

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230009918

APPLICANT REQUESTS:

- His upgraded discharge under the DoD Discharge, Review Program (Special) (SDRP) be affirmed
- Correction of his dates of service to show 25 July 1969 not 22 July 1969

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty) (SDRP upgrade)
- DD Form 215 (Correction to DD Form 214) 4 December 1978
- DD Form 214 - reissue 28 October 2014

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 his discharge was upgraded to honorable but not affirmed. His date of entry should be 25 July 1969 not as some records show it as 22 July 1969. He served honorably in Vietnam and when he returned he wanted to be with his wife and son or to be stationed near them and his brother who had cancer. He needs the affirmation in order to seek care from the Department of Veterans Affairs.
3. A review of the applicant's service record shows he was inducted into the Army of the United States on 22 July 1968. He was discharged some 2 days later on 24 July 1968 for immediate enlistment in the Regular Army. He was issued a DD Form 214 reflective of his 2 days of active service.
4. The applicant enlisted in the Regular Army on 25 July 1969, completed training with award of the primary military occupational specialty 36G (Manual Central Office

Repairman), and a secondary MOS of 36H (Dial/Manual Central Office Repairer). The highest grade he held was E-4.

5. The applicant served in Vietnam 13 February 1970 through 29 December 1970 with the 270th Detachment, 37th Signal Battalion (21 February 1970 - 11 April 1970) and the U.S. Army Strategic Command, Signal Support Detachment - Da Nang (12 April 1970 - 26 December 1970).

6. Upon return to the States, the applicant failed to report to his new unit. He was dropped from the rolls as a deserter on 1 February 1971. The applicant voluntarily returned to military control on 9 October 1972 and was placed in pretrial confinement.

7. Court-martial charges were preferred against the applicant on 10 October 1972, for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being absent without leave from on or about 1 February 1971 until on or about 9 October 1972.

8. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. In his request for discharge, he stated he understood that if his request for discharge was accepted he could be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate. He understood that, as a result of the issuance of such a discharge, he would be deprived of many or all Army benefits, that he might be ineligible for many or all benefits administered by the VA, and that he could be deprived of any rights and benefits as a veteran under both Federal and State law. He also understood that he could expect to encounter substantial prejudice in civilian life by reason of an Undesirable Discharge (UD).

9. The applicant's chain of command recommended that the request be approved and that the applicant receive an undesirable discharge.

10. The separation authority approved the applicant's request for discharge on 10 November 1972 under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, and directed that the applicant be reduced to the lowest enlisted grade and receive a UD.

11. The applicant was discharged on 5 December 1972 in the grade of E-1. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 635-200, Chapter 10, for the good of the service – in lieu of court martial and his service was characterized as under conditions other than honorable. He was credited with 1 year, 8 months, and 3 days of net active service and 3 days of prior active duty service, with 616 days of lost time. His awards are listed as the National Defense Service Medal,

Vietnam Service Medal, Republic of Vietnam Campaign Medal, and the Sharpshooter Qualification Badge with Rifle Bar.

12. On 27 May 1977, the Army Discharge Review Board (ADRB) notified the applicant that their review the applicant's discharge, under the SDRP criteria, and warranted upgrading of his characterization of service to honorable. There is very limited information on this upgrade and there is not clear documentation as to the justification for the granting the upgrade to a fully honorable discharge. A new separation document was forwarded to the applicant as this time

13. On 5 September 1978, the ADRB reviewed the prior SDRP in accordance with Public Law 95-126 and the historically consistent, uniform standards for discharge review.

14. On 11 December 1978, the ADRB notified the applicant that their review had found that he did not qualify for upgrading under the new uniform standards for discharge review. Accordingly, his upgraded discharge under the "DoD Discharge Review Program (Special) was not affirmed. The DD Form 215 issued in no way changed or modified the upgraded the discharge he had previously received. However, because of a new law, he would not be able to use that discharge to qualify for benefits under the Veterans Administration.

15. Department of the Army General Orders 8 of 1974 awarded the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, U.S. Army, Vietnam, and subordinate units for the period 20 July 1965 to 28 March 1973.

16. The applicant was charged, due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Prior to October 1979, the Army issued a separate DD Form 214 for each period of induction, enlistment, and immediate reenlistment. The applicant was inducted into the Army of the United States on 22 July 1968, and he was discharged on 24 July 1968 for immediate enlistment in the Regular Army. He was issued a DD Form 214 reflective

of his 2 days of active service. He enlisted in the Regular Army on 25 July 1969. His second DD Form 214 reflects the date of his enlistment, not the date of his induction. The Board found no error or injustice with the date of entry.

b. The evidence shows following the applicant's extensive AWOL, court-martial charges were preferred against him. He elected a voluntary discharge in lieu of trial by a court-martial. He was discharged in lieu of court martial and his service was characterized as under conditions other than honorable, after completing 1 year, 8 months, and 3 days of active service with 616 days of lost time.

c. In May 1977, following review the applicant's discharge under the SDRP criteria, given the applicant's service in Vietnam from February 1970 to December 1970, the ADRB determined an upgrade of his character of service to honorable was warranted. He was issued a new separation document reflective of this upgrade. In December 1978, the ADRB re-reviewed his upgraded discharge under the "DoD Discharge Review Program (Special) but did not affirm it. This did not change the upgraded discharge he had previously received. However, because of a new law, he would not be able to use that discharge to qualify for VA benefits.

d. Public Law 95-126 (October 1977) denied VA benefits to any former service member who had been AWOL for more than 180 consecutive days, or who had been classified as a deserter or a conscientious objector. DOD established consistent, uniform standards for discharge reviews. Reconsideration using these uniform standards was required for all discharges previously upgraded under the SDRP and certain other programs were required. Individuals whose SDRP upgrades were not affirmed upon review under these historically consistent uniform standards were not entitled to VA benefits, unless they had been entitled to such benefits before their SDRP review.

e. The Board determined the applicant's request lacks merit when the evidence of record is considered.

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:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.



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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 5 December 1972 is missing an entry that does not require Board action. As a result, amend the DD Form 214 by :

- a. deleting the Vietnam Service Medal entry at item 24 (Decoration, Medals, Badges, Citations, and Campaign Ribbons)
- b. adding the following entries to item 24 the Vietnam Service Medal with one bronze service star and the Republic of Vietnam Gallantry Cross with Palm Unit Citation.

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. The Department of Defense (DOD), on 4 April 1977, directed the Services to review all less than fully honorable administrative discharges issued between 4 August 1964 and 28 March 1973. This program, known as the DOD Discharge Review Program (Special) (SDRP) required, in the absence of compelling reasons to the contrary, that a discharge upgrade to either honorable or general be issued in the case of any individual who had either completed a normal tour of duty in Southeast Asia, been wounded in action, been awarded a military decoration other than a service medal, had received an honorable discharge from a previous period of service, or had a record of satisfactory military service of 24 months prior to discharge. Consideration of other factors, including possible personal problems which may have contributed to the acts which led to the discharge and a record of good citizenship since the time of discharge, would also be considered upon application by the individual.
3. In October 1978, Public Law 95-126 was enacted. This legislation denied Department of Veterans Affairs (VA) benefits to any former service member who had been AWOL for more than 180 consecutive days, or who had been classified as a deserter or a conscientious objector. Further it required the DOD to establish historically consistent, uniform standards for discharge reviews. Reconsideration using these uniform standards was required for all discharges previously upgraded under the SDRP and certain other programs were required. Individuals whose SDRP upgrades were not affirmed upon review under these historically consistent uniform standards were not entitled to VA benefits, unless they had been entitled to such benefits before their SDRP review.
4. 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 Army Board for Correction of Military Records (ABCMR). It states that 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. The ABCMR will decide cases based on the evidence of record. It is not an investigative body.

//NOTHING FOLLOWS//