

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2025

DOCKET NUMBER: AR20240009862

APPLICANT REQUESTS:

- an upgrade of his under conditions other than honorable discharge
- a personal appearance before the Board

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 the circumstances around his discharge were not reflected properly and his discharge under other than honorable conditions does not accurately reflect his time served, or the matter in which he was discharged. While stationed in Fort Sam Houston TX, he was serving as a Crew Chief on a medivac helicopter. During an assignment, he was told they were being sent out to recover a person that was injured from an accident. While on this alleged assignment, they were directed by the pilot to collect bails that were dropped off at another location. Upon returning to base, he learned of the contents of the bails to be marijuana. He expressed that he was unwilling to participate in any future flights of this context. Two days later, he was approached by the associated pilot regarding an early discharge. An additional two days later, he went into the commander's office to sign his early discharge paperwork. It was not until he returned home that he received his discharge paperwork in the mail and learned of the type of discharge he was given.

3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 28 January 1970.

b. He received nonjudicial punishment (NJP) on 5 May 1970, for on or about 1 May 1970, did without proper authority, absent himself from his appointed place of duty. He was reduced to private/E-1 (suspended for 60 days).

c. He served in Vietnam from 10 August 1970 until 9 August 1971. While assigned in Vietnam he received NJP:

- On 5 December 1970, for leaving his place of duty (ammunition bunker) without proper authority; he was reduced to private/E-1
- On 28 June 1971, for on or about 3 April 1971, were derelict in the performance of his duties in that he negligently failed to return to the Motor Pool for overnight security, as it was his duty to do; he was reduced to private/E-2 (suspended for two months); he appealed the punishment
- On 27 July 1971, his appeal to the next higher commander was denied

d. He received NJP on 7 October 1971, for on or about 15 September 1971, without authority absent himself from his unit and did remain so absent until on or about 29 September 1971.

e. On 13 March 1972, at Fort Sam Houston, TX, the applicant was found guilty by a summary court-martial of the charge of insubordinate conduct toward warrant officer, non-commissioned officer, or petty officer and its specifications of on or about 22 February 1972

- Was disrespectful in language toward Chief Warrant Officer J.L.D., by saying to him, "You are a fat slob and too lazy to work," or words to that effect
- Having received a lawful order from Staff Sergeant (SSG) C.F.F., to work with Specialist Five C.L.L. in the motor pool, willfully disobey the same
- Was disrespectful in language toward SSG C.F.F., by saying to him, "Get off my back, I am tired of you and all these other...me," or word to that effect
- The court sentenced him to forfeiture of \$150.00 per month for one month and reduction to the grade of private first class
- The convening authority approved and ordered it executed on 14 March 1972

f. On 22 March 1972, he underwent a mental status evaluation and was found to have no significant mental illness. He had the mental capacity to understand and participate in board proceedings.

g. On 5 April 1972, his commander notified him of his intent to separate him under the provisions (UP) of Army Regulation (AR) 635-212 (Discharge Unfitness and Unsuitability), paragraph 6a (1) by reason of unfitness. He acknowledged on the same day.

h. His commander recommended approval on 5 April 1972.

i. On 11 April 1972, he was advised by consulting counsel of the basis for the contemplated action to separate him for unfitness UP of AR 635-212 and its effects; of the rights available to him; and the effects of any action by him waiving his rights.

- He waived consideration of his case by a board of officers
- He waived representation by appointed counsel

j. On 19 April 1972, the separation authority approved discharge with an Undesirable Discharge Certificate, UP of AR 635-212 with a separation program number (SPN) of 28B.

k. He was discharged on 21 April 1972, under conditions other than honorable UP of AR 635-212 with a SPN of 28B. He completed 2 years, 2 months, and 6 days of service this period. He had 18 days of lost time from 2 August 1970 – 5 August 1970 and 15 September 1971 – 28 September 1971. He was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with 60 Device

4. 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.

5. 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 thorough review of the application, supporting documents, and the applicant's military record, the Board determined that relief was not warranted in this case. The Board carefully considered the applicant's request for an upgrade of his discharge characterization from "under conditions other than honorable" to a general or honorable discharge, and conducted a comprehensive review in accordance with published Department of Defense guidelines for liberal consideration of discharge upgrade requests. The applicant's record shows a consistent pattern of misconduct, including multiple nonjudicial punishments and a conviction at a summary court-martial. The Board also notes the applicant failed to submit any post service accomplishments or letters of reference for clemency. Therefore, the Board determined that these violations, which spanned several years of his military service, did not warrant an upgrade to this character of service and denied relief.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

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):

The applicant's records contain sufficient evidence to support additional awards not shown on his DD Form 214. His DD Form 214 for the period ending 21 April 1972, will be administratively corrected without Board action to show award of the:

- [DELETE]: Vietnam Service Medal
- [ADD the following]:
 - Vietnam Service Medal with two bronze service stars
 - Meritorious Unit Commendation
 - Republic of Vietnam Gallantry Cross with Palm Unit Citation
 - Republic of Vietnam Civil Actions Honor Medal First Class Unit Citation

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) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. AR 635-212 (Discharge Unfitness and Unsuitability), in effect at the time, set forth the basic authority for the elimination of enlisted personnel for unfitness and unsuitability. Paragraph 6a of the regulation provided that an individual was subject to separation for unfitness when one or more of the following conditions existed: (1) because of frequent incidents of a discreditable nature with civil or military authorities; (2) sexual perversion including but not limited to lewd and lascivious acts, indecent exposure, indecent acts with or assault on a child; (3) drug addiction or the

unauthorized use or possession of habit-forming drugs or marijuana; (4) an established pattern of shirking; (5) an established pattern of dishonorable failure to pay just debts; and (6) an established pattern showing dishonorable failure to contribute adequate support to dependents (including failure to comply with orders, decrees or judgments). When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.

4. Department of the Army General Order (DAGO) 8, 1974 awarded the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, United States Military Assistance Command for service from 8 February 1962 to 28 March 1973.

5. DAGO 32, 1973 awarded Republic of Vietnam Civil Actions Honor Medal First Class Unit Citation to the 611th Transportation Company for service from 1 January 1971 – 31 December 1971.

6. DAGO 32, 1973 awarded Meritorious Unit Commendation to the 611th Transportation Company for service from 1 August 1971 – 15 September 1972.

//NOTHING FOLLOWS//