

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 23 January 2025

DOCKET NUMBER: AR20240008340

APPLICANT REQUESTS: in effect, an upgrade of his under other than honorable conditions character of service.

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 he does not think he should have a punitive discharge. When he was sent to Thailand at age 17 in 1968, he had not learned a lot. There were "tougher ones" who always wanted to start a fight. They told the squad leader he started them. The applicant wouldn't do anything. If the older ones in the squad or the ones who know how to do the work would have explained, he could have done it.
3. On 12 February 1968, the applicant enlisted in the Regular Army for 3 years at the age of 17 with parental consent. After completing initial entry training, he was awarded military occupational specialty 51B (Carpenter) and assigned to duty in Thailand, where he served from on or about 7 July 1968 through 5 July 1969. The highest grade he held was private 2/E-2.
4. During his service in Thailand, the applicant received punishment under the provisions of Article 15, Uniform Code of Military Justice, on four occasions:
 - a. 13 September 1968 – disrespectful in language toward a First Sergeant with punishment consisting of forfeiture of \$15 pay for one month and restriction to the company area for 14 days.
 - b. 6 January 1969 – failing to go at the time prescribed to his appointed place of duty on two occasions with punishment consisting of an oral reprimand.

c. 6 March 1969 – willfully suffering his military identification card to be wrongfully disposed of by giving the card to a local Thai national with punishment consisting of reduction to pay grade E-1, forfeiture of \$58 dollars per month for 2 months, and restriction to the limits of the installation for 30 days.

d. 28 March 1969 – twice failing to obey a lawful order and breaking restriction with punishment consisting of forfeiture of \$27 and restriction to the company area for 14 days.

4. On 26 June 1969, an Army Medical Corps psychiatrist diagnosed the applicant with passive-aggressive personality disorder. The psychiatrist found the applicant met retention standards and was mentally responsible. The psychiatrist noted the applicant had committed a number of minor infractions that demonstrated his ability to lose his temper, further noting his work record was fair and he was weakly motivated to complete his last year of military service. The psychiatrist stated there was a possibility the applicant might adjust in a stateside assignment.

5. Following his service in Thailand, the applicant was assigned to duty with a unit at Fort Bragg, NC.

6. The applicant's record contains a partial copy of a Superior Court Order Revoking Probation, dated 22 December 1969, which shows the applicant had entered a plea of guilty to the crime of misdemeanor breaking and entering. He was sentenced to confinement for a term of 2 years, which sentence was suspended, and he was placed on probation for a period of 3 years. The order shows the applicant had willfully violated the terms and conditions of his probation judgment, and as a result the probation was revoked.

7. On 20 January 1970, the applicant's company commander recommended his discharge under the provisions of Army Regulation 635-206 (Discharge – Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence Without Leave or Desertion) on the basis of his 2-year conviction by a civil court.

a. The company commander noted the applicant was in the command for only 1 month before his arrest and first civil confinement. He had several problems stemming from his inability to adequately handle monetary problems, but he showed no indications that warranted rehabilitative action.

b. The company commander further noted that after the applicant's release from civil confinement, he returned to the unit, and 1 month later departed absent without leave (AWOL). While AWOL, he broke his probation and was returned to civil confinement.

c. The applicant had an appointment for psychiatric evaluation on 25 August 1969, but did not appear.

8. On 4 March 1970, the applicant acknowledged his commanding officer's recommendation to discharge him, and he acknowledged his rights, which he waived. He indicated he did not intend to appeal his civil conviction, and he acknowledged he could expect to encounter substantial prejudice in civilian life in the event a less than honorable discharge was issued to him. He further acknowledged an undesirable discharge under conditions other than honorable may make him ineligible for many or all benefits as a Veteran under both Federal and State laws.

9. On 23 March 1970, the general court-martial convening authority approved the applicant's discharge and directed he receive an Undesirable Discharge Certificate.

10. On 31 March 1970, the applicant was discharged in the lowest enlisted grade with service characterized as under other than honorable conditions. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged by reason of conviction by a civil court. He completed 1 year, 8 months, and 11 days of net active service, and he had 159 days of lost time. His decorations included the Vietnam Service Medal (based on his service in Thailand).

11. Army Regulation 635-206, then in effect, provided for the discharge of a Soldier convicted by civil authorities of an offense for which the maximum penalty under the Uniform Code of Military Justice is death or confinement in excess of 1 year. If the offense is not listed on the Table of Maximum Punishments, Manual for Courts-Martial, the maximum punishments authorized by the United States Code or the District of Columbia Code, whichever is lesser, will apply. United States Code provides for confinement in excess of 1 year for breaking and entering. Individuals discharged under these regulatory provisions would normally receive an Undesirable Discharge Certificate.

12. 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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 evidence of record shows the applicant plead guilty to the crime of misdemeanor breaking and entering. He was sentenced to confinement for a term of 2 years, which sentence was suspended, and he was placed on probation for a period of 3 years. The order shows the applicant had willfully violated the terms and conditions of his probation judgment, and as a result the probation was revoked. The command subsequently administratively separated the applicant based on his civil conviction. The Board determined there was no error or injustice in the characterization of service he received at the time of his discharge.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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.

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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 635-200 (Personnel Separations – Enlisted Personnel), then in effect, set 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.

3. Army Regulation 635-206, then in effect, provided for the discharge of a Soldier convicted by civil authorities of an offense for which the maximum penalty under the Uniform Code of Military Justice is death or confinement in excess of 1 year. If the offense is not listed on the Table of Maximum Punishments, Manual for Courts-Martial, the maximum punishments authorized by the United States Code or the District of Columbia Code, whichever is lesser, will apply. United States Code provides for confinement in excess of 1 year for breaking and entering. Individuals discharged under these regulatory provisions would normally receive an Undesirable Discharge Certificate.

4. 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/NR) 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.

//NOTHING FOLLOWS//