

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 June 2024

DOCKET NUMBER: AR20230012528

APPLICANT REQUESTS: the spouse of a deceased former service member (SM) requests the upgrade of her husband's under than honorable conditions discharge to an honorable character of service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Death Certificate
- Marriage License
- Three letters of support

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, that based on her deceased husband's accomplishments while he was on active duty, the Board should correct his character of service to honorable.

a. The applicant points out that, while he served as a shipping clerk in Vietnam, the SM earned the following awards: National Defense Service Medal, Vietnam Service Medal, and Republic of Vietnam Campaign Medal with Device (1960). The applicant argues her husband willingly and honestly served his country, as proven by the medals he received.

b. The SM ultimately died from T-Cell Lymphoma, which the applicant maintains only further supports why his character of service should be upgraded.

c. In support of her request, the applicant provides three letters of support; the letters affirm the SM was a strong family man who actively served his church and his community. The letters further describe him as trustworthy and someone who embodied the values of morality, charity, and obedience to the law.

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

a. On 3 January 1968, the SM enlisted into the Regular Army for 3 years; he was 20 years old. Effective 18 April 1968, his training leadership promoted him to specialist four (SP4)/E-4.

b. Upon completion of initial entry training and the award of military occupational specialty 76P (Stock Control and Accounting Specialist), orders transferred him to Vietnam, and he arrived in country, on 5 June 1968; effective 8 June 1968, orders further assigned him to the U.S. Army Depot, Long Binh.

c. On 16 June 1968, the SM accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for the following violations: the SM violated a U.S. Army, Vietnam (USARV) Circular by entering an off-limits area, and he left his appointed place of duty without authorization.

d. On 4 September 1968, the SM's commander imposed the punishments of extra duty, a forfeiture of \$20 per month for one month, and a suspended reduction to private first class (PFC)/E-3; the associated DA Form 2627-1 (Record of Proceedings under Article 15, UCMJ) is unavailable for review. On 8 September 1968, the SM's commander vacated the suspended reduction; the SM's available service record offers no additional details about this action.

e. On 25 October 1968, the SM's unit reported him as absent without leave (AWOL); on 9 November 1968, he returned to military control. On 14 November 1968, the SM again departed in an AWOL status, and, on 8 January 1969, the unit dropped him from its rolls. On 31 January 1969, the SM's company commander completed a "Commander's Inquiry" pertaining to the SM's AWOL. The commander wrote, "Consultation with his previous commander, CPT (Captain) B\_\_ A\_\_...revealed that [SM] appeared to have no real trouble with his contemporaries or superiors." "The real reason for [SM] going AWOL cannot be ascertained at this time."

f. On 14 March 1969, the SM returned to military control. On 7 April 1969, and consistent with the SM's pleas, a special court-martial found the SM guilty of violating Article 86 (AWOL), UCMJ, based on two periods: 25 October to 10 November 1968 (16 days) and 14 November 1968 to 14 March 1969 (120 days).

(1) The court sentenced the SM to 6-months' confinement, forfeiture of \$70 per month for 6 months, and reduction to private (PV1)/E-1.

(2) On 15 April 1969, after suspending the SM's confinement until 7 October 1969, the special court-martial convening authority approved the sentence and ordered its execution.

g. On 6 May 1969, the SM went AWOL again; the unit dropped him from its rolls, on 6 June 1969. On 26 August 1969, the SM returned to military control; also, on 26 August 1969, a special court-martial order vacated the SM's suspended confinement sentence and the command remanded him to the installation stockade.

h. On 12 September 1969, the U.S. Army Correctional Holding Detachment commander advised the SM, via memorandum, that he was initiating separation action against him under the provisions of Army Regulation (AR) 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability). The commander stated his reasons were that the SM had previously entered an off-limits area; absented himself from his place of duty; and was AWOL on three occasions for periods totaling 248 days.

i. On 15 September 1969, after consulting with counsel (a Military Police officer), the SM acknowledged counsel had advised him of the basis for the pending separation action. The SM further 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.

j. On 16 September 1969, the SM underwent a separation physical. On his Standard Form (SF) 93 (Report of Medical History), the SM disclosed that he drank excessively; under "Physician's Summary and Explanation of all Pertinent Data," the examining physician noted the SM acknowledged he was drinking a pint per day of alcohol. On the SM's SF 88 (Report of Medical Examination), the physician declared the SM medically qualified for elimination.

k. On 17 September 1969, an Army psychiatrist prepared the SM's Report of Psychiatric Evaluation. The psychiatrist wrote:

(1) "(A) review of present difficulties reveals that EM (enlisted member) is not motivated for further military service and is non-restorable. He has been AWOL for an extended time and apparently feels no remorse about this. He states he had his reasons for going AWOL and does not elaborate."

(2) "Diagnosis: (3211) Passive dependency, passive-aggressive type, moderate, manifested by AWOL and disrespect for and conflict with authority; stress unknown; no

predisposition evident. LD (line of duty) No; not due to his own misconduct. EPTS (existed prior to service)."

(3) "Findings:"

(a) "This individual meets the retention standards prescribed in chapter 3 (Retention Medical Fitness Standards), AR 40-501 (Standards of Medical Fitness), and there is no psychiatric disease or defect which warrants disposition through medical channels."

(b) "This condition and the problems presented by this individual are not, in the opinion of this examiner, amenable to hospitalization, treatment, transfer, disciplinary action, training, or reclassification to another type of duty within the military. It is unlikely that efforts to rehabilitate or develop this individual into a satisfactory member of the military will be successful."

(4) "Recommendations: It is recommended that this individual be administratively separated from the military under the provisions of AR 635-212."

l. On or about 21 September 1969, the U.S. Army Correctional Holding Detachment commander submitted his separation recommendation. He wrote, "Discharge is recommended because of habits and traits of character manifested by repeated commission of court-martial offenses, which include violating a lawful general regulation by being in an off-limits area; absenting himself from his place of duty without authority; and being AWOL on three occasions for periods totaling 248 days, as reflected in item 44 of EM's DA Form 20 (Enlisted Qualification Record). He habitually shirks his duties, has an overall disregard for military authority, and does not respond to rehabilitative efforts."

m. On 4 October 1969, the separation authority approved the commander's separation recommendation and directed the SM's undesirable discharge under other than honorable conditions. On 7 October 1969, a special court-martial order suspended the unexecuted portion of the SM's confinement sentence. On 11 October 1969, orders separated the SM accordingly.

n. The SM's DD Form 214 shows he completed 11 months and 18 days of his 3-year enlistment contract with a total of 291 days of lost time (AWOL and confinement). The report additionally reflects the following:

(1) Item 11c (Reason and Authority) – AR 635-200 (Personnel Separations – Enlisted Personnel) (sic), SPN (separation program number) 386.

(2) Item 15 (Reenlistment (RE) Code) – RE-4

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

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)

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 former service member’s (SM) 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 former SM’s military records, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of going AWOL for 248 days. The Board considered the applicant’s letters of support that spoke to his trust worthiness and his character in weighing their clemency determination. Based on the preponderance of evidence, the Board found no error or injustice that would warrant an upgrade. Therefore, the Board denied 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:

<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:

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.



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

- 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 39, dated 1970, awarded the U.S. Army Depot, Long Binh the Meritorious Unit Commendation, for the period 1 September 1968 to 31 July 1969.

c. 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 11 October 1969, by deleting the Vietnam Service Medal and add the following:

- Vietnam Service Medal with one silver service star
- Meritorious Unit Commendation
- 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 displayed an established pattern of shirking.

3. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for enlisted administrative separations not already addressed in other regulations.

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 displaying an established pattern of shirking received the SPN "386."

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//