

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240006081

APPLICANT REQUESTS: in effect, an 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)
- Self-authored letter
- DD Form 214

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 in a self-authored letter he joined the Army and served his country from 1968 to 1971. His basic training was in 1968 at Fort Lewis, WA. He was one of two to get their first stripe. Then he went to advanced individual training for more training. He was one of three to get their second stripe. He got expert marksmanship for M-14, M-16, Pistol and Mortars.

a. He went to Vietnam as a Mortarman for company E, 2nd Battalion, 501 Infantry, 101st Airborne Division, (Air Mobile). He received his specialist rank and Bronze Star Medal. The rest of the men in his squad received Bronze Star Medals. His squad was in support for base camps. He did road duty stops- stopped trucks for guns and explosives.

b. He was in Vietnam for 11 months. He then got his orders to go home for 30 days. Then to report to Fort Carson, CO. After arriving at Fort Carson, CO he went to check in and was told there was no record of him to report there. He repeatedly reported to the gate for five days straight, only to be told that they did not have any record of him. He was told to go home on the sixth day.

c. He enjoyed the Army. It was a valuable experience. He looks forward to his status changing as he is proud to have had the opportunity to enlist and serve his country. He is proud to be a Vietnam Veteran. He is getting up in age, he does this now, not just for himself but for his family.

3. The applicant enlisted in the Regular Army on 29 November 1968. He held military occupational specialty 11C (Indirect Fire Crewman).

4. Special Orders Number 28, issued by Headquarters, U.S. Army Training Center, Fort Lewis, WA on 28 January 1969 shows he qualified expert with rifle M-14. Special Orders Number 100, issued on 10 April 1969, shows he qualified second class gunner with mortar bar with 81 millimeter mortar.

5. He served in Vietnam from 13 May 1969 – 14 April 1970, with Company E, 2d Battalion, (Airmobile) 501st Infantry.

6. Special Orders Number 196, issued by Headquarters, 101st Airborne Division on 15 July 1969, awarded the Combat Infantryman Badge.

7. General Orders Number 13677, issued by Headquarters, 101st Airborne Division (Airmobile) on 12 November 1969, awarded the Army Commendation Medal for meritorious achievement from 1 June 1969 – 31 October 1969.

8. General Orders Number 3697, issued by Headquarters, 101st Airborne Division (Airmobile) on 1 April 1970, awarded the Bronze Star Medal for meritorious service in conjunction with ground operations against a hostile force from 1 June 1969 – 31 March 1970.

9. General Orders Number 4340, issued by Headquarters, 101st Airborne Division (Airmobile) on 17 April 1970, awarded the Air Medal for meritorious achievement while participating in aerial flight on 15 November 1969.

10. DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) shows the applicant was absent without leave from 6 June 1970 and dropped from the rolls on 13 July 1970. He was returned on 5 May 1975, when he was apprehended for desertion by Military Police from [REDACTED]

11. He underwent a separation physical on 9 May 1975, which shows he was qualified for separation.

12. 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 19 May 1975, with a characterization of service of under conditions other

than honorable. It also shows he completed 1 year, 7 months, and 22 days of active service with 541 days lost under 10 USC 972 from 6 June 1970 – 28 November 1971 and 1,253 days lost on or subsequent to normal expiration term of service 29 November 1971 – 4 May 1975. No awards are reflected.

13. 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.

14. By regulation, (AR 635-200) 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.

15. 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:

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 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 found no error or injustice in the separation proceedings and designated characterization of service assigned by his commander during separation. Based on the applicant's statement and a preponderance of the evidence, the Board granted relief to upgrade his characterization of service to honorable.

2. The Board determined additional relief was appropriate. The Board concluded the applicant's narrative reason for separation should be amended with the corresponding codes, he should be awarded the Army Good Conduct Medal for the period 29 November 1968 to 29 November 1971, and to reinstate his rank to specialist (SPC)/E-4.

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:

- awarding him the Army Good Conduct Medal for the period 29 November 1968 to 29 November 1971
- reinstating the applicant's rank to specialist (SPC)/E-4
- amending the applicant's DD Form 214, for the period ending 19 May 1975 to show in:
 - item 6a (Grade, Rate, or Rank): SPC
 - item 6b (Pay Grade): E-4
 - item 7 (Date of Rank): 9 November 1969
 - item 9c (Authority and Reason): Army Regulation 635-200 SPD JFF
 - item 9e (Character of Service): Honorable
- amending the applicant's DD Form 214, for the period ending 19 May 1975 to remove days lost from item 27 (Remarks)
- adding to the applicant's DD Form 214, for the period ending 19 May 1975 the awards listed in administrative notes below and the Army Good Conduct Medal (First Award)

6/6/2025

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 19 May 1975 to show:

- Expert Marksmanship Qualification Badge (M-14 Rifle)
- Second Class Gunner with Mortar Bar
- National Defense Service Medal
- Combat Infantryman Badge
- Army Commendation Medal
- Bronze Star Medal
- Air Medal
- Vietnam Service Medal with 3 bronze stars
- Vietnam Campaign Medal with 1960 device
- Presidential Unit Citation
- Republic of Vietnam Gallantry Cross with Palm
- Republic of Vietnam Civil Actions Honor Medal, First Class

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. Department of the Army General Order (DAGO) 16, 1972 awarded the Presidential Unit Citation to the 2d Battalion, 501st Infantry for service from 10-21 May 1969.

4. DAGO 43, 1970 awarded the Republic of Vietnam Gallantry Cross with Palm Unit Citation for service from 15 August 1968 – 14 May 1969.

5. DAGO 48, 1971 awarded the Republic of Vietnam Civil Actions Honor Medal First Class Unit Citation for service from 18 March 1968 – 2 May 1970.

6. 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//