

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230013165

APPLICANT REQUESTS: the characterization of service of her deceased husband, a former service member (FSM), be upgraded from under other than honorable conditions (UOTHC) to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 16 May 1972
- DD Form 215 (Correction to DD Form 214 – Report of Separation from Active Duty), date of correction 30 October 1975
- two Certificates of Live Birth, dated [REDACTED] and [REDACTED]
- Marriage License, [REDACTED], dated 3 May 1985
- Driver's License, [REDACTED], expiration date 7 September 2024
- Medical Records (3 pages), Piedmont Healthcare, dated 7 July 2022
- Certificate of Death, dated [REDACTED]
- four statements of support

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect, her husband was her hero, provider, best friend, and the love of her life. They raised six children together, one of whom went into the military and then law enforcement. Her husband served honorably in Vietnam. After coming home, he was reassigned [REDACTED]. Due to paperwork issues, he did not receive his Army pay. He had no choice but to go home and get a job to support his young family. He later turned himself in and was given a dishonorable discharge. He was a hard

worker all of his life and loved serving his country. He passed away from cancer which his family believes was due to Agent Orange exposure. This country lost a patriotic, devoted, loyal man. He never received benefits from the Department of Veterans Affairs (VA). A discharge upgrade would assist her in receiving those benefits.

3. The FSM enlisted in the Regular Army on 13 July 1967 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 63B (Wheeled Vehicle Mechanic). The highest rank he attained was specialist four/E-4.

4. He served in the Republic of Vietnam from 5 April 1968 to 29 March 1969.

5. The FSM accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two occasions:

a. On 4 June 1969, for being absent from his place of duty on or about 2 June 1969. His punishment consisted of forfeiture of \$15.00 pay.

b. On 16 October 1969, for being absent from his unit without authority (AWOL), on or about 7 October 1969 until on or about 14 October 1969. His punishment consisted of reduction to private first class/E-3 and forfeiture of \$50.00 pay.

6. Before a summary court-martial, at Fort Benning, GA on 20 April 1970, contrary to his plea of not guilty, the FSM was found guilty of being AWOL on or about 12 January 1970 until on or about 3 April 1970. He was sentenced to reduction to private/E-1 and forfeiture of \$50.00 pay per month for four months. The sentence was approved and ordered duly executed on 28 April 1970.

7. A DA Form 3545 (Deserter Wanted By the Armed Forces) prepared on 24 May 1970 shows the FSM was reported AWOL on 18 May 1970 and subsequently dropped from the rolls on 16 June 1970.

8. The FSM's service record is void of the complete facts and circumstances surrounding his discharge. However, a memorandum from the U.S. Army School/Training Center, Fort Gordon, GA, dated 26 April 1972, shows the FSM's intermediate commander recommended approval of the FSM's request for discharge for the good of the service, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. The commander further recommended the issuance of a DD Form 258A (Undesirable Discharge Certificate).

9. The FSM was discharged on 16 May 1972, under the provisions of AR 635-200, Chapter 10, for the good of the service. His DD Form 214 confirms his character of service was UOTHC. He was credited with 2 years, 8 months, and 13 days of net active

service, with 144 days of lost time and 638 days lost subsequent to normal expiration term of service.

10. On 30 October 1975, the FSM was issued a DD Form 215, showing he was issued a Clemency Discharge, pursuant to Presidential Proclamation Number 4313. It should be noted that participation and successful completion of the Clemency Program did not provide for an upgrade of an individual's discharge. It simply restored the civil rights that would have been lost had the individual not participated.

11. The applicant provides the following:

a. Two Certificates of Live Birth showing the FSM's birth on [REDACTED], and the applicant's birth on [REDACTED]

b. A Marriage License, issued in the [REDACTED] showing the applicant's marriage to the FSM on [REDACTED]

c. A Driver's License from the [REDACTED] expiration date 7 September 2024, presumably belonging to the FSM.

d. Three pages of medical documents from Piedmont Healthcare, dated 7 July 2022, show the FSM's cancer diagnosis and subsequent death.

e. A Certificate of Death, showing the FSM's date of death as 28 July 2022.

f. In four statements of support, the authors attest to the FSM's pride in service and love of family. He served honorably in Vietnam. However, upon return to the U.S., he stopped receiving pay. In dire straits, he did what he had to do to support his family. He was devastated by the nature of his discharge. He was a hardworking man, who endured the hardships of coming home to a country that may not love him. He never lost his love for his country. His VA benefits would be very helpful to his wife.

12. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate.

13. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, the FSM's record of service to include deployment, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board found the applicant's statement and the provided statements of support compelling in support of a clemency determination. Based on a preponderance of the evidence, the Board determined the FSM's character of service should be changed to under honorable conditions (general).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as under honorable conditions (general).

12/26/2024

X

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.

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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulations provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

3. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. 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.

4. Presidential Proclamation Number 4313, issued on 16 September 1974, provided for the issuance of a clemency discharge to certain former Soldiers, who voluntarily entered into and completed an alternate public work program specifically designated for former Soldiers who received a less than honorable discharge for AWOL-related incidents between August 1964 and March 1973. Under this proclamation, eligible deserters were given the opportunity to request discharge for the good of the service with the

understanding that they would receive an undesirable discharge. Upon successful completion of the specified alternative service, the deserter was issued a clemency discharge. The clemency discharge did not affect the individual's underlying discharge and did not entitle him to any VA benefits. Rather, it restored federal and, in most instances, state civil rights which may have been denied due to the less than honorable discharge. If a participant of the program failed to complete the period of alternative service, the original undesirable characterization of service would be retained.

5. 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.

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, Boards 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.

//NOTHING FOLLOWS//