

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 December 2023

DOCKET NUMBER: AR20220011201

APPLICANT REQUESTS: upgrade of his under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)

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 that the General sent him to his Quarters to do his yard work on base. The Company medic put him in for having a foot injury to get him out of the weekend duty, and the General was upset and kicked him out because he didn't do his yard work at his quarters.
3. Review of the applicant's service records shows:
 - a. He enlisted in the Regular Army on 14 September 1966. He held military occupational specialty 64C, Truck Driver.
 - b. He served in Germany from 4 December 1966 to 15 April 1967 and in Vietnam from 3 June 1967 to 19 May 1968.
 - c. After leaving Vietnam, he was assigned to the U.S. Army Aviation Materiel Command, then in St. Louis, MO, around 11 July 1967.

d. On 5 August 1968, he accepted nonjudicial punishment under Article 15 for being absent without leave from 29 July 1968 to 2 August 1968. His punishment included a suspended reduction to specialist four (SP4)/E-4 (until 6 November 1968).

e. On 18 September 1968, the command requested the applicant undergo a psychiatric evaluation. The request for exam states:

(1) The applicant indicated he had domestic problems and desired to apply for a compassionate reassignment closer to his home. He was advised of the procedure and needed documentation. He was granted leave from 15 August to 23 August 1968 to obtain necessary documents. He was also granted other leave and passes but went AWOL on 2 August 1968 and received an Article 15 upon return. He was reassigned from his position as driver for the commanding general to driver for the Transportation Division. He demonstrated apathy to the job and his driver's license was revoked. He was again reassigned but still displayed a lack of interest, and desired to be discharged. Rehabilitative efforts and counseling failed as he consistently failed or refused to obtain necessary documents for his desired requests.

(2) At some point after returning from leave, he obtained a fake sick call slip placing himself on quarters. He had entered false information on the sick call slip. He is pending court-martial charges.

f. The applicant's psychiatric evaluation, dated 19 September 1968, shows he was diagnosed with passive-aggressive personality disorder. He stated that he was not motivated and would not perform military duties. He had a sick child and he also had problems with AWOL and alteration of a sick call slip. The medical provider cleared him for administrative action deemed appropriate by his command.

g. In September 1968, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) is not available for review.

h. The complete facts and circumstances surrounding his discharge are not available for review. However, his record contains:

(1) Special Order Number 173 and 175, issued by the U.S. Army Aviation Materiel Command on 23 September 1968 reducing him to the lowest enlisted grade of private and ordering his discharge for the good of the service, under Army Regulation (AR) 635-200 (Personnel Separations) with an under other than honorable conditions discharge.

(2) DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) that shows he was discharged on 25 September 1968, in the lowest enlisted

grade under the provisions of AR 635-200, Chapter 10, Separation Code 246, in lieu of trial by court-martial, and Reentry Code 4, and his service was characterized as under other than honorable conditions. His DD Form 214 shows he completed 2 years and 13 days of active service, with 5 days of excess leave and with lost time from 28 July to 2 August 1968, and 35 days of excess leave. He was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal
- Expert Marksmanship Badge with Rifle Bar

i. There is no indication he petitioned the Army Discharge Review Board for a review of his discharge within that board's 15-year statute of limitations.

4. By regulation (AR 635-200), Chapter 10, a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. A discharge under other than honorable conditions is normally considered appropriate.

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.

6. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions characterization of service.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 14 September 1966.
- On 5 August 1968, he accepted nonjudicial punishment under Article 15 for being absent without leave from 29 July 1968 to 2 August 1968.
- In September 1968, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) is not available for review. The complete facts and circumstances surrounding his discharge are not available for review.
- DD Form 214 shows he was discharged on 25 September 1968, under the provisions of AR 635-200, Chapter 10, Separation Code 246, in lieu of trial by court-

martial, with Reentry Code 4, and his service was characterized as under other than honorable conditions.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 293, his ABCMR Record of Proceedings (ROP), and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states, "the General sent him to his Quarters to do his yard work on base. The Company medic put him in for having a foot injury to get him out of the weekend duty, and the General was upset and kicked him out because he didn't do his yard work at his quarters".

e. Although the complete facts and circumstances surrounding his discharge are not available for review, on 18 September 1968, command requested the applicant undergo a separation psychiatric evaluation. The request for examination states, the applicant reported having domestic problems and desired to apply for a compassionate reassignment closer to his home. He was advised of the procedure and needed documentation. He was granted leave from 15 August to 23 August 1968 to obtain necessary documents. He was also granted other leave and passes but went AWOL on 2 August 1968 and consistently failed or refused to obtain necessary documents. In addition, the applicant applied for additional pay benefits, based on marriage, but failed to provide proof of marriage. When he finally presented a marriage certificate, it was in his handwriting and lacking in authenticity, with the date differing from what he had previously stated. In addition, on 10 September 1968, after returning from leave the applicant obtained a sick call slip that he altered, placing himself on quarters for two days. In checking with the medical provider, it was discovered he had entered false information on the sick call slip.

f. Due to the period of service, no active-duty electronic medical records were available for review. However, the applicant submitted a psychiatric evaluation, dated 19 September 1968, indicating he was diagnosed with passive-aggressive personality disorder. He stated during the evaluation he was not motivated and would not perform military duties. The medical provider cleared him for any administrative action deemed appropriate by his command. The applicant was described as mentally responsible, able to distinguish right from wrong and adhere to the right, as well as having the mental capacity to understand and participate in board proceedings.

g. The applicant is not service connected, and no VA electronic medical records were available for review. In addition, the applicant did not submit any medical documentation post-military service indicating any BH condition.

h. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral condition that mitigates his misconduct.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant did not assert a mitigating behavioral health condition. However, the record indicates a psychiatric evaluation, dated 19 September 1968, diagnosing him with passive-aggressive personality disorder.

(2) Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant is not asserting a mitigating BH condition. There is insufficient evidence of a mitigating in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant was diagnosed with passive-aggressive personality disorder, this provides context but does not offer mitigation for his misconduct, since the applicant made a conscious decision to go AWOL, provide inaccurate information, and falsify documents, despite his ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for liberal consideration and clemency in determining discharge upgrade requests. The Board considered the misconduct and whether there was sufficient evidence of mitigating circumstances to weigh in favor of clemency determination. The Board agreed that although the applicant had a condition diagnosed during his period of service, it was not a mitigating factor toward his misconduct. After due consideration of the request, and, in the absence of post-service achievements or letters of reference to weigh in support of a clemency determination, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined 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 Army Board for Correction of Military Records (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) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of

guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a states that 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. Paragraph 3-7b states that 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. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

4. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

5. 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/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. 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. 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.

6. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//