

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230009523

APPLICANT REQUESTS: an upgrade of his characterization of service.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 16 June 2023
- DD Form 149 (Application for Correction of Military Record), 19 June 2023
- self-authored statement
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 16 June 1969

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, in effect, he never had issues with his leaves or unauthorized leave while serving, and he believes a great injustice was committed when he was discharged. He did not get a chance to correct this nor was given a military hearing.

a. Once he was discharged, he worked in a private industry. He never relied on government assistance and was able to support and provide for his family. When he received his DD Form 214 from the archives, he had no knowledge of the charges or allegations presented.

b. On his DD Form 149, the applicant references reprisal/whistleblower is related to his request. However, he provides no further details regarding this issue.

3. The applicant enlisted in the Regular Army on 11 May 1966 for a 3-year period. His DA Form 20 (Personnel Qualification Record) shows the following:

a. He was awarded the military occupational specialty of 76P (stock control and accounting specialist).

b. The highest rank he attained was private first class (PFC)/E-3.

c. He served in Vietnam from 28 September 1967 to 23 November 1968.

d. He had the following periods of time lost:

- 11 June 1967 to 17 June 1967 - absent without leave (AWOL)
- 30 May 1968 to 9 July 1968 - confined
- 10 March 1969 to 17 March 1969 - AWOL
- 24 May 1969 to 6 June 1969 - AWOL
- 17 April 1969 to 8 May 1969 - confined

5. Before a summary court-martial, while in Vietnam, the applicant was arraigned and tried for violation of the Uniform Code of Military Justice (UCMJ), for behaving himself with disrespect towards two officers, by failing to render the hand salute upon recognition of the two officers on or about 12 December 1967. He pled not guilty and was found guilty. The sentence imposed was forfeiture of \$43.00 for one month and reduction to the grade of private/E-1. The sentence was adjudged on 22 December 1967, and approved and ordered to be executed on 23 December 1967.

6. The applicant received company grade nonjudicial punishment (NJP) on 14 February 1969, under the provisions of Article 15 of the UCMJ, for disobeying a lawful order from a noncommissioned officer (NCO) on or about 8 February 1968, for failing to pick up a pallet of soap and being disrespectful in language to a superior NCO. His punishment imposed was restriction for 14 days and 2 hours of extra duty for 14 days.

7. Before a special court-martial, while in Vietnam, the applicant was arraigned and tried for violation of the UCMJ, for striking his superior NCO on or about the face with his hand and disobeying a lawful order from his superior NCO. He pled not guilty and was found guilty. The sentence imposed was confinement at hard labor for 6 months, forfeiture of \$60.00 per month for 6 months, and reduction to the grade of private/E-1. The sentence was adjudged on 30 May 1968, and approved on 8 June 1968.

8. On 8 June 1968, the sentence was amended to confinement at hard labor for 4 months, forfeiture of \$60.00 per 4 months, and reduction to E-1.

9. On 10 July 1968, the unexecuted portion of the sentence for confinement at hard labor for 4 months, forfeiture of \$60.00 for 4 months was suspended for 3 months, and the unexecuted portion of the sentence would be remitted without further action.

10. The applicant accepted NJP under the provisions of Article 15 of the UCMJ, on 10 November 1968, while in Vietnam, for:

- a. Failing to obey a lawful order from his superior NCO on or about 21 October 1968
- b. Disobeying a lawful order issued by his commanding officer on or about 24 October 1968.
- c. Failing to obey a lawful directive, by being in Saigon and not on official business on or about 25 October 1968.
- d. Disobeying a lawful order from his superior officer on or about 29 October 1968.
- e. His punishment imposed was forfeiture of \$50.00 per month for 2 months, extra duty for 45 days, and restriction for 60 days.

11. On 20 February 1969, he accepted NJP under the provisions of Article 15 of the UCMJ, for violating a lawful regulation by making a left turn at the gate and crossing over to the right lane. His punishment imposed was forfeiture of \$17.00 per month for 1 month, 5 days of extra duty and restriction.

12. The applicant's commander notified the applicant on 15 April 1969 of his intent to recommend his discharge under the provisions of Army Regulation (AR) 635-212 (Personnel Separations - Discharge - Unfitness and Unsuitability) by reason of unfitness. The commander stated the reasoning for the recommendation as the applicant's frequent incidents of discreditable nature with military authorities.

13. On 15 April 1969, the applicant consulted with legal counsel. He elected to waive consideration and a personal appearance of his case by a board of officers, he waived representation by counsel, and he did not submit statements on his own behalf. He additionally understood he may encounter substantial prejudice in civilian life if he received a discharge under conditions other than honorable and may be ineligible for many or all benefits as a veteran under both Federal and State laws.

14. Before a special court-martial adjudged on 15 April 1969, the applicant was arraigned and tried for violation of the UCMJ, for:

- a. Absenting himself without leave on or about 10 March 1969 and remaining AWOL until on or about 18 March 1969.
- b. Disobeying a lawful order from his superior NCO on or about 6 March 1969.

c. Being disrespectful in language towards his superior NCO on or about 21 March 1969.

d. Willfully disobeying a lawful order from his superior NCO on or about 22 March 1969.

e. Being disrespectful in language towards his superior NCO on or about 22 March 1969.

f. He pled not guilty and was found guilty. The sentence imposed was confinement at hard labor for 6 months, forfeiture of \$70.00 per month for 6 months.

g. On 17 April 1969, the sentence was approved and amended to confinement at hard labor for 30 days and forfeiture of \$70.00 per month for 6 months.

15. The applicant underwent a medical examination on 22 April 1969. The examining psychiatrist recommended he be eliminated under the provisions of AR 635-212. Stating the applicant had previous court-martial charges and he presented himself in an immature fashion depicting a rather inadequate personality with definite indications of a character-behavior disorder.

16. On 25 April 1969, the applicant's commander formally recommended his discharge for unfitness under the provisions of AR 635-212. He stated the applicant's incidents of a discreditable nature with military authorities were his reasoning for the proposed action.

17. On 6 May 1969, the applicant's immediate commander recommended approval of the separation action.

18. On 10 May 1969, the separation authority approved the recommended discharge for unfitness and directed the issuance of an DD Form 258A (Undesirable Discharge Certificate).

19. The applicant was discharged on 6 June 1969, under the provisions of AR 635-212, in the grade of E-1. His service was characterized as under other than honorable conditions. He was credited with 2 years, 9 months, and 15 days of net active service. He had 5 periods of lost time. He was awarded the Vietnam Service Medal with 2 bronze service stars, Republic of Vietnam Campaign Medal, and the Sharpshooter Qualification Badge (Rifle).

20. AR 635-212 states an individual is subject to separation when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier further effort is unlikely to succeed.

21. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation, and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors and the applicant provided no corroborating evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

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.

8/27/2024

X 

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. AR 15-185 (ABCMR), prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. It states 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. AR 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 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 was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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4. AR 635-212, then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.

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/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.

a. 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, Boards 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.

b. 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//