

IN THE CASE OF: ██████████

BOARD DATE: 4 April 2024

DOCKET NUMBER: AR20230010652

APPLICANT REQUESTS: correction of his DD Form 214 (Report of Separation from Active Duty) for the period ending 15 October 1974 to show an upgrade of his under other than honorable conditions discharge to honorable and to add his unit of assignment from June 1971 to December 1971. He also requests a video/telephonic appearance before the Board.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record).

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 he is requesting the characterization of his discharge on his DD Form 214 be upgraded to honorable. He is also requesting that his duty assignment with the 1/58th Helicopter Assault Battalion be added, where he served from June 1971 to December 1971. The correction should be made due to the fact that his "character and conduct" have changed since 1974.
3. A review of the applicant's service record shows:
  - a. He enlisted in the Regular Army on 31 May 1967.
  - b. He was honorably released from active duty on 28 May 1970. His DD Form 214 shows he completed 2 years, 11 months, and 28 days of active service with no lost time and 1 year, 6 months, and 12 days of foreign service. He was transferred to the U.S. Army Reserve (USAR). It also shows he was awarded or authorized:
    - National Defense Service Medal
    - Good Conduct Medal
    - Marksman Marksmanship Qualification Badge with Pistol Bar

- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-14)

c. The service record was void of a second DD Form 4 (Enlistment Record – Armed Forces of the United States); however, a second DD Form 214 shows he enlisted in the Regular Army on 24 July 1970.

d. His DA Form 20 (Enlisted Qualification Record) shows:

- Item 31 (Foreign Service):
  - Panama from 4 March 1968 to 23 October 1969
  - Vietnam from 5 April 1971 to 10 December 1971
- Item 38 (Record of Assignments):
  - enroute to U.S. Army Pacific (USARPAC)
  - 17 April 1971 – Company E, 1st Battalion (BN), 506th Infantry, USARPAC
  - 9 September 1971 – Company B, 158th Aviation Bn, 101st Airborne Division
  - 10 December 1971 – enroute to Continental United States (CONUS)
- Item 44 (Time Lost Under Section 972, Title 10 USC):
  - absent without leave (AWOL) – 12 October 1972 to 15 October 1972
  - AWOL – 30 November 1972 to 30 November 1972
  - AWOL – 4 January 1973 to 14 January 1973
  - AWOL – 27 June 1973 to 27 June 1973
  - AWOL/dropped from rolls (DFR) – 14 January 1974 to 8 September 1974

e. Seven DA Forms 2627-1 (Record of Proceedings Under Article 15, UCMJ) show the applicant accepted nonjudicial punishment for the following offenses:

- 9 May 1971 – one specification of breaking and entering on 12 April 1971 into the noncommissioned officer (NCO) club with the intent to commit a crime
- 22 September 1972 – one specification of failure to obey a regulation on 22 September 1972 by speeding on Fort Hood at 39.6 mph in a 30 mph zone
- 1 November 1972 – one specification of being AWOL from 12 October 1972 to 17 October 1972
- 7 December 1972 – one specification of being AWOL from 30 November 1972 to 1 December 1972

- 21 December 1972 – one specification of failure to be at his appointed place of duty on 12 December 1972
- 5 February 1973 – one specification of being AWOL from 4 January 1973 to 15 January 1973; his punishment included reduction to private (PVT)/E-1
- 29 November 1973 – two specifications of failure to go to his appointed place of duty on 24 November 1973 and 26 November 1973

f. The available service record was void of the facts and circumstances surrounding the applicant's discharge and separation processing.

g. On 15 October 1974, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows:

- he completed 3 years, 6 months, and 8 days of active service with 256 days of lost time
- Item 9c (Authority and Reason): Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel)
- item 11: CSC, 1st Battalion, 50th Infantry, 2d Armored Division – FORSCOM
- he was awarded or authorized:
  - National Defense Service Medal
  - Good Conduct Medal
  - Vietnam Service Medal with two bronze service stars
  - Republic of Vietnam Campaign Medal
  - Combat Infantryman Badge
  - Air Medal
  - Marksman Marksmanship Badge with Pistol Bar
  - Expert Marksmanship Badge with Rifle Bar

4. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

5. By regulation (AR 635-5), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. For Item 11 (Last Duty Assignment and Major Command) enter the last assignment and major command.

6. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under

Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

7. In reaching its determination, the Board can consider the applicant’s petition and his service record in accordance with the published equity, injustice, or clemency determination guidance

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found partial relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The regulation governing preparation of the DD Form 214 in effect at the time only provided for entering a Soldier’s last unit of assignment in item 11. The Board found no basis for documenting other units of assignment on the DD Form 214 and determined there is no error or injustice related to this matter. The Board noted that, if the applicant wishes to have documentation of his history of assignments, he may request a copy of his service record from the National Personnel Record Center.

3. With regard to the applicant’s character of service, the Board considered the his 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 his overall service record, in particular his service in Vietnam during which he was awarded the Air Medal and the Combat Infantryman Badge, supports clemency. Based on a preponderance of the evidence, the Board determined the applicant’s character of service should be changed to under honorable conditions (general).

**BOARD VOTE:**

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. 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 reissuing his DD Form 214 for the period ending 15 October 1974 to show his character of service as under honorable conditions (general).

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

8/18/2024

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. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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. Army Regulation 635-5 (Separation Documents – Personnel Separations) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. For Item 11 (Last Duty Assignment and Major Command) enter the last assignment and major command.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 1-9d (Honorable Discharge) states an honorable discharge is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

b. Paragraph 1-9e (General Discharge) states a general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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/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 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 based on 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.

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.

6. Department of the Army Pamphlet 672-3 (Unit Citations and campaign Participation Credit Register) assist commanders and personnel officers in determining or establishing the eligibility of individual members for campaign participation credit, assault landing credit, and unit citation badges awarded during the Vietnam Conflict. Department of the Army General Order Number 6, dated 1974, awarded 1st Battalion, 506th Infantry the Republic of Vietnam Gallantry Cross with Palm Unit Citation for service in Vietnam from 1 March 1971 to 9 October 1971.

//NOTHING FOLLOWS//