

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20240000302

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general).

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, U.S. Code, 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 due to his youth at the time, he made poor decisions because of immaturity and family issues. He has been thinking about his discharge for a long time.
3. The applicant enlisted in the Regular Army on 28 September 1967, for 3 years. Upon completion of initial entry training, he was awarded military occupational specialty 36K (Field Wireman). The highest grade he attained was E-4.
4. The applicant was honorably discharged on 17 June 1968. He was issued a DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) and credited with 8 months and 20 days of net active service for this period.
5. The applicant reenlisted in the Regular Army on 18 June 1968 for 4 years.
6. He served in Vietnam from 8 March 1969 through 7 December 1970.
7. The applicant was honorably discharged on 17 June 1971. He was issued a DD Form 214, and credited with 3 years of net active service for this period. He was awarded or authorized the National Defense Service Medal, Vietnam Service Medal, Vietnam Campaign Medal, the Army Commendation Medal, and two Overseas Service Bars.

8. The applicant reenlisted in the Regular Army, on 18 June 1971 for 6 years.
9. On 22 May 1972, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 30 May 1972.
10. On 2 June 1972, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL. His punishment included forfeiture of \$83.00 pay for one month, reduction to E-3, and 14 days extra duty.
11. On 5 December 1972, the applicant was reported as AWOL a second time, and remained absent until he returned to military authorities 7 January 1973.
12. On 15 January 1973, the applicant was reported as AWOL a third time, and remained absent until his apprehension by civil authorities 3 March 1973.
13. Court-martial charges were preferred against the applicant for violations of the UCMJ; however, the relevant DD Form 458 (Charge Sheet) is not available for review.
14. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
15. The applicant was discharged on 20 April 1973. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 10-2, with Separation Program Designator code 246 (for the good of the service). He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 1 year, 7 months, and 5 days of net active service this period, with 88 days of lost time. He was not awarded or authorized any awards [See Administrative Notes].
16. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he would have consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.
17. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and the applicant's service record in accordance with the published equity, injustice, or clemency guidance.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's 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 military records, the Board determined that relief is warranted in this case. The applicant honorably served in the Republic of Vietnam from 8 March 1969 through 7 December 1970. In addition to his Vietnam tour, the applicant completed two prior periods of honorable service, further reflecting a pattern of dedication and honorable conduct.

2. The Board noted, while the record indicates the applicant was absent without leave (AWOL) for a total of 88 days at various periods following his return from Vietnam, the Board found that this infraction was outweighed by the applicant's overall record of honorable service and the significant stressors associated with combat duty. The Board considered the applicant's Vietnam service and prior honorable enlistments as mitigating factors that merit clemency. Based on this, the Board found that the applicant's character of service warrants an upgraded from his Under Other Than Honorable Conditions (UOTHC) to Under Honorable Conditions (General) to more accurately reflect the entirety of his military service.

3. 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:

Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

In addition to the administrative notes annotated by the Analyst of Record (below the signature), 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 the applicant a DD Form 214 showing his characterization of service as general, under honorable conditions.

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.

ADMINISTRATIVE NOTE(S):

1. Army Regulation 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. Army Regulation 600-8-22 (Military Awards) states a bronze service star will be awarded, for wear on the Vietnam Service Medal, for participation in each campaign. Recognized campaigns for Vietnam include Tet 69 Counteroffensive 1969 (23 February 1969 to 8 June 1969), Vietnam Summer-Fall 1969 (9 June 1969 to 31 October 1969), Vietnam Winter-Spring 1970 (1 November 1969 to 30 April 1970), Sanctuary Counteroffensive (1 May 1970 to 20 June 1970), and the Vietnam Counteroffensive Phase VII (1 July 1970 to 30 June 1971).
3. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) shows DAGO Number 8, dated 1974 awarded the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, United States Army Vietnam, and its subordinate units during the period 20 July 1965 to 28 March 1973.
4. A review of the applicant's record shows his DD Form 214, for the period ending 20 April 1973, is missing important entries that affect recognition for his acts of heroism. As a result, amend the DD Form 214 by adding the following entries in item 24

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

- Vietnam Service Medal with five bronze service stars
- Republic of Vietnam Campaign Medal
- Republic of Vietnam Gallantry Cross with Palm
- Republic of Vietnam Campaign Medal with device (1960)
- Overseas Service Bars (2)
- Army Commendation Medal
- Good Conduct Medal
- National Defense Service Medal
- Expert Badge Rifle M16

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 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

3. 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), on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//