

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20230013632

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge to honorable.

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)
- Two Department of Transportation U.S. Coast Guard, Certificate of Discharge, dated 31 May 1977 and 26 August 1997
- U.S. Coast Guard, Certificate of Discharge, 23 December 1988
- U.S. Merchant Mariner's Document Identification

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190012858 on 8 February 2011.

2. The applicant states he was told that due to his service in Vietnam his discharge would be changed in 6 months. He was misled by the discharge, and he did not know where to go for help. He has proof that he served his country honorably with the U.S. Coast Guard and with the U.S. Army in the middle east. He enclosed his U.S. Coast Guard discharge as proof that he tried to correct his mistake that he made in 1972, by going to the U.S. Merchant Marine.

3. The applicant provides:

a. Two Department of Transportation, U.S. Coast Guard, Certificate of Discharge to Merchant Seaman I____ L____, with a date of discharge on 5 April 1977 and 25 August 1997.

b. A U.S. Coast Guard, Certificate of Discharge to Merchant Seaman I____ L____, with a date of discharge on 23 December 1988 and a copy of his identification card.

4. A review of the applicant's service records show:

a. The applicant enlisted in the Regular Army on 20 September 1968 for a period of 3 years.

b. His DA Form 20 (Enlisted Qualification Record) shows in item 38 (Record of Assignments) – his service in Vietnam from 25 May 1969 to 7 May 1970.

c. General Court-Martial Order Number 7, issued by Headquarters, U.S. Army Engineer Command, Vietnam, shows a General Court-Martial convened on 13 March 1970, the applicant was arraigned, tried, and convicted of the following:

(1) Charge I: Violation of the Uniform Code of Military Justice (UCMJ), Article 128.

- Specification 1: In that applicant, in Vietnam, did on or about 4 January 1970 assault Captain J__ K__, a person then having and in the execution of military police duties by striking him in the face and about the body with his fists
- Specification 2: In that applicant, while in Vietnam, did on or about 4 January 1970, assault Private First-Class W__ M__, a person then having and in execution of Military Police duties by striking him about the body with his fists

(2) Charge II: Violation of the UCMJ, Article 124. Specification: In that applicant, while in Vietnam, did on or about 4 January 1970, maim Sergeant T__ L__ Jr., by biting off a portion of his ear.

3) Additional Charge I: Violation of the UCMJ, Article 90. Specification: In that applicant, Vietnam, on or about 4 January 1970, strike First Lieutenant F__ G__, his superior commissioned officer, who was then in the execution of his office, in the groin with his foot.

d. The court sentenced him to reduction to grade of private/E-1, forfeiture of all pay and allowances, and confinement at hard labor for three years.

e. The sentence was adjudged on 13 March 1970.

f. On 7 May 1970, in the case of the applicant, only so much of the sentence as provides for forfeiture of all pay and allowances, confinement at hard labor for thirty months and reduction to the grade of private E-1 was approved. The forfeitures shall apply to pay and allowances becoming due on or after the date of this action. The record of trial was forwarded to the Judge Advocate General of the Army for review by a Court of Military Review. Pending completion of the appellate review the accused will be

confined in the U.S. Disciplinary Barracks, Fort Leavenworth, KA, or elsewhere as competent authority may direct.

g. Item 44 of his DA Form 20 further shows he departed absent without leave (AWOL) on 12 July 1971. On 15 August 1971, he was dropped from the rolls of his unit as a deserter. On 25 January 1972, the applicant returned from deserter status. On 28 January 1972, the applicant was placed in pre-trial confinement until 24 February 1972.

h. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. The record does contain a properly constituted DD Form 214 which shows he was discharged on 2 March 1972. His DD Form 214 shows he was discharged from active duty under the provisions of AR 635-200, Chapter 10, separation program number (SPN) 246/Reentry Code 4, with the issuance of an under conditions other than honorable certificate. His DD Form 214 shows:

(1) He was awarded the National Defense Service Medal, Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16), Vietnam Service Medal with three bronze service stars, and one overseas service bar.

(2) He completed 1 year, 5 months, and 13 days of active service this period and he had 569 days of lost time under 10 USC 972.

i. On 8 February 2011, in Docket Number AR20190012858, the applicant's request was denied. The Board determined the applicant's discharge accurately reflects his overall record of service.

5. By regulation (AR 635-200), a member who has committed an offense 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. A discharge under other than honorable conditions is normally considered appropriate.

6. 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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's

contentions, the military record, and regulatory guidance were carefully considered. The applicant's service record is void of the separation packet and the complete facts and circumstances surrounding his discharge are not available. However, his DD Form 214 showing he was discharged, under the provisions of AR 635-200, chapter 10 (in lieu of trial by court-martial) with an under other than honorable conditions discharge, with 1 year, 5 months, and 13 days of active service this period and 569 days of lost time. The Board noted that he served in Vietnam from 25 May 1969 to 7 May 1970; however, his service was marred by serious misconduct, including a conviction by a general court-martial for multiple counts of assault. The Board found no error or injustice in his available separation processing. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination, that would outweigh his misconduct. Based on a preponderance of evidence, the Board determined that the character of service and reason for separation the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 to amend the decision of the ABCMR set forth in Docket Number AR20190012858 on 8 February 2011.

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. Army Regulation 635-200 (Personnel Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides 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. A discharge under other than honorable conditions is normally appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade per Army Regulation 600-8-19.

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.

2. 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.

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.

//NOTHING FOLLOWS//