

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230010110

APPLICANT REQUESTS: Upgrade of his discharge under other than honorable conditions (UOTHC).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Photograph
- Character reference letters (10)

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 the military promised to send him to school because he could not read or write but instead, they rushed him off to Vietnam. If he had gone to school before Vietnam, he would have had a better outcome.
3. With consent from his mother, the applicant enlisted in the Regular Army at the age of 17 for a period of 3 years in the rank/grade of private (PV1)/E-1 on 27 May 1966. He was advanced to private (PV2)/E-2 while attending Advanced Individual Training (AIT) on 27 September 1966.
4. While attending AIT, the applicant accepted non-judicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for the following offenses on the dates shown:
 - a. On 10 September 1966, for absencing himself from his unit from on or about 6 September 1966 until on or about 7 September 1966. His punishment included forfeiture of \$10.00; 7 days of restriction; and 7 days of extra duty.

- b. On 10 October 1966, for entering an off limits establishment on or about 1 October 1966. His punishment consisted of forfeiture of \$10.00.
5. Upon completion of training, he was awarded military occupational specialty 11B (Light Weapons Infantryman) and placed on assignment instructions to Vietnam.
6. The applicant accepted NJP under the provisions of Article 15, of the UCMJ on 12 December 1966, for without proper authority, absencing himself from the Overseas Replacement Station, U.S. Army Personnel Center, Oakland, CA on or about 5 November 1966 and remaining so absent until on or about 12 December 1966. His punishment included reduction to E-1 and forfeiture of \$28.00 pay per month for two months.
7. He was advanced to the rank/grade of private first class (PFC)/E-3 on 13 February 1967.
8. The applicant accepted NJP under the provisions of Article 15, UCMJ on 11 March 1967, for absencing himself from his unit in Vietnam on or about 5 March 1967 and remaining so absent until he was apprehended on 11 March 1967. His punishment consisted of reduction to E-2.
9. On 23 May 1967, before a special court-martial in Vietnam, the applicant was tried and found guilty of without proper authority, absencing himself from his unit from on or about 15 March 1967 until on or about 27 March 1967 and from on or about 19 April 1967 until on or about 22 April 1967. His sentence included forfeiture of \$33.00 pay per month for four months and reduction to PV1. The sentence was adjudged on 23 May 1967. On 1 June 1967, the sentence was approved and ordered to be executed.
10. The applicant accepted NJP under the provisions of Article 15, of the UCMJ on 31 July 1967, for without proper authority, absencing himself from his unit in Vietnam on or about 9 July 1967 and remaining so absent until on 10 July 1967. His punishment consisted of reduction to PV1 and forfeiture of \$32.00 pay for a month.
11. On 20 April 1968, before a special court-martial in Vietnam, the applicant was tried and found guilty of absencing himself from his unit from on or about 12 October 1967 until on or about 21 January 1968; and for wrongfully having in his possession an amount of marijuana on or about 21 January 1968. His sentence included reduction to E-1; confinement at hard labor for six months; and forfeiture of \$72.00 pay per month for six months. The sentence was adjudged on 20 April 1968. The sentence was approved and ordered to be executed on 29 April 1968, but that portion of the sentence adjudging confinement at hard labor in excess of 4 months and forfeiture of \$72.00 per month in excess of 4 months was suspended for 6 months, at which time, unless the suspension

was sooner vacated. The unexecuted portion of the sentence was subsequently remitted on 13 June 1968.

12. On 20 June 1969, the applicant was tried and convicted in a civil court for 13 counts of burglary. He was sentenced to be confined in the penitentiary of the State of Georgia or such place as the Director of Corrections may direct for eight years, to be computed from 16 January 1969.

13. On 18 August 1969, the applicant's immediate commander informed him that he was initiating action to separate the applicant from service under the provisions of Army Regulation 635-206 (Discharge: Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence Without Leave or Desertion), paragraph 6, for conviction by civil court. The commander advised the applicant that he could be furnished an Undesirable Discharge Certificate as a result of this action. He further advised the applicant of his various rights. The applicant acknowledged receipt of this notification.

14. On 18 August 1969, the applicant acknowledged receipt of the commander's intent and indicated he had been counseled and advised of the basis for the action to be taken against him under the provisions of Army Regulation 635-206. He requested consideration of his case by a board of officers but waived his rights to representation by counsel and to submit a statement in his own behalf.

15. On 13 January 1970, the applicant's immediate commander recommended the applicant's separation from service under the provisions of Army Regulation 635-206, paragraph 33a, for conviction by civil court. The commander further recommended the applicant be issued an Undesirable Discharge Certificate. The intermediate commander concurred with the recommendation.

16. An Administrative Elimination Board was conducted to consider the applicant's case on 24 April 1970. The board found the applicant should be eliminated from the service under the provisions of Army Regulation 635-206 due to misconduct (conviction by civil court) with issuance of an Undesirable Discharge Certificate.

17. On 12 May 1970, the separation authority approved the Board's findings and recommendation.

18. On 14 May 1970, the Assistant Adjutant General, Headquarters U.S. Infantry Center, Fort Benning, GA, specified the applicant would be separated under the provisions of Army Regulation 635-206 with Separation Program Number (SPN) 284 on 21 May 1970.

19. The applicant's DD Form 214 shows the applicant was discharged on 21 May 1970, under the provisions of Army Regulation 635-206, with SPN "284" by reason of

Convicted by a Civil Court During Current Term of Active Military Service." His service was characterized as UOTHC. He was credited with completion of 1 year, 9 months, and 3 days of net service this period, with 815 days of time lost due to absence without leave and confinement. He was awarded or authorized the:

- National Defense Service Medal
- Vietnam Service Medal with 2 Bronze Stars
- Vietnam Campaign Medal with 1960 Device\
- Overseas Service Bar (2)
- Combat Infantryman Badge
- Marksman Marksmanship Badge with M-14 Rifle Bar

20. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his service characterization. On 29 February 1980, he was informed that after careful consideration the ADRB had determined that he was properly discharged and denied his request.

21. The applicant provides the following documents which are available in their entirety for the Board's consideration.

- a photograph depicting him holding a certificate presented to him for his participation in an event sponsored by the County Sheriff's Department
- ten character reference letters rendered by friends, colleagues, and business associates who all make favorable remarks about his character and post-service accomplishments

22. In reaching its determination, the Board can consider the applicant's petition, his arguments and assertions, and his 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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant's chain of command recommended his separation for misconduct due to his civil conviction. He had been found guilty of the charge of burglary and was sentenced to confinement for not less than 8 years in the State Prison. As a result, he was separated from active duty and received an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature, and that outweigh his misconduct, in support of a clemency determination. Based on a preponderance of

evidence, the Board determined that 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.

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

The regulation provides 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. It is not an investigative body.

3. Army Regulation 635-206, in effect at that time, set forth the basic authority for the separation of enlisted personnel due to misconduct (fraudulent entry, conviction by civil court, and absence without leave or desertion).

a. Section IV provided members would be considered for discharge when it was determined that one or more of the following applied: (a) when the Soldier was initially convicted by civil authorities, or action taken against the Soldier which was tantamount to a finding of guilty, of an offense for which the maximum penalty under the Uniform Code of Military Justice was death or confinement in excess of 6 months; (b) when initially convicted by civil authorities of an offense which involved moral turpitude, regardless of the sentence received or maximum punishment permissible under any code; or (c) when initially adjudged a juvenile offender for an offense involving moral turpitude. An undesirable discharge was normally considered appropriate. For discharge of members of Reserve components see section VII.

b. Section VII provided that the administrative discharge of a member of the Reserve components for cause, under conditions other than honorable, may be effected only pursuant to the approved findings of a board of officers convened by competent authority, except in those instances wherein the individual concerned consents to such discharge with waiver of board proceedings. If discharge under these regulations is contemplated, an effort will be made to obtain the written consent of the reservist for waiver of board action, prior to complying with paragraph 34 (Appointment of Board of Officers), except in those cases where the individual is not under military control. A board of officers will not be convened in any case wherein such written consent is obtained.

c. Upon determination a Soldier is to be discharged from the service as undesirable under these regulations, the authority accomplishing the discharge will, if the Soldier concerned is in a grade above private/E-1, reduce such Soldier to that grade without further administrative procedure and discharge the Soldier as an E-1.

4. Army Regulation 635-200 (Active Duty Enlisted Separations), currently in effect, sets forth the basic authority for the separation of enlisted personnel. It states in a case in which a discharge UOTHC is authorized by regulation, a member may be awarded an honorable or general discharge, if during the current enlistment period of obligated service, he has been awarded a personal decoration or if warranted by the particular circumstances of a specific case.

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. 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.

c. A discharge UOTHC is an administrative separation from the Service under conditions other than honorable.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Service 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//