

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230010836

APPLICANT REQUESTS: correction of his record to show he was a prisoner of war (POW) vice absent without leave (AWOL).

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

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:

a. He was listed as being AWOL in disciplinary action. He requests his record be changed to prisoner of war (POW) as he was captured while guarding a Buddhist temple in Tam Ki City.

b. After being tortured for 3 days, he was able to escape by running through the bamboo. While running down the streets of Tam Ki City, his commanding officer saw him, picked him up and took him to Chu Lai instead of his assigned base in Tam Ki. His records indicate AWOL. His commander did not believe that he was captured while guarding the Buddhist Temple and said that he was AWOL.

c. When he was discharged from the Army, he had flashbacks and continued drinking so he could forget everything. He married for the fifth time in 2000. When he met his wife in 1996, he stopped drinking and smoking. He still had problems with post-traumatic stress disorder (PTSD) and depression. He was able to keep a lot from her as he was a long haul truck driver and stayed on the road. In 2002, he hit his wife in his sleep two separate times. He was fighting and talking a foreign language. She suggested he seek help at the Department of Veterans Affairs (VA). He was treated in

the hospital in 2004 and then again in 2006. He had to get off the road as flashbacks continued. He was seeing a VA psychologist for his problems. His doctor gave him medication to take three times a day and one at night to help him sleep.

d. The applicant annotated PTSD and other mental health as issues/conditions related to his request.

3. On 18 January 1968, the applicant enlisted in the Regular Army.

4. On 15 March 1968, the applicant accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for on or about 10 March 1968 without proper authority, fail to go at the time prescribed to his appointed place of duty.

5. Summary Court-Martial Order Number 22, issued by Headquarters, the Student Brigade, USAIS, on 5 December 1968, shows:

a. The applicant was arraigned, tried, and convicted by a Summary Court-Martial of the following charges:

- Charge II, violation of Article 111, at Fort Benning, GA, on or about 19 October 1968, operate a vehicle, a passenger car, while drunk and did thereby cause said vehicle to overturn
- Charge III, violation of Article 121, at Fort Benning GA, on or about 19 October 1968, wrongfully appropriate a 1955 Pink and Gray Chevrolet, of a value of about \$400.00, the property of a member of the 74th Company, 7th Student Battalion, The Candidate Brigade (Prov), U.S. Army Infantry School, Fort Benning, GA 31905

b. The court sentenced him to confinement at hard labor for 5 months and forfeiture of \$73.00 per month for 5 months. The sentence was adjudged on 5 December 1968.

d. On 10 January 1969, the convening authority approved the sentence and ordered it be executed. The execution of that portion thereof adjudging confinement at hard labor for 5 months is suspended for 5 months at which time unless the suspension is sooner vacated, the suspended portion of the sentence will be remitted without further action.

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

- Item 31 (Foreign Service): service in Vietnam from 18 October 1969 to 17 October 1970
- Item 44 (Time Lost): 5 December 1968 to 21 December 1968 (17 days)

7. On 5 February 1970, the applicant accepted NJP under Article 15, UCMJ for on 3 February 1970, at Chu Lai base, Vietnam operating a two-and-a-half-ton truck while drunk and did thereby cause said vehicle to be involved in an accident. His punishment included reduction to the grade of private/E-2 (suspended for 45 days).
8. His record is void of any DA Forms 4187 (Personnel Action) changing his duty status from present for duty to AWOL and/or POW.
9. He was honorably released from active duty on 14 October 1970. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 2 years, 8 months, and 10 days of active service. It also shows:
 - a. He was awarded or authorized the Republic of Vietnam Campaign Medal with Device (1960), Vietnam Service Medal, Army Commendation Medal, Bronze Star Medal, two overseas service bars, Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14), and the Marksman Marksmanship Qualification Badge with Rifle Bar (M-14).
 - b. Item 30 (Remarks): in part, 17 days lost under section 972 Title 10 USC from 5 December 1968 to 21 December 1968.
10. By regulation, if the Soldier has been in a POW status, whether or not eligible for award of POW medal, enter the unit of assignment/country, and the dates of capture and release, i.e., "Prisoner of War, 24th MP Co, Germany, 410611-450317." See DA Form 2-1 (Personnel Qualification Record – Part II), item 35 (Record of Assignments), for this information.

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 applicant served in Vietnam from 18 October 1969 to 17 October 1970. There is no evidence in the applicant's service record, and he provides none to support his contention that he was captured. There is no "Missing in Action (MIA)" Casualty Report, no DA Form 4187 or Morning Report reporting him in a MIA or captured duty status, and no debrief by the unit intelligence officer regarding his alleged capture. Additionally, the applicant was AWOL for 17 days from 5 December 1968 to 21 December 1968, before he arrived in Vietnam on 18 October 1969. The Board did not find his argument credible or supported by any evidence and determined relief is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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.



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 600-8-22 (Military Awards) states the Prisoner of War Medal was authorized on 8 November 1985 and is awarded to individuals who in past armed conflicts were taken prisoner or held captive after 5 April 1917. The Prisoner of War Medal is to be issued only to those U.S. military personnel and other personnel granted creditable U.S. military service who were taken prisoner and held captive:

- while engaged in an action against an enemy of the United States
- while engaged in military operations involving conflict with an opposing foreign force
- while serving with friendly forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party
- by foreign armed forces that are hostile to the United States, under circumstances which the Secretary concerned finds to have been comparable to those under which persons have generally been held captive by enemy armed forces during periods of armed conflict

3. Army Regulation 635-5 (Separation Documents) establishes the standardized policy for preparing and distributing discharge documents. It directs that, in the case of prisoners of war, the unit of assignment, country, and dates of capture and release will be entered in the "Remarks" section of the discharge document.

//NOTHING FOLLOWS//