

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 18 June 2024

DOCKET NUMBER: AR20230011746

APPLICANT REQUESTS: his under honorable conditions (general) discharge be upgraded.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)

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 an honorably discharged veteran with a 60 percent (%) disability rating from Vietnam.
3. The applicant enlisted in the Regular Army on 23 February 1966 for a period of three years. His military occupational specialty was 76P (Stock Control and Accounting Specialist).
4. The Commander's Inquiry, dated 6 July 1966 shows the applicant was absent without leave (AWOL) on 5 June 1966 and dropped from the rolls as a deserter on 5 July 1966.
5. Before a special court martial at Fort Sill, Oklahoma on 27 January 1967 the applicant was found guilty of AWOL from on or about 5 June 1966 until on or about 20 July 1966; and from on or about 21 August 1966 until on or about 22 December 1966. The court sentenced him to be confined at hard labor for six months and to forfeit \$64.00 per month for six months. The sentence was approved and ordered to be executed on 2 February 1967.

6. Special Court Martial Order Number 161, dated 28 February 1967, issued by U.S. Army Artillery and Missile Center, Fort Sill, OK shows the unexecuted portion of the sentence to confinement at hard labor for six months, was suspended for six months.
7. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 5 October 1968 for AWOL on or about 1 October 1968. His punishment consisted of verbal reprimand, forfeiture of \$10.00 pay for one month, restriction and extra duty.
8. The applicant served in Vietnam from 26 October 1967 to 19 October 1968.
9. A Statement of Medical Condition, dated 24 October 1969 shows there had been no change in the applicant's medical condition since his last separation physical examination.
10. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
11. The applicant was transferred to the U.S. Army Reserve (USAR) on 25 October 1969. His DD Form 214 shows he was transferred under the provisions of AR 635-200 (Personnel Separations-Enlisted Personnel), with Separation Program Number 201 (expiration term of service) and Reenlistment Code 3B. His service was characterized as under honorable conditions (general). He completed 3 years of net active service. He had 245 days of lost time. His awards include the National Defense Service Medal, Republic of Vietnam Service Medal, and the Republic of Vietnam Campaign Medal with 1960 device.
12. Letter Orders 01-1063494, dated 26 January 1972, show the applicant was discharged from the USAR. His service was characterized as under honorable conditions (general). Effective 22 February 1972.
13. In reaching its determination, the Board can consider the applicant's petition and service record 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 partial relief was 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. The applicant's separation packet is not available for review. However, his DD Form 214 shows he was separated due to expiration of his term of service with a

general discharge. The Board noted the applicant served in Vietnam. However, given his AWOL, NJP, conviction by special court martial, and 245 days of lost time, the Board determined a general discharge is appropriate. The Board found no error or injustice in his available separation processing.

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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.



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, USC, 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. AR 635-200, Personnel Separations, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. When a Soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply. Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

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.

3. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NR) on 25 July 2018, 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 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.

//NOTHING FOLLOWS//