

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 September 2025

DOCKET NUMBER: AR20240011589

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

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

- DD Form 149 (Application for Correction of Military Record)
- Six character reference letters that collectively attest to his faith, charitable work in the community, exceptional character, trustworthiness, and dependability

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. His DD Form 149 annotates post-traumatic stress disorder (PTSD) and other mental health issues are related to his request.
3. A review of the applicant's service record reflects the following:
 - a. On 14 August 1969, he enlisted in the Regular Army.
 - b. On 12 January 1970, he began service in the Republic of Vietnam.
 - c. General Orders Number 9, issued by Headquarters, 159th Engineer Group, on 10 March 1970, awarded him the Purple Heart for wounds received in connection with military operations against a hostile force, on 25 February 1970.
 - d. He accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 14 April 1970, for being reported as absent without leave (AWOL), on or about 11 April 1970. His punishment included reduction to E-2, and forfeiture of \$22.00 per month for a one month.

e. On 24 April 1970, he accepted NJP under Article 15 of the UCMJ, for being reported as AWOL on or about 19 April 1970, until on or about 20 April 1970; and for disobeying a lawful regulation, on or about 19 April 1970. His punishment included forfeiture of \$47.00 per month for two months, and 25 days extra duty.

f. Court-martial charges were preferred against him for violations of the UCMJ; however, the relevant DD Form 458 (Charge Sheet) is not available for review.

g. Before a general court-martial at Long Binh Post, Republic of Vietnam, on 26 September 1970, he was found guilty of:

- one specification of committing an assault upon Specialist Four S_ by cutting him with a straight razor, on or about 11 July 1970
- one specification of committing an assault upon Specialist Five S_ by cutting him with a straight razor, on or about 11 July 1970

h. The court sentenced him to forfeiture of \$65.00 per month for one year, confinement at hard labor for one year, discharge from the service with a bad conduct discharge, and reduction to E-1. Subsequently, the sentence was approved, and the record of trial was forwarded for appellate review.

i. He departed the Republic of Vietnam, on or about 3 November 1970.

j. General Court-Martial Order Number 271, issued by Headquarters, U.S. Disciplinary Barracks, Fort Leavenworth, KS, on 9 March 1972, noted his sentence had been affirmed and ordered the bad conduct discharge duly executed.

k. The applicant was discharged on 17 March 1972. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 11-1b. His service was characterized as under conditions other than honorable. He completed 1 year, 7 months, and 27 days of net active service with 345 days of time lost.

4. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency 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. Upon review of the character reference letters attesting that the applicant has demonstrated exceptional character on multiple instances since leaving the service, and his service in Vietnam to include award of the Purple Heart, the Board determined relief was appropriate to amend his characterization of service to under honorable conditions (general).

2. Prior to closing the discussion, the Board noted and concurred with the administrative note below to more accurately depict the military service of the applicant.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 17 March 1972 to show his characterization of service as under honorable conditions (general).


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):

1. A review of the applicant's record shows his DD Form 214, for the period ending 17 March 1972, is missing important entries that affect recognition for his acts of heroism. As a result, amend the DD Form 214 by adding the following entries in item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized):

- Vietnam Service Medal with three bronze service stars
- Republic of Vietnam Campaign Medal with 60 Device
- Republic of Vietnam Gallantry Cross with Palm
- Purple Heart
- 1 Overseas Service Bars
- Marksman (Rifle M-16) Badge
- Sharpshooter (Rifle M-14) Badge

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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 635-200 sets 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.
 - c. Chapter 11, paragraph 11-1 provided that a member would be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.
4. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate.

Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

6. 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, Boards 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.

//NOTHING FOLLOWS//