

IN THE CASE OF: ██████████

BOARD DATE: 9 September 2024

DOCKET NUMBER: AR20230009682

APPLICANT REQUESTS, in effect, correction of his DD Form 214, Armed Forces of the United States Report of Transfer or Discharge, to show:

- all authorized awards
- his service was characterized as under honorable conditions, general or honorable

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

- DD Form 293, Application for Review of Discharge
- DD Form 214, 4 January 1972
- Letter to the Department of Veterans Affairs (VA)
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20110010692

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 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, his combat service in the Republic of Vietnam (RVN) and his awards for valor, which include the Purple Heart, Bronze Star Medal with "V" Device, and the Valorous Unit Award, warrant correction of the characterization of his service and entitlement to veteran's benefits.

a. He contends that he was treated unfairly when he requested an early release due to family hardships. He was unable to provide for his family and he had a handicap child that required additional help; both physically and financially. His served honorably during the Vietnam War and the Korean Conflict.

b. Upon returning from the war, he was not afforded the luxury of receiving counseling or assistance with problem-solving, personal problems or anything else. He felt as though the Soldiers were looked down on and left out to dry and fend for themselves. His health has steadily declined over the years.

3. The applicant enlisted in the Regular Army on 12 July 1967. The highest permanent rank/pay grade he held was private first class/E-3. His military occupational specialty was 11B, light weapon infantryman.

4. His DA Form 20, Enlisted Qualification Record, shows the applicant -

a. Completed foreign service in:

- RVN, 12 December 1967 to 25 August 1968
- Korea, 25 August 1968 to 13 December 1968

b. Had approximately 17 periods of lost time between 16 May 1969 and December 1971, totaling more than 650 days. During this period the applicant's duty status was reported as absent without leave (AWOL), confined, and being dropped from the rolls.

5. The complete facts and circumstances of his discharge proceedings are not available. However, his DD Form 214 shows:

- he held the rank and pay grade of private/E-1 at the time of discharge
- he was discharged on 4 January 1972 in accordance with AR 635-200, Personnel Separations-Enlisted Personnel, chapter 10, for the good of the service
- his service was characterized as under other than honorable conditions
- he completed 2 years, 5 months, and 10 days and he had 650 days of lost time
- he was assigned Separation Code 246 and Reenlistment Code 4

6. In ABCMR Docket Number AR20110010692, 6 December 2011, the Board granted relief of the applicant's petition for award of the Purple Heart. The applicant was issued a DD Form 215 on 1 March 2012 which deleted the Vietnam Service Medal with Bronze Service Star from his DD Form 214 and added the:

- Purple Heart
- Bronze Star Medal with "V" Device
- Vietnam Service Medal with four Bronze Service Stars
- Valorous Unit Award
- RVN Gallantry Cross with Palm Unit Citation
- RVN Civil Actions Honor Medal First Class unit Citation
- Expert Marksmanship Qualification Badge with Machine Gun (M-60) Bar

- Korea Defense Service Medal

7. The applicant provides personal statements written in support of his claim for VA benefits based on his combat service and awards.

8. Regulatory guidance states that a request for discharge under the provisions of AR 635-200, chapter 10, is voluntary.

9. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination 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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Discharge Upgrade: Grant. The applicant's separation packet is not available for review. However, other evidence shows the applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he presumably consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his available separation processing. The Board considered his combat service in Vietnam as well as awards of the Purple Heart and Bronze Star Medal with V Device and determined that given his extensive lost time/AWOL, his service did not rise to the level required for an honorable characterization; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

b. Awards: No action. The applicant was previously issued a DD Form 215 that corrected his DD Form 214 to reflect his awards and decorations.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 amending the DD Form 214 for the period of service ending 4 January 1972 as follows:

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

9/9/2024

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CHAIRPERSON
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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) 635-200, Personnel Separations Enlisted Personnel, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, an undesirable discharge was considered appropriate at the time. Requests are voluntary and included an admission of guilt to the charges against them or of lesser included offenses.

b. Provides that 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.

c. Provides that 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.

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 on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

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.

4. Title 10, U.S. Code, section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to ABCMR applicants (and/or their counsel) prior to adjudication.

5. AR 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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 the evidence.

//NOTHING FOLLOWS//