

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2025

DOCKET NUMBER: AR20240011859

APPLICANT REQUESTS: in effect, upgrade of his undesirable discharge to general, under honorable conditions or honorable.

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

- DD Form 149 (Application for Correction of Military Record), 24 July 2024
- DD Form 214, (Armed Forces of the United States Report of Transfer or Discharge), 9 July 1970
- 28 pages of service records

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:

a. He enlisted and was shipped to Germany. His unit was short personnel, and they spent all their time getting ready for inspections at the motor pool, so he reenlisted for service in Vietnam.

b. He served in Vietnam from July 1968 to July 1969 and worked in the Battalion Tactical Operations Center of his unit. He respected his noncommissioned officers and officers, and they respected him. During his Vietnam service he was off-duty when his unit came under an alert. He and four other Soldiers were in the pit when his commanding officer gave him instruction to fire the 60 caliber machine gun. He did not know how to fire it so his commanding officer said they would all be getting nonjudicial punishment for sleeping while on guard. None of them were sleeping so he took the punishment on everyone's behalf. He was blamed for something he didn't do.

c. He had excellent conduct and efficiency ratings from when he was in the Army until he left Vietnam. When he returned stateside to Fort Riley, things were as bad as

they were when in Germany, so he requested to be sent back to Vietnam. His request was denied because of a shortage in his military occupational specialty.

d. He went absent without leave (AWOL) and was brought back to his unit. He was given a chance to return to Vietnam but decided to get out of the Army with the discharge. Under the Carter program, and Executive Order Number 11967 and Proclamation 4483, over 100,000 draft dodgers were pardoned. He got hit harder than them. He would be grateful if the Army or the Veterans Administration could help him out with an upgrade.

3. A review of the applicant's service records show the following:

a. On 31 July 1967, he enlisted in the Regular Army for 3 years.

b. On 1 May 1968, he was honorably discharged in order to reenlist. He completed 9 months of net service this period. His rank was private first class (PFC).

c. On 2 May 1968, he reenlisted for 3 years. He was promoted to specialist 4 on 18 November 1968.

d. On 16 July 1968, he deployed to Vietnam.

e. On 21 June 1969, he accepted nonjudicial punishment (NJP) for falling asleep while on bunker guard. He was reduced to PFC and forfeited some pay for 1 month.

f. On 15 July 1969, he returned to the continental United States.

g. On 10 June 1970, he accepted NJP for being AWOL from special processing detachment, Fort

i. On an unspecified date, he was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment, the possible effects of an under other than honorable conditions discharge, and the procedures and rights available to him. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He submitted a statement in his own behalf.

j. On an undated statement submitted through his defense counsel, the applicant noted his two AWOLs were caused by his inability to adjust to stateside duty after 18 months of overseas duty. He was apprehended at the end of both AWOL periods.

k. On 3 June 1970, his commanding officer recommended approval of his request for discharge with an undesirable discharge.

l. On 16 June 1970, the staff judge advocate (SJA) recommended approval of his request. The SJA found the requirements of Army Regulation 635-200, Chapter 10, had been fulfilled and sufficient to warrant separation with an undesirable discharge.

m. On 17 June 1970, the separation authority approved his separation and directed issuance of an Undesirable Discharge Certificate.

n. His DA Form 20 (Enlisted Qualification Record) shows he was AWOL for the periods:

- 8 September 1969 to 24 September 1969, 17 days
- 3 October 1969 to 6 October 1969, 4 days
- 7 October 1969 to 29 April 1970, 205 days
- 8 June 1970 to 8 June 1970, 1 day
- 25 June 1970 to 28 June 1970, 4 days
- 29 June 1970 to 8 July 1970, 10 days (confinement)

o. On 9 July 1970, he was discharged. His DD Form 214 reflects he was discharged under the provisions of Army Regulation 635-200, chapter 10, for the good of the service, with a character of service of under other than honorable conditions. It further reflects he completed 1 year, 6 months, and 9 days of net service this period. His rank was private/E-1.

4. On 23 September 1971, the Army Discharge Review Board denied his request for an upgrade of his discharge, finding he was properly discharged.

5. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination 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 applicant was pending court-martial charges for being absent without leave from 8 September 1969 to 25 September 1969 and from 5 October 1969 to 30 April 1970, 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. The Board noted the applicant's length of absence and based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust and denied relief.

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:

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.

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), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.
 - a. Chapter 3-7 provided:
 - (1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.
 - (2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

c. An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

3. 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//