

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20230011876

APPLICANT REQUESTS:

- an upgrade to his under honorable conditions (general) discharge to honorable
- correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show his service in Vietnam from 28 March 1969 through 19 March 1970

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of a Discharge From the Armed Forces of the United States)
- DA Form 20 (Enlisted Qualification Record) (partial form)
- 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 would like his service in Vietnam added to his DD Form 214. In addition, he asks the Board to consider an upgrade to his discharge due to his service in Vietnam and his conduct prior to his period of absence without leave (AWOL) and his court-martial. He deeply regrets his actions and negative behavior, his intent was to be a good Soldier, but he failed.
3. The applicant has service in Vietnam from 28 March 1969 through 19 March 1970. In addition, he is authorized foreign service credit and additional awards not currently listed on his DD Form 214. These changes will be administratively corrected in the "Administrative Notes" section of this document without the need for Board action.
4. The applicant's service record reflects the following:

a. He enlisted in the Regular Army on 16 July 1968.

b. DA Form 2627-1 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 10 July 1970, reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for: on or about 24 April 1970, without authority, absent himself and remained absent until on or about 26 June 1970. He was found guilty and received forfeitures of pay of \$95.00 for one month. He did not submit matters in extenuation, mitigation, or defense. He did not appeal.

c. Special Court-Martial Order (SPCMO) Number 16, dated 6 April 1971, shows the applicant was arraigned and tried for the following charge:

- Charge: Violation of the Uniform Code of Military Justice, Article 86
- Specification: Did on or about 7 December 1970 without proper authority, absent himself from his organization, and did remain so absent until on or 7 January 1971
- Pled: Guilty
- Found: Guilty
- Sentence: To be confined at hard labor for a period of two months, and to be reduced to the grade of private (PVT)-E-1. (No previous convictions considered.)
- The sentence was adjudged on 23 March 1971

d. On 6 April 1971, the Action Memorandum, issued by Headquarters, 1st Field Army Support Command, reflects the sentence was approved and will be duly executed. The deferment of confinement granted on 23 March 1971 is hereby terminated.

e. On 4 April 1971, the applicant was AWOL and was dropped from rolls (DFR) on 3 May 1971. The applicant later surrendered to military control on 4 October 1972.

f. DD Form 458 (Charge Sheet), 18 October 1972, shows charges were preferred against him for a UCMJ violation for being, without authority, absent himself on 4 April 1971 and did remain so absent until on or about 4 October 1972.

g. In DA Form 2823 (Witness Statement), dated 18 October 1972, the applicant states that he is requesting a discharge under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), chapter 10, was due to some major life issues and family concerns. He believed he could not continue to serve and would be in the Army's best interest to release him, so he may no longer bring shame to himself and/or his organization. He further understood he would receive an undesirable discharge and in doing so, he would also lose the Department of Veterans Affairs benefits.

h. On 25 October 1972, he formally requested a discharge for the good of the service. He was not subjected to coercion with respect to this request for discharge and was advised of the implications attached to such discharge. Having consulted with appointed counsel, he further acknowledged:

- if his request for discharge is accepted, he may be discharged under other than honorable conditions (UOTHC) and furnished an undesirable discharge certificate
- he will be deprived of many or all Army benefits
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life by reason of an undesirable discharge

i. On 27 October 1972, his commanding officer recommended the applicant be discharged Army Regulation 635-200, chapter 10 and that he is issued an Undesirable Discharge Certificate. On 31 October 1972, his battalion commander subsequently also recommended that he be discharged, along with the issuance of a Undesirable Discharge Certificate.

j. On 10 November 1972, the separation authority directed that the applicant will be discharged for the good of the service under the provisions of Chapter 10-2, Army Regulation 635-200. He further directed he be reduced to the lowest enlisted grade.

k. The applicant's DA Forms 20 (Enlisted Qualification Record) show in:

- item 31 (Foreign Service): 28 March 1969 through 19 March 1970 Vietnam for a period of 12 months
- item 41 (Awards and Decorations): National Defense Service Medal, Vietnam Service Medal, Vietnam Campaign Medal with 1960 device, two overseas bars

l. His DD Form 214 shows he was discharged on 17 November 1972 pursuant to Army Regulation 635-200, Chapter 10-2 with a general discharge. He completed 2 years, 9 months, 2 days of active service, and 11 Months, 27 Days of foreign service. This document also shows in:

- item 9c (Authority and Reason): Department of Defense (DOD) Discharge Review Program (Special)
- item 26 (Awards): No awards
- item 27 (Remarks) 134 Days Lost under Title 10, U.S. Code 972, 7 December 1970 to 6 January 1971; 4 April 1971 to 15 July 1971;
- item 27 (Cont.) 446 Days Lost 16 July 1971 to 3 October 1972

m. On 25 July 1978, the Army Discharge Review Board (ADRB) reviewed his case under the provisions of PL 95-126 and has directed The Adjutant General to issue a change to his DD 214 to affirm his Department of Defense (DoD) Special Discharge Review Program (SDRP) discharge upgrade under Uniform Standards.

n. DD Forms 215 (Correction to DD Form 214), dated 10 August 1978, reflect the following corrections:

- item 9c (Authority and Reason): Chapter 10, Army Regulation 635-200, Separation Code JFS
- item 27 (Remarks): Discharge Reviewed Under the Provisions of Public Law (PL) 95-126 and a Determination Made that Change in Characterization of Service is Warranted by DOD Directive
- item 27 (Cont.) Delete: Upgraded Under the DOD Discharge Review Program (Special); Date applied for Discharge Upgrade 14 April 1977; Date Discharge was Upgraded 14 April 1977; Character of Service Prior to Upgrade UOTHC
- item 27 (Cont.): Administrative Discharge Conduct Triable by Court-Martial

6. By regulation, a member who has committed an offense or offenses, the punishment for any of which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An UOTHC Discharge Certificate normally is appropriate for a member who is discharge 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 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 in-service mitigating factors to overcome the misconduct. The Board recognized the applicant's service in Vietnam from 28 March 1969 through 19 March 1970, however, his post-deployment conduct reflects a pattern of serious misconduct. unauthorized absence of over two months in 1970, followed by a conviction at a Special Court-Martial for another extended AWOL period in late 1970.

2. The Board noted, the applicant received non-judicial punishment under Article 15, UCMJ, for an unauthorized absence of over two months in 1970, followed by a conviction at a Special Court-Martial for another extended AWOL period in late 1970. Subsequently, the applicant was again AWOL for over 17 months, culminating in his request for discharge under Chapter 10. Evidence in the record show the applicant's discharge was later upgraded to General under the DoD Discharge Review Program, however, the Board found the applicants characterization of service remains appropriate given the severity and frequency of his misconduct. Therefore, the Board denied relief

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

X //SIGNED//

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows he is authorized foreign service credit and awards not listed on his DD Form 214. As a result, amend his DD Form 214 for the period ending 17 November 1972, by amending:

- item 26 (Awards) to show he was authorized the following awards:
 - Republic of Vietnam Gallantry Cross with Palm Unit Citation
 - National Defense Service Medal
 - Republic of Vietnam Campaign Medal with Device (1960)
 - Two Overseas Service Bars
 - Vietnam Service Medal with three bronze service stars, the applicant participated in the following campaigns:
 - TET 69 Counteroffensive, 23 February 1969-8 June 1969
 - Vietnam Summer-Fall 1969, 9 June 1969-31 October 1969
 - Vietnam Winter-Spring 1970, 1 November 1969-30 April 1970
- item 27 (Remarks) to read "Service in Vietnam from 28 March 1969 through 19 March 1970"

REFERENCES:

1. Title 10, United States Code (USC) (Armed Forces), 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 Army Board for Correction of Military Records (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), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service (ETS), prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.
 - 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, mandatory service obligation (MSO), or period for which called or ordered to active duty.
 - c. Chapter 10 of that regulation provided, in pertinent part, 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, an under other than honorable conditions discharge was normally considered appropriate.

4. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The VSM was awarded to all service members of the Armed Forces of the United States for qualifying service in Vietnam after 3 July 1965 through 28 March 1973. Qualifying service included attachment to or assignment for 1 or more days with an organization participating in or directly supporting military operations. One bronze service star is authorized with the VSM for each campaign during which a member was assigned or attached to and present for duty with a unit during the period in which it participated in combat.

b. The Republic of Vietnam Campaign Medal with Device (1960) was awarded by the Government of the Republic of Vietnam to service members of the U.S. Armed Forces who served in the Republic of Vietnam for 6 months during period 1 March 1961 to 28 March 1973, inclusive. The award was also authorized for those who had served outside the geographical limits of the Republic of Vietnam and contributed direct combat support to the Republic of Vietnam and Armed Forces for 6 months. These individuals must have met the criteria established for the Armed Forces Expeditionary Medal (Vietnam) or the Vietnam Service Medal during the period of service required to qualify for the Republic of Vietnam Campaign Medal.

c. The National Defense Service Medal is authorized for honorable active service for the period between 1 January 1961 and 14 August 1974 (Vietnam).

5. Army Regulation 635-5 (Personnel Separations-Separation Documents), prescribes the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service. The DD Form 214 (Armed Forces of The United States Report of Transfer or Discharge) 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 (REFRAD), retirement, or discharge.

6. Department of the Army Pamphlet 672-3 (Unit and Campaign Participation Credit Register) shows:

a. A bronze service star is worn on the appropriate service ribbon, to include the Vietnam Service Medal, for each credited campaign. During his service in Vietnam, the applicant participated in the following campaigns:

- TET 69 Counteroffensive, 23 February 1969-8 June 1969
- Vietnam Summer-Fall 1969, 9 June 1969-31 October 1969
- Vietnam Winter-Spring 1970, 1 November 1969-30 April 1970

b. Department of the Army General Orders Number 8, dated 1974, announced award of the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, U.S. Army Vietnam, and its subordinate units for the period 20 July 1965 to 28 March 1973.

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

8. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury (TBI); or who reported sexual assault or sexual harassment.

9. 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. 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. 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.

10. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. By law, Title 10 (Armed Forces), U.S. Code, section 1552, this Board is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed. The ABCMR does not have authority to set aside a conviction by a court-martial.

11. Public Law 95-126 was enacted in October 1977. This legislation required the Service Departments to establish historically consistent uniform standards for discharge reviews. Reconsideration of all discharges previously upgraded under the Department of Defense (DoD) Special Discharge Review Program (SDRP) was required using these uniform standards. Individuals whose DoD SDRP upgrades were not affirmed upon review under these historically consistent uniform standards were not entitled to Department of Veterans Affairs (VA) benefits unless they had been entitled to such benefits before their DoD SDRP review. Two of the principal features of Public Law 95-126 were:

(1) The addition of 180 days of continuous unauthorized absence to other reasons (e.g. conscientious objector, deserters) for discharge which act as a specific bar to eligibility for VA benefits.

(2) prospective disqualification for receipt of VA benefits for those originally qualifying as a result of upgrade by Presidential Memorandum of 19 January 1977 or the SDRP, unless an eligibility determination is made under the published uniform standards and procedures.

//NOTHING FOLLOWS//