

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20230014940

APPLICANT REQUESTS: reconsideration of his previous request for:

- an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to an under honorable conditions (general) discharge
- awards for service in Vietnam
- a personal appearance via video/telephone before the Board.

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

DD Form 149 (Application for Correction of Military Record)

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 AR20150013716 on 27 September 2016.

2. As a new contention, the application states he was never afforded the opportunity to tell his story during the court process. He signed up for the military buddy program. He was only put with his buddy during advanced individual training. He was sent to Vietnam and his buddy stayed in the United States. He would like the truth to be told to the unfair treatment he received and be awarded any awards he was entitled to from serving in Vietnam.

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

a. He enlisted in the Regular Army on 3 May 1971. His DD Form 4 (Enlistment Contract – Armed Forces of the United States) shows he enlisted for the Regular Army Enlistment Option. It does not indicate he enlisted for the Buddy Program.

b. He accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), on three separate occasions for the following offenses:

- 21 May 1971, at Fort Polk, LA, disobeying a lawful order from his commanding officer.

- 13 July 1971, at Fort Polk, LA, without authority absent himself from his unit from 3 July 1971 to 11 July 1971.
- 23 July 1971 at Fort Polk, LA, three counts of disobeying a lawful order and one count of wrongfully communicating a threat to four Corporals.

c. Item 31 (Overseas Service) of his DA Form 20 (Enlisted Qualification Record) show she began service in Vietnam on 25 September 1971. He was assigned to Company C, 1st Battalion, 12th Cavalry.

d. On 24 February 1972, in Vietnam, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with:

- Charge I: four specifications of willfully disobeying lawful orders (uniform violation, carry M-18 anti-personnel mine)
- Charge II: one specification of willfully disobeying lawful orders (to carry M-18 anti-personnel mine) and one specification of wrongfully communicating a threat

e. On 25 February 1972, the applicant, through counsel, submitted a request for discharge for the good of the service-in lieu of trial by court-martial under the provisions of Chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- he was making the request of his own free will and had not been subjected to any coercion whatsoever by any person.
- by submitting the request for discharge, he acknowledges that he is guilty of the charge against him or of a lesser included offense.
- under no circumstances did he desire further rehabilitation, for he had no further desire to perform military service.
- if his request for discharge was accepted, he may be discharged under conditions other than honorable (UOTHC) and furnished an UOTHC certificate.
- he would be deprived of many or all Army benefits, that he may be ineligible for many, or all benefits administered by the Veteran's Administration and that he may be deprived of his rights and benefits as a veteran under both Federal and State law.
- no election was made to submit a statement on his own behalf.

f. The applicant's immediate and intermediate commander also recommended approval of the applicant's request for discharge and further recommended the issuance of a DD Form 258A (Undesirable Discharge Certificate).

g. On 18 March 1972, the separation authority approved the applicant's discharge for the good of the service. He directed the applicant be issued an Undesirable Discharge Certificate (DD Form 258A) and reduction to private/E-1.

h. Accordingly, the applicant was discharged on 3 April 1972. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial with his service characterized under other than honorable conditions (Separation Program Number 246 and reenlistment code 3). He was credited with 11 months, and 1 day of net active service, with service in Vietnam from 25 September 1971 to 31 March 1972. He was awarded or authorized the:

- National Defense Service Medal
- Vietnam Service Medal
- Vietnam Campaign Medal W/60 Device.

4. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his service characterization on two separate occasions. The ADRB considered his requests on 22 May 1974 and 17 October 1979, determined after careful consideration of his military records and all other available evidence, that he was properly discharged and denied his request for relief.

5. The applicant petitioned the ABCMR for an upgrade of his service characterization. The ABCMR considered his request on 27 September 2016, determined the evidence presented did not demonstrate the existence of a probable error or injustice and denied his request for relief.

6. By regulation, a member who has committed an offense or offenses, the punishment for any of which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other Than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

7. In reaching its determination, the Board can consider the applicants 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 partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the

records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The evidence shows the applicant was charged with commission of offenses (disobeying lawful ordered and communicating a threat, in a combat zone) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. 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. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Awards: Grant. There is no evidence in the available record and the applicant does not provide evidence he was recommended for or awarded any personal decorations. However, his unit in Vietnam was awarded the Valorous Unit Award and Republic of Vietnam Gallantry Cross with Palm Unit Citation. Also, he participated in one campaign during his service in Vietnam. Therefore, he should receive a bronze service star to be affixed to his already-awarded Vietnam Service Medal.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial amendment of the ABCMR's decision in Docket Number AR20150013716 on 27 September 2016. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by adding to his DD Form 214:

- three bronze service stars to his previously issued Vietnam Service Medal
- Valorous Unit Award
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

2. As for the discharge upgrade, 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 upgrade decision of the ABCMR set forth in Docket Number AR20150013716 on 27 September 2016

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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, U.S. Code, 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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribes the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Paragraph 3-7b (General Discharge) states 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.

c. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) states a Soldier who has committed an offense or offense, the punishment for which, under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the Soldier's overall record during the current enlistment.

3. 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 based on 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.

4. Army Regulation 15-185 states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//