

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230008600

APPLICANT REQUESTS:

- a. correction of her late husband's records as follows:
 - reversal of his special court-martial conviction on 18 August 1969
 - reinstatement of his rank/grade to specialist four/E-4
- b. a personal appearance hearing before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- three Letters of Commendation, 1 August 1969, 15 August 1969, and 18 August 1969
- 22d Field Artillery Support Command Special Court-Martial Record of Trial Excerpt, 18 August 1969
- two Chain of Command Letters for Best Motor Pool Driver, 13 March 1970
- Commanding General's Letter for Best Motor Pool Driver, 19 March 1970
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 10 April 1970
- Marriage Certificate, [REDACTED]
- [REDACTED] Plumbing, Heating, and Air Conditioning Business License Sign
- Reader's Choice Best Plumber Certificate, 29 October 2015
- Facebook Memorial Post, 14 June 2016
- Death Certificate, [REDACTED]
- Surviving Spouse Affidavit, [REDACTED]

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 surviving spouse of the deceased former service member (SM), states:

a. Her late husband was drafted into the U.S. Army during the Vietnam war when he was 18 years old. He was 11 years old when he lost his mother to cancer. His father was a long-distance wheat farmer and he practically raised himself.

b. While sleeping on guard duty is a serious offense, she feels her husband was unjustly used as an example for other Soldiers. He told her he volunteered to prepare for a full field inspection that day and reported to duty without getting any sleep. She feels there are no warning signs when exhaustion overcomes someone. After the incident, he received a special court-martial, was confined to post, reduced in rank, and lost \$75 pay per month. Prior to this incident he had an exemplary record with no infractions. On the contrary, he had many letters of commendation.

c. This incident haunted him for the rest of his life. After being honorably discharged, he went to business college; obtained a plumbing, heating, and air conditioning license; and owned a successful business from 1974 until his death. He was a wonderful husband and father, active in his church and community. He deserves to have this blemish removed from his otherwise distinguished service to his country.

3. The SM was inducted into the Army of the United States on 11 April 1968 at 19 years, 4 months, and 27 days of age. Upon completion of initial entry training, he was assigned to Fort Lee, VA, and arrived on 28 August 1968. He was promoted to the temporary rank of specialist four on 27 January 1969.

4. The SM received the following letters of commendation:

a. from the 22d Field Army Support Command Supply Officer on 1 August 1969 for outstanding performance while assigned to the 22d Field Army Support Command Gas Station;

b. from the 520th Quartermaster Company Supply Sergeant on 15 August 1969 for exemplary service while assigned to the 520th Quartermaster Company Supply Section; and

c. from the 520th Quartermaster Company Platoon Sergeant on 18 August 1969 for outstanding performance while assigned to the 520th Quartermaster Company.

5. On 18 August 1969, the SM was convicted by a special court-martial at Fort Lee, VA, of violating the Uniform Code of Military Justice. Specifically, for being found sleeping at his post as a sentinel at the 520th Quartermaster Company Motor Pool on or about 26 July 1969. His sentence consisted of 60 days of restriction to the limits of Fort Lee,

forfeiture \$75 per month for 3 months, and reduction to the rank/grade of private/E-2. On 27 August 1969, the sentence was approved and ordered duly executed.

6. On 27 November 1969, he was promoted to the rank/grade of private first class/E-3.

7. The SM received the following memoranda of achievement from his chain command for being the "Best Motor Pool – Driver":

- on 13 March 1970 from the Commander, Headquarters, 22d Field Army Support Command
- on 19 March 1970 from the Commander, Headquarters, 260th Quartermaster Battalion
- on 19 March 1970 from the Commanding General, Headquarters, U.S. Army Quartermaster Center and Fort Lee

8. The SM was honorably discharged on 10 April 1970 by reason of expiration of term of service. His DD Form 214 shows in:

- item 5a (Grade, Rate, Rank) – private first class
- item 5b (Pay Grade) – E-3
- item 6 (Date of Rank) – 27 November 1969
- item 22a (Net Service This Period) – 2 years
- item 22c (Foreign and/or Sea Service) – none
- item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) –
 - National Defense Service Medal
 - Sharpshooter Marksmanship Qualification Badge with Rifle Bar

9. In addition to the items described above, the applicant provided copies of the following documents:

- their marriage certificate
- the SM's business license
- the SM's Reader's Choice Best Plumber Certificate
- a Facebook memorial post
- the SM's death certificate
- her surviving spouse affidavit

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the SM's military records, the Board found that relief was not warranted. The Board carefully considered the former service member's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and FSM's available military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted the FSM's post service achievements and character references attesting to the FSM 's character and community service in weighing a clemency determination. However, 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.

2. The Board determined 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. Furthermore, the Board found reversal of the FSM's special court-martial conviction on 18 August 1969 is without merit and reinstatement of his rank/grade to specialist four/E-4 is unwarranted. As such, the Board denied relief.

BOARD VOTE:

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

4/11/2024

X

[Redacted Signature]

CHAIRPERSON

[Redacted Name]

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 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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. Title 10, U.S. Code, section 1552, provides that the Secretary of a Military Department may correct any military record of the Secretary's Department when the Secretary considers it necessary to correct an error or remove an injustice. With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice, action to correct any military record of the Secretary's Department may extend only to correction of a record to reflect actions taken by reviewing authorities under the Uniform Code of Military

Justice or action on the sentence of a court-martial for purposes of clemency. Such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that Military Department.

4. Army Regulation 624-200 (Appointment and Reduction of Enlisted Personnel), in effect at the time, stated the authority to appoint individuals to the pay grades of E-3 and E-4 was delegated to company, troop, battery, and detachment commanders.

Paragraph 4 (Orders) stated temporary appointment of enlisted personnel to all grades above E-3 and permanent appointment to E-3 will be announced in orders issued by the appointing authority. The orders will state whether the appointment is permanent or temporary, show both grade and pay grade, and cite the specific paragraph and subparagraph of the regulation upon which the authority for the appointment is based.

5. Army Regulation 635-5 (Personnel Separations), in effect at the time, prescribed the separation documents that must be prepared for Soldiers upon retirement, discharge, or release from active-duty service or control of the Active Army. It established standardized policy for preparing and distributing the DD Form 214. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The detailed instructions for:

- items 5a and 5b –show the active-duty rank pay grade at time of separation
- item 6 (Date of Rank) –show the effective date of the rank/pay grade

6. 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 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. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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.

//NOTHING FOLLOWS//