

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 May 2024

DOCKET NUMBER: AR20230011824

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

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 U.S. Report of Transfer or Discharge)
- DD Form 215 (Correction to DD Form 214)

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 has been a productive member of society since being released from the military.
3. On 28 March 1968, the applicant was inducted into the Regular Army. Upon completion of initial entry training, he was awarded military occupational specialty 95B (Military Police).
4. On 30 April 1968, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for on or about 22 April 1968, going absent without leave (AWOL) and remaining so absent until on or about 28 April 1968. His punishment included forfeiture of \$20.00-, and 14-days restriction and extra duty.
5. On 22 August 1968, the applicant began service in the Republic of Vietnam.
6. On 8 December 1968, the applicant accepted NJP under Article 15 of the UCMJ, for indulgence of intoxicating liquor, incapacitating him for the proper performance of his duties on or about 23 November 1968; and failing to go at the time prescribed to his

appointed place of duty on or about 5 December 1968. His punishment included reduction to E-1, suspended until 8 February 1969; and forfeiture of \$50.00 per month for 2 months.

7. On 13 December 1968, the applicant accepted NJP under Article 15 of the UCMJ, for being asleep on his guard post on or about 8 December 1968. His punishment included forfeiture of \$50.00 pay per month for two months.

8. On 14 January 1969, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty on or about 12 January 1969. His punishment included forfeiture of \$25.00 pay, and 14 days restriction and extra duty.

9. A letter dated 1 April 1969, by the applicant's commander noted the applicant was injured when he negligently shot himself in the left leg by playing with his weapon; twirling it on his finger. He was subsequently diagnosed with a compound fracture; comminuted tibia distal. He was scheduled for medical evacuation.

10. The applicant departed the Republic of Vietnam, on 5 April 1969.

11. Before a special court-martial on 29 July 1969, at Arlington Heights, Ill, the applicant was found guilty of one specification of going AWOL from on or about 4 June 1969 and remaining so absent until he returned to military control on 27 June 1969. The court sentenced him to confinement at hard labor for two months, and reduction to E-1. His punishment was suspended for two months. The sentence was approved on 7 August 1969 and the record of trial was forwarded for appellate review.

12. The applicant's DA Form 20 (Enlisted Qualification Record) shows he was AWOL from 1 to 2 November 1969 and from 4 November 1969 until 12 January 1970.

13. The applicant consulted with legal counsel on 13 January 1970, and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an undesirable discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions 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 acknowledged he understood that if his request for discharge was accepted, he may be discharged UOTHC. He understood that, as a result of the issuance of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans

Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State law.

b. The applicant declined his right to submit statements in his own behalf.

14. Court-martial charges were preferred against the applicant on 16 January 1970, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with two specifications of going AWOL from on or about 1 November 1969 to until on or about 3 November 1969; and from on or about 4 November 1969 until on or about 28 December 1969.

15. On 21 January 1970, the applicant's commander recommended approval of the applicant's request for discharge and further recommended the issuance of an Undesirable Discharge Certificate.

16. The separation authority approved the applicant's request for discharge for the good of the service in lieu of trial by court-martial on 28 January 1970, and directed the issuance of a DD Form 258A (Undesirable Discharge Certificate).

17. The applicant was discharged on 28 January 1970. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter, with Separation Program Number 246, for the good of the service. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Reenlistment Code 3B. He completed 1 year, 6 months, and 1 day of net active service this period with 111 days of lost time.

18. A DD Form 215 (Correction to DD Form 214), dated 3 October 2019, shows the applicant's social security number was corrected.

19. 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.

20. 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:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition and available military records, the Board determined there is insufficient evidence of mitigating factors to overcome the misconduct of multiple periods of AWOL.

2. The Board noted the applicant did not provide any post service achievements or character letters of support for the Board to weigh a clemency determination. The Board agreed the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 1 year, 6 months, and 1 day of net active service this period with 111 days of lost time. Furthermore, the Board determined the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to honorable. Therefore, the Board denied relief.

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.

[REDACTED]

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 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - 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. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

3. 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/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.

//NOTHING FOLLOWS//