

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 June 2024

DOCKET NUMBER: AR20230012488

APPLICANT REQUESTS: upgrade of his under other than honorable conditions character of service to honorable.

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

- Two DD Forms 149 (Application for Correction of Military Record)
- 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 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, in effect, while serving in Vietnam between 1968 and 1969, he incurred wounds in combat and received treatment at a military hospital in Cam Ranh Bay.

a. While still recovering at the hospital, the applicant decided to visit the local village, and he ended up getting "caught up having fun." He never realized that what he was doing was wrong according to military standards. He was a combat Soldier who grew up in the backwoods of a small country town in Texas; Vietnam was unlike anything he had ever seen.

b. The applicant continues, "...I was fighting a war for my country, which I loved, and I wanted to do this...that I wanted to be a combat Soldier, but I got to thinking what if I die over here (and) haven't (ever been with) a woman...so I decided, if I'm going to die over here, I might as well sow my oats...so I did that." However, it dawned on him that he needed to return to his unit, so he turned himself in and decided to accept whatever punishment his command might give.

c. The applicant declares, "I am a Soldier, not a coward ...not a deserter, (and) I wanted a chance to prove that. I was given that chance by someone who believe(d) in me, that I was a good Soldier. I was given a general court-martial by a two-star general who (knew) I was a good man (who had) just made a wrong move, and if I was to get put in the stockade or (Fort Leavenworth) or kicked out of the Armed Forces, it should have been done then while I was still in a war zone fighting for my country. The General knew who I was (and) he knew I was a good Soldier and (he) gave me that chance to prove it and I didn't let him down; but, on the other hand, after I came to the States, there were those that didn't like what they (said) on my record, so they didn't like me as a Soldier...a black Soldier...(and) they wanted me off their post."

d. The applicant's stateside unit tried twice to send him overseas after he had just returned from Vietnam. Additionally, there was a staff sergeant (SSG) who did not like the applicant; this SSG made physical threats towards the applicant. Later, the command confined the applicant for 30 days in the post stockade because a sergeant (SGT) falsely claimed the applicant had threatened the commanding officer.

e. After his release from confinement, the unit sent the applicant to Fort Jackson, SC; SSG P__ told the applicant that the commander was "out to get me and he did...he forced me to sign discharge papers with word of mouth. He told me if I didn't sign, he would make my life so miserable, I (would) wish I would have sign(ed)...so I sign(ed) out of fear of what he could do to me as a (captain (CPT)) (and) me as a (private)." After the applicant signed the discharge papers, the CPT said the applicant had 30 minutes to "get my black a__ (off) his post," and he gave the applicant a look that really scared him.

f. The applicant rhetorically asks, if he was supposed to receive an adverse discharge, why was it not one of his punishments in the general court-martial? Instead, the court gave him an extra 6 months to make up for his lost time, meaning he served 18 months in Vietnam instead of the normal 12; additionally, he lost a lot of his pay. He points out that he served his sentence and did what the court told him to do; his slate should have been wiped clean. He adds that he traveled over 500 miles, from Cam Ranh Bay to his unit's base camp, to turn himself in. He maintains he received a discharge that he did not deserve, and it resulted from hate and because of the color of his skin. "The truth is right before your eyes; I don't see how you could miss it. The only thing I am looking for is justice...(to) make things (right)."

3. A review of the applicant's service record reveals the following:

a. In or around August 1967, after completing the 11th grade in high school, the applicant underwent pre-entry testing, consisting of the Armed Forces Qualification Test (AFQT) and the Army Qualification Battery (AQB). On the AFQT, the applicant achieved a score of 25, which placed him in AFQT Category IV; on his AQB, he earned a general

technical (GT) score of 83 and passed (i.e., scored 90 or higher) in another six tested areas.

(1) Historical context. Following a 1948 Congressional mandate, the Department of Defense (DOD) developed a series of tests (AFQT and AQB) to determine a prospective enlistee/inductee's eligibility for service. In the 1960s, enlistees had to achieve an AFQT score of at least 31; high school graduates who scored between 21 and 30 were acceptable provided they also achieved minimum test scores of 90 or higher on the AQB in at least three other tested areas.

(2) In October 1966, because of a growing need for manpower due to the Vietnam War, the Secretary of Defense implemented the "New Standards Program – Project 100,000." The intent was to expand the pool of eligible enlistees/inductees by lowering the thresholds for acceptance. AFQT Category IV enlistees and inductees who scored between 10 and 30 could now enter military service. DOD ultimately terminated the program in 1971, but between 1966 and 1971, over 350,000 men entered the Armed Forces via the New Standards Program.

b. On 27 August 1967, the applicant enlisted into the Regular Army for 3 years; he was 19 years old. Upon completion of initial entry training and the award of military occupational specialty 11C (Infantry Indirect Fire Crewman), orders transferred him to Vietnam, and he arrived in country, on 6 February 1968. Orders further assigned him to the 4th Battalion, 31st Infantry Regiment. Effective 21 February 1968, the applicant's leadership promoted him to private first class (PFC)/E-3.

c. On 24 May 1968, the applicant sustained wounds in combat and was medically evacuated to the 2nd Surgical Hospital for treatment. On 25 May 1968, 2nd Surgical Hospital General Orders awarded the applicant the Purple Heart. On 13 June 1968, Special Orders awarded the applicant the Combat Infantryman Badge.

d. On 16 May 1969, a special court-martial found the applicant guilty of two specifications of Article 86 (Absent without Leave (AWOL) for More than 30 days), Uniform Code of Military Justice (UCMJ). The associated special court-martial order is unavailable for review; however, the applicant's DA Form 20B (Record of Court-Martial Conviction) shows the court convicted the applicant of being AWOL, from 27 July to 12 December 1968 (138 days) and again, from 13 December 1968 to 7 February 1969 (56 days). On 18 May 1969, the special court-martial authority approved a sentence of 4-months' confinement, suspended for 4 months; forfeiture of \$73 per month for 6 months; and reduction to private (PV1)/E-1.

e. On 18 August 1969, the applicant completed his tour in Vietnam, and orders reassigned him to Fort Benning, GA (now renamed Fort Moore); he arrived at his new unit, 5th Battalion, 31st Infantry Regiment, on or about 7 October 1969.

f. On 11 October 1969, the applicant accepted nonjudicial punishment (NJP) for failing to report at the time prescribed to "Commitment RBR12N." On 14 October 1969, the applicant's command placed the applicant in confinement. On 30 October 1969, a special court-martial convicted the applicant of UCMJ violations:

(1) The applicant's command charged him with the below-listed charges; the applicant pleaded not guilty to both:

- Article 91 (Willfully Disobeying the Lawful Order of a Noncommissioned Officer (NCO) – on 13 October 1969, the applicant disobeyed SGT F_ A. S__'s order to perform his extra duties; the court found the applicant not guilty
- Article 134 (General Article – Communicating a Threat) – on 13 October 1969, the applicant threatened to kill SGT F_ A. S__; the court found the applicant guilty

(2) The court sentenced the applicant to 2 months' confinement and the forfeiture of \$82 per month for 2 months.

(3) On 12 November 1969, after suspending one month of the applicant's confinement, the special court-martial convening authority approved the sentence and ordered its execution.

g. On 26 January 1970, the applicant's commander-initiated bar to reenlistment action against him, citing the applicant's two special court-martial convictions and his October 1968 NJP. The commander additionally certified the applicant had been a constant disciplinary problem for the unit and had required frequent counseling. The applicant's command subsequently approved the bar.

h. On 18 March 1970, the applicant accepted NJP for having been AWOL, from 16 to 17 March 1970 (1 day). In April 1970, the applicant received reassignment instructions for the Overseas Replacement Station, Fort Jackson; the orders instructed him to report by 30 April 1970.

i. On 7 May 1970, the applicant arrived at Fort Jackson; on 13 May 1970, he accepted NJP for having been AWOL, from 30 April until 7 May 1970 (7 days). On 13 May 1970, the Overseas Replacement Station commander referred the applicant to the supporting Mental Hygiene Consultation Division because he was considering the applicant for separation. In his "Brief Statement of Problem," the commander stated, "EM (enlisted member) displays negative attitude towards military service and military and personal responsibilities. Measures to rehabilitate EM have been taken over a 2 year period with no apparent results. Further attempts at rehabilitation are termed in advisable at this time."

j. On 15 May 1970, after consulting with counsel (a Judge Advocate General officer), the applicant acknowledged counsel had advised him of the basis for his pending separation. The applicant elected to waive his rights to have his case considered by, and to personally appear with counsel before a board of officers; additionally, he opted not to submit statements in his own behalf.

k. On 20 May 1970, the Mental Hygiene Consultation Division provided its mental status evaluation of the applicant. After affirming the applicant has no mental defects that would warrant separation under Army Regulation (AR) 635-40 (Physical Evaluation for Retention, Retirement, or Separation), the evaluator stated the applicant had a character or behavior disorder, classified as follows:

(1) "DIAGNOSIS: 3204. Antisocial personality, chronic, moderate; manifested by poor judgment, a tendency to twist the facts, and a resentful attitude towards authority. LOD No (not in line of duty), EPTS (existed prior to service)."

(2) "This individual's condition represents a long-standing, refractory personality disorder, which indicates that he is not amenable to disciplinary action, psychotherapy, reclassification, or reassignment. While the final decision regarding the disposition of this individual rests with command, it is the opinion of the undersigned that he should be separated administratively under the appropriate regulation."

l. On 8 June 1970, the Overseas Replacement Station commander prepared his recommendation to separate the applicant for unfitness, under the provisions of AR 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability). The commander stated his reason for initiating this action was the applicant's "repeated offenses of a nature to discredit the Armed Forces." "The nature and number of offenses do not warrant any other consideration."

m. On or about 17 July 1970, the separation authority approved the commander's separation recommendation and directed the applicant undesirable discharge under other than honorable conditions. On 20 July 1970, orders separated the applicant accordingly.

n. The applicant's DD Form 214 shows he completed 2 years, 4 months, and 15 days of his 3-year enlistment contract with three periods of lost time. The report additionally reflected the following:

(1) Item 11c (Reason and Authority) – AR 635-212, SPN (separation program number) 28B Unsuitability (sic).

(2) Item 15 (Reenlistment (RE) Code) – RE-3 and RE-3B

(3) Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized):

- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)
- Combat Infantryman Badge
- Three overseas service bars
- Expert Marksmanship Qualification Badge with two Rifle Bars (M-14) and (M-16)
- Marksman Marksmanship Qualification Badge with Pistol Bar (.45 Caliber)
- Second Class Gunner with 81mm Mortar Bar

BOARD DISCUSSION:

1. 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 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 under liberal consideration, there is sufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL. The Board carefully considered the applicant's deployment time in Vietnam, awards and decorations and found that his punishment was harsh based on the era in which the applicant served. The Board agreed the applicant did not meet the standards for an upgrade to honorable, however relief is warranted with an upgrade to general, under honorable conditions. Therefore, the Board granted partial relief.

2. 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:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. In addition to the administrative notes annotated by the Analyst of Record (below the signature), 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 re-issuing the applicant a DD Form 214 for the period ending 17 July 1970, to show a characterization of service as general, under honorable conditions.

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 upgrade of the applicant's discharge from under other than honorable conditions character of service to honorable.

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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):

1. AR 635-5 (Separation Documents), in effect at the time, stated the DD Form 214 was to list all decorations, service medals, campaign credits, and badges awarded or authorized.

2. GO awarded the applicant the Purple Heart (1st Award).

3. AR 600-8-22, currently in effect, states

a. The National Defense Service Medal is awarded for honorable active service for any period between 1 January 1961 and 14 August 1974.

b. The Vietnam Service Medal is awarded to all members of the Armed Forces of the United States based on their qualifying service in Vietnam after 3 July 1965 through 28 March 1973. A bronze service star will be awarded for wear on the Vietnam Service Medal for the Soldier's participation in each recognized campaign; a silver service star was given in lieu of five bronze service stars. Vietnam campaigns include the following:

- Tet Counteroffensive (30 January 1968 to 1 April 1968)
- Counteroffensive, Phase IV (2 April 1968 to 30 June 1968)
- Counteroffensive, Phase V (1 Jul 1968 to 1 November 1968)
- Counteroffensive, Phase VI (2 November 1968 to 22 February 1969)
- Tet 69/Counteroffensive (23 February 1969 to 8 June 1969)
- Summer-Fall 1969 (9 June 1969 to 31 October 1969)

4. Department of the Army Pamphlet (DA PAM) 672-3 (Unit Citation and Campaign Participation Credit Register) shows:

a. Department of the Army General Order (DAGO) Number 42, dated 1971, awarded the 4th Battalion, 31st Infantry Regiment the Presidential Unit Citation, for the period 11 to 31 August 1969.

b. DAGO Number 8, dated 1974, awarded all units that served in Vietnam the Republic of Vietnam Gallantry Cross with Palm Unit Citation.

4. Based on the foregoing, amend the applicant's DD Forms 214, ending 20 July 1970, by deleting the Vietnam Service Medal and add the following:

- Purple Heart (1st Award)
- National Defense Service Medal
- Vietnam Service Medal with one silver service star and one bronze service star

- Presidential Unit Citation
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

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 635-212, in effect at the time, set forth the basic authority for separating enlisted personnel for reasons of unfitness or unsuitability. Paragraph 6 (Applicability) stated Soldiers were subject to separation for unfitness under the provisions of this regulation when they were involved in such misconduct as frequent acts of a discreditable nature.

3. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 1-9d (Honorable Discharge) stated an honorable discharge was a separation with honor. Issuance of an honorable discharge was conditioned upon proper military behavior and proficient duty performance. A Soldier's service was to be characterized as honorable based on conduct ratings of at least "Good"; efficiency ratings of at least "Fair"; no general court-martial, and no more than one special court-martial conviction.

b. Paragraph 1-9e (General Discharge) stated a general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.

4. AR 635-5, in effect at the time, prescribed policies and procedures for the completion of the DD Form 214.

a. Appendix A (SPN and Authority Governing Separations) showed Soldiers separated under the provisions of AR 635-212 for unfitness because of frequent involvement in incidents of a discreditable nature with civil or military authorities received the SPN "28B."

b. Item 15 (Reenlistment Code). The "Remarks" section of each enlisted person's qualification record will be checked for eligibility for reenlistment. The regulation listed the RE codes:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless a waiver is granted
- RE-3B – Not eligible for reenlistment unless a waiver is granted; applicable to enlisted personnel who incurred lost time during their last period of service
- RE-4 – Not eligible for reenlistment

5. AR 601-280 (Army Reenlistment Program) prescribed eligibility criteria for the immediate reenlistment in the Regular Army of persons currently serving on active duty with the Army. Table 2-3 (Persons Ineligible for Immediate Reenlistment) listed disqualifications for immediate reenlistment; Line "F" disqualified Soldiers separated per AR 635-212.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 on the basis of 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.

7. AR 15-185, currently in effect, states the ABCMR decides cases on the evidence of record; it is not an investigative body. It begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary). The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//