them in the future.

3. 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/NR) 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.

//NOTHING FOLLOWS//