

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240007334

APPLICANT REQUESTS: correction of the deceased former servicemember's (SM) DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show an honorable discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, for the period ending 12 August 1968
- Certificate of Death, State of Arizona
- Two photos with SM and the applicant

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 she is requesting an exception to change her father's, the SM, characterization to honorable. Her father was a Vietnam Combat Veteran and unfortunately made some bad decision during his service time. He had progressed in life, had a family, and turned to be a very good person who loved his family and her dearly.
3. The applicant provides:
 - a. A copy of the SM's death certificate to establish proof of relationship.
 - b. Two photos of the SM and the applicant.
4. A review of the SM's service records show:
 - a. He enlisted in the Regular Army on 7 September 1966 at the age of 17 with the consent of his parents.

b. The SM's DA Form 20 (Enlisted Qualification Record) shows in:

- Item 31 (Foreign Service), he served in Vietnam from 30 June 1967 to 12 April 1968
- Item 38 (Record of Assignment), he was assigned to 608th Transportation Company, Vietnam

c. The SM accepted non-judicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 24 March 1967, for the following misconduct on or about 15 March 1967:

- failing to go at the time prescribed to his appointed place of duty
- being disrespectful in language to a noncommissioned officer, his First Sergeant
- having knowledge of and failing to obey a lawful written order, not to possess or consume alcoholic beverages in the company area

d. Before a Special Court-Martial Order Number 75, dated 28 June 1967, shows:

e. On 31 May 1967, the applicant was arraigned, tried, and convicted of the following offenses:

(1) Charge I (Violation of the UCMJ, Article 91 (Insubordinate Conduct), Specification: willfully disobey a lawful order given by his First Sergeant to remain in the company area, on or about 21 June 1967

(2) Charge II (Violation of the UCMJ, Article 92 (Failure to obey an order or regulation), Specification: failed to obey a lawful general regulation, on or about 21 June 1967.

(3) Charge III (Violation of the UCMJ, Article 95 (Drunk or Sleeping on Post, or Leaving Post before being Relieved), Specification 1 and 2: resist being lawfully apprehended by, an armed force policeman on or about 16 June 1967 and 21 June 1967

f. His sentence included forfeiture of \$50.00 per month for 6 months, confinement at hard labor for 6 months and reduction to the grade of Private/E-1. His sentence was adjudged on 28 June 1967. The sentence was approved and was duly executed, but the execution of the portion thereof adjudging confinement was suspended for 6 months, at which time, unless the suspension was sooner vacated, the suspended portion of the sentence to confinement will be remitted without further action.

g. The U.S. Army Court of Military Review for appellate approval is void from the SM's service record.

h. Special Court-Martial Order Number 17 dated 27 August 1967, shows the unexecuted portion of the sentence to confinement at hard labor for 6 months was duly executed. The United States Army Republic of Vietnam stockade was designated as the place of confinement.

i. DA Form 527 A (Psychiatric Evaluation) shows the SM underwent a psychiatric evaluation on 6 & 7 March 1968, which found him mentally responsible and had the mental capacity to understand and participate in board proceedings.

j. The applicant accepted NJP under the provisions of Article 15 of the UCMJ on the following dates:

- 27 April 1968, for violating a lawful general regulation by being in an off limits area in the Republic of Vietnam, on or about 24 April 1968
- 5 May 1968, for being restricted to the limits of the company area, break said restriction, on or about 4 May 1968

k. The applicant was notified on 14 May 1968 of his commanding officer's intent to have the SM appear before a board of officers under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), by reason of unfitness for military service due to frequent incidents of a discreditable nature with civil or military authorities) for the purpose of determining whether he should be discharged before the expiration of his term of service. The commander cited the SM had been counseled on 13 separate occasions from 21 January 1967 to 4 May 1968, his special court-martial convictions and his Article 15's.

l. The applicant acknowledged receipt of the proposed separation notification on 15 May 1968. After consulting with counsel, he acknowledged that he:

- he waived consideration of his case by a board of officers
- he waived personal appearance before a board of officers
- he waived the opportunity to be represented by counsel
- he elected not to submit statements in his own behalf
- may be deprived of many rights and benefits as a Veteran under both Federal and State law
- may encounter substantial prejudice in civilian life if he were issued an undesirable discharge

m. The applicant's chain of command recommended approval of his discharge and further recommended the applicant be issued an undesirable discharge.

n. Special Court-Martial Order Number 8 dated 5 July 1968, shows on 14 January 1968, the SM was arraigned, tried, and convicted of having received a lawful order from his superior noncommissioned to get into a bunker, willfully disobeyed on or about 8 May 1968. His punishment included reduction to the grade of Private/E-1, confinement at hard labor for one month and to forfeit \$75.00 per month for a like period. His two previous convictions were considered.

o. The approval authority approved the recommended discharge on 29 July 1968, under the provisions of Army Regulation 635-212, for Unfitness with Separation Program Number (SPN) 28B and directed the issuance of an Undesirable Discharge Certificate.

p. The SM was discharged on 12 August 1968 with an under other than honorable conditions discharge. 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 635-212 (Personnel Separations – Discharge - Unfitness and Unsuitability), with SPN 28B (undesirable discharge), based on unfitness. He completed 1 year, 7 months, and 7 days of active service and 119 days of lost time. He was awarded or authorized the:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with "1960" device
- Expert Marksmanship Qualification (M-16) Rifle Badge
- Marksman Marksmanship Qualification (M-14) Rifle Badge

5. A review of the SM'S record confirms he is eligible for awards and campaign credits that are not recorded on his DD Form 214. The entries will be added to his DD Form 214 as administrative corrections and will not be considered by the Board.

6. There is no evidence the applicant nor the SM applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

7. By regulation (AR 635-212), individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.

8. 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 and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to a pattern of misconduct leading to the FSM's separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the FSM's characterization of service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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 for correction of the records of the individual concerned.
2. Prior to closing the case, the Board did note the administrative notes below from the analyst of record and recommended those changes be completed to more accurately reflect the military service of the applicant.

X //SIGNED//

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 show he is authorized additional awards not annotated on his DD Form 214 for the service period ending 20 June 1969. As a result, correct his DD Form 214 to show:

- Meritorious Unit Commendation
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- three bronze service stars to his previously issued Vietnam Service 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 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. Paragraph 1-9d provided that an honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 1-9e provided that a general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. Army Regulation 635-212 (Personnel Separations – Discharge - Unfitness and Unsuitability), then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.

4. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs 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.

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.

5. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

6. Department of the Army Pamphlet 672-3 (Unit Citations and Campaign Participation Credit Register) assist commanders and personnel officers in determining or establishing the eligibility of individual members for campaign participation credit, assault landing credit, and unit citation badges awarded during the Vietnam Conflict.

a. Department of the Army General Orders (DAGO) Number 8, dated 1974, awarded the Republic of Vietnam Gallantry Cross Unit Citation with Palm to Headquarters, United States Army Vietnam, for service in Vietnam for the period of 20 July 1965 to 28 March 1973.

b. DAGO Number 39, dated 1970, awarded 608th Transportation Company the Meritorious Unit Commendation for service in Vietnam from 1 November 1967 to 31 October 1968.

//NOTHING FOLLOWS//