

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230012794

APPLICANT REQUESTS: in effect, an upgrade of his under honorable conditions (General) discharge to honorable, previously awarded to him by a Department of Defense (DOD) Special Review Board (SDRP).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 he served his country and spent a year in combat; while there, he became addicted to drugs, which were introduced to him by the Army.

a. The applicant explains that he joined the Army after high school at a time when the Army needed new Soldiers badly due to the Vietnam war. He went to Vietnam a naive kid and, while there, he became addicted to opium, heroin and other drugs; his health has suffered ever since.

b. On his return home, the government caught the applicant smuggling drugs, and the Army discharged him. Nonetheless, he emphasizes that he did his tour in Vietnam, and he asks the Board to reconsider his circumstances and "let an old man die with honor...."

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

a. On 3 July 1969, the applicant enlisted into the Regular Army for 3 years; he was 18 years old. Upon completion of initial entry training and the award of military occupational specialty 11B (Light Weapons Infantryman), orders transferred the applicant to Vietnam, and he arrived in country, on 16 December 1969; orders further

assigned him to the 4th Battalion, 3rd Infantry Regiment. Effective 31 December 1969, the applicant's leadership promoted him to private first class (PFC)/E-3. On 5 February 1970, Special Orders (SO) awarded the applicant the Combat Infantryman Badge.

b. On 9 August 1970, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for disobeying an order from his first sergeant to fix two flat tires; the imposing commander reduced the applicant to private (PV2)/E-2.

c. On 2 September 1970, Headquarters, Americal Division General Orders awarded the applicant the Army Commendation Medal for meritorious achievement, during the period 1 May to 31 August 1970.

d. In September 1970, intra-theater orders reassigned him to the U.S. Army Support Command as a security guard. On 18 November 1970, the applicant completed his tour in Vietnam and orders transferred him to Fort Lewis, WA for further reassignment within the continental United States (CONUS).

e. On 2 December 1970, agents from the Federal Bureau of Investigation (FBI) and U.S. Customs arrested the applicant and charged him with smuggling marijuana from Vietnam. On or about 14 December 1970, a Grand Jury indicted the applicant for smuggling and for failing to pay taxes on marijuana he brought to CONUS.

f. On 18 February 1971, the U.S. Army Quartermaster Center and Fort Lee issued orders attaching the applicant, pending the outcome of his Federal charges.

g. On 2 March 1971, and in accordance with the applicant's plea, a U.S. District Court found the applicant guilty of violating Title 26 (Internal Revenue Code), USC, section 4744 (a) (2), which prohibited the transport and concealment of marijuana without paying a transfer tax; the court sentenced the applicant to 2 years' probation.

h. On 4 March 1971, Headquarters, U.S. Army Quartermaster Center and Fort Lee SO relieved the applicant from attachment and directed him to report by 8 March 1971 to Fort Hood, TX. Effective 12 March 1971, orders further assigned the applicant to an infantry battalion within the 1st Armored Division. On 5 May 1971, the applicant transferred to a battalion within the 1st Cavalry Division, also at Fort Hood.

i. On 12 May 1971, the applicant's commander advised him he was initiating separation action against the applicant, under the provisions of Army Regulation (AR) 635-206 (Personnel Separations – Discharge – Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence without Leave or Desertion)). Also, on 12 May 1971, the applicant acknowledged the command had afforded him the opportunity to consult with counsel, but he had declined. The applicant declared that he waived his

rights to have his case considered by, and to appear personally with counsel before, a board of officers; he further opted not to submit statements in his own behalf.

j. On 12 May 1971, the applicant's commander submitted his separation recommendation to the separation authority; he cited the applicant's Federal conviction as the basis for his action. On 7 June 1971, the applicant's battalion commander endorsed the separation action and recommended the applicant receive a general discharge under honorable conditions.

k. On 11 June 1971, the separation authority approved the commander's separation recommendation and directed the applicant's undesirable discharge under other than honorable conditions; in addition, he ordered the applicant's reduction to the lowest enlisted grade.

l. On 14 June 1971, SO reduced the applicant from PV2 to private (PV1)/E-1; and on 18 June 1971, orders discharged the applicant under other than honorable conditions.

m. The applicant's DD Form 214 shows he completed 1 year, 11 months, and 16 days of active service. It also shows in:

(1) Item 11c (Reason and Authority) – AR 635-206, SPN (Separation Program Number) 284.

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

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

- Vietnam Service Medal with two bronze service stars
- Republic of Vietnam Campaign Medal with Device (1960)
- Army Commendation Medal
- Combat Infantryman Badge
- Expert Marksmanship Qualification Badge with Rifle Bar

n. On 9 September 1971, the applicant petitioned the Army Discharge Review Board (ADRB), requesting an upgraded character of service. The applicant maintained his commander had led him the separation authority would approve a general discharge under honorable conditions, and the applicant felt his undesirable discharge was unfair. On 22 August 1972, the ADRB denied the applicant's request.

o. On 3 October 1973, the ADRB conducted another review of the applicant's case, but elected not to amend his character of service.

p. On 12 September 1978, an SDRP evaluated whether the applicant's character of service should be upgraded, based on DOD guidance. The SDRP voted to change the applicant's discharge to general under honorable conditions, and it further affirmed this character of service. On 14 November 1978, the board's president announced the results to the applicant, via letter, stating, "I am pleased that the Board's action was favorable. This will enhance your accessibility to VA (Department of Veterans Affairs) benefits, should you apply."

q. On 7 December 1978, The Adjutant General (TAG) informed the applicant that, per Public Law 95-126, the applicant's upgrade was reviewed and a Board determined the applicant did not qualify for upgrade, under the new standards imposed by the public law. As such, his general discharge under honorable conditions was not affirmed and he would not be eligible for VA benefits. TAG issued the applicant a DD Form 215 (Correction to DD Form 214), affirming that the applicant's discharge had been reviewed under the standards of DOD's directives.

BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by civil court for smuggling marijuana into the United States. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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.



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. Vietnam campaigns include the following:

- Winter-Spring 1970 (1 November 1969 to 30 April 1970)

- Sanctuary Counteroffensive (1 May 1970 to 30 June 1970)
- Counteroffensive, Phase VII (1 July 1970 to 30 June 1971)

3. Department of the Army Pamphlet (DA PAM) 672-3 (Unit Citation and Campaign Participation Credit Register) shows Department of the Army General Order (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 18 June 1971, by deleting the Vietnam Service Medal with two bronze service stars and adding the following:

- Vietnam Service Medal with three bronze service stars
- 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 635-206, in effect at the time, prescribed procedures for misconduct separations. Section VI (Conviction by Civil Court) stated Soldiers initially convicted by a civil court were subject to discharge; the regulation required that a civil court convicted the Soldier of an offense for which the maximum punishment under UCMJ included either death or confinement for more than 1 year.
3. The Manual for Courts-Martial, in effect at the time, showed that 5-years' confinement was among the maximum punishments for violations of Article 134 (General Article – Wrongful Possession, Sale, Transfer, or Use of Marijuana).
4. AR 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.
 - a. Paragraph 1-9d (Honorable Discharge). An honorable discharge was a separation with honor; commanders issued an honorable discharge certificate based on the Soldier's proper military behavior and proficient duty performance. Separation authorities could characterize a Soldier's service as honorable if he/she received at least "Good" for conduct, and at least "Fair" for efficiency. In addition, the Soldier could not have one general court-martial or more than one special court-martial conviction.
 - b. Paragraph 1-9e (General Discharge). 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.
5. AR 600-200 (Enlisted Personnel Management System), in effect at the time, stated in paragraph 7-30b (3) (Reasons for Reduction – Approved for Discharge from Service with an Undesirable Discharge) that Soldiers approved for administrative separation with an undesirable discharge under other than honorable conditions were to be reduced to private/E-1 prior to discharge.
6. 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 635-206 for misconduct due to a civil conviction received the SPN "284."

b. Item 15 (Reenlistment Code). DD Form 214 preparers were to check the "Remarks" section of each enlisted person's DA Form 20 (Enlisted Qualification Record) for eligibility for reenlistment. The regulation additionally listed the RE codes:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless a waiver is granted
- RE-4 – Not eligible for reenlistment

7. AR 601-210 (Regular Army Enlistment Program), in effect at the time, prescribed eligibility criteria for enlistment into the Regular Army.

a. Table 2-5 (Waivable Moral and Administrative Disqualifications) listed waivable disqualifications for entry into the Regular Army; Line "Q" stated Soldiers separated per AR 635-206 required waiver approval to enlist.

b. Table 2-6 (Applicants Ineligible to Enlist No Waivers Considered) listed disqualifications for entry into the Regular Army; Line "G" disqualified Soldiers separated per AR 615-368 (Enlisted Personnel – Discharge – Unfitness), AR 615-369 (Enlisted Personnel – Discharge – Inaptitude or Unsuitability), AR 635-208 (Personnel Separations – Discharge – Unfitness), AR 635-209 (Personnel Separations – Discharge – Unsuitability), or AR 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability).

8. In March 1977, the Department of Defense announced it was initiating SDRP boards; they were to be conducted by the ADRB.

a. The SDRP was the second of two major Federal programs intended to address character of service issues pertaining to Vietnam-era deserters (the first had been the Ford Clemency Program (in effect from September 1974 to March 1975)). The ADRB convened SDRP boards from April to September 1977.

b. SDRP boards permitted former Soldiers with general and undesirable discharge certificates, issued between 4 August 1964 and 28 March 1973, to apply for a simplified review of their discharges under liberalized standards. Considered factors included age, length of service at the time of discharge, and any personal distress that could have contributed to the misconduct that resulted in the discharge. The board also considered any combat-related awards received, and record of good citizenship since discharge.

c. In October 1977, Congress enacted Public Law 95-126; this law denied the automatic entitlement to VA benefits for those Vietnam-era Veterans who, due to administrative upgrade programs such as the SDRP, would otherwise have become so entitled. In addition, the law stipulated VA benefits would only be granted when, on a case-by-case basis, the ADRB affirmed the SDRP upgrades. As a result, those former Soldiers who received SDRP-upgraded characters of service, but were not granted ADRB affirmation, remained ineligible for health and other benefits from the VA.

9. 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. 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. 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. 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//