

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240005000

APPLICANT REQUESTS: upgrade of his under conditions other than honorable discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 during his time in service he served honorably and wanted to make it a career, unfortunately when he came back from Vietnam his parents split up left his father alone with kids and causing hardship, he decided that his family needed help, so he went absent without leave (AWOL) to help his father. He did turn himself in to Fort Benning, GA. He is facing stage 4 cancer due to Agent orange exposure and would like his discharge upgraded so that he may get healthcare and benefits.
3. He enlisted in the Regular Army on 11 February 1970. He held military occupational specialty 12A (Pioneer).
4. He served in Vietnam from 6 September 1970 to 5 September 1971 with Company C and Company A, 26th Engineer Battalion.
5. He received non-judicial punishment under Article 15 of the Uniform Code of Military Justice for on or about 23 April 1971, through neglect discharge a .45 caliber pistol in the bed of a moving 5-ton truck causing injury to himself and endangering the lives of others.
6. He was awarded the Army Commendation Medal for meritorious service in connection with military operations against a hostile force for the period 1 September

1970 – 31 July 1971. (This will be administratively added to his DD Form 214 (Report of Transfer or Discharge).

7. DA Form 20 (Enlisted Qualification Record) shows in item 44 (Time Lost under Section 972, Title 10, USC and Subsequent to Normal Date ETS (expiration term of service) several periods of AWOL:

- 19 August 1970 – 2 September 1970
- 29 October 1971 – 7 December 1971
- 10 December 1971 – 16 May 1972

8. He underwent a medical examination on 22 May 1972, and was found qualified for separation.

9. He underwent a mental status evaluation on 22 May 1972, and was found to have no significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings.

10. The applicant's record is void of the complete facts and circumstances that led to his separation. However, his service record contains a DD Form 214 that shows he was discharged on 23 June 1972, for the good of the service in lieu of trial by court martial with a characterization of service of under conditions other than honorable. It also shows he completed 1 year, 9 months, and 13 days of active service with 214 days lost time from 19 August – 2 September 1970; 29 October – 7 December 1971; 10 December 1971 – 16 May 1972. He was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal with 1 bronze star
- Vietnam Campaign Medal with 1960 Device
- 2 Overseas Service Bars
- Expert Badge (Rifle M-16)
- Parachutists Badge

11. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

12. By regulation, 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.

13. 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 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 charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board determined based on the applicant's service in Vietnam, statement in support of his request, and receipt of the Army Commendation Medal, an upgrade to under honorable conditions (General) was warranted.

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 relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 23 June 1972 to show an under honorable conditions (General) characterization of service.

5/5/2025

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):

A review of the applicant's service records shows he is entitled to awards not listed on his DD Form 214. As a result, amend his DD Form 214 ending on 23 June 1972 to show:

- Delete: Vietnam Service Medal with 1 bronze star
- Add: Vietnam Service Medal with 2 bronze stars
- Add: Army Commendation Medal

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) sets forth the basic authority for the separation of enlisted personnel. 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.
 - a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.
 - b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.
3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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.

//NOTHING FOLLOWS//