

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 July 2023

DOCKET NUMBER: AR20230000117

APPLICANT REQUESTS: in effect, upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

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

- DD Form 293 (Application for the review of Discharge)
- Self-Authored Statement
- DD Form 214 (Armed Forces of the United States Report of transfer or Discharge), for period ending 28 October 1969

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 his discharge was already upgraded in 1977 by President Carter. He asks why would (we) wait over 20 years to come up with this? He was told he has post-traumatic stress disorder (PTSD) from being in battle and other things. In a self-authored statement, he states that he was given an undesirable discharge in 1977. He states that discharge was upgraded to honorable. When he found out the discharge had been upgraded, he registered with the Department of Veterans Affairs (VA) and started receiving benefits. If he had known in 1977, he was eligible for benefits he would be in a better position in life. He spent eight months in the jungle of Vietnam and experienced firsthand killing and exposure to the elements.

3. The applicant provides a DD Form 214 that shows the applicant was honorably discharged on 28 October 1969.

4. The applicant enlisted in the Regular Army on 30 August 1968 for 3 years. His military occupational specialty (MOS) was 11B (Light Weapons Infantryman).

5. The applicant accepted nonjudicial punishment (NJP) on 19 April 1969 under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for without authority, absenting himself from his unit (Overseas Replacement Station) and did remain so absent until on or about 18 April 1969. His punishment consisted of reduction to private (PVT)/E-2, forfeiture of \$26.00, and restriction.
6. The applicant served in Vietnam from 26 April 1969 through 4 May 1970.
7. The applicant was honorably discharged on 28 October 1969. He was issued a DD Form 214 for this period of honorable service that shows he completed 1 year, 1 month, and 3 days of net active service this period. He was awarded or authorized the National Defense Service Medal, Vietnam Campaign Medal, and the Combat Infantryman Badge.
8. The applicant reenlisted in the Regular Army on 29 October 1969, for 3 years
9. The applicant was reported as absent without leave (AWOL) on 6 December 1969 and dropped from the rolls as a deserter on 4 January 1970. He surrendered to military authorities on 7 November 1973 and was returned to military control on the same date.
10. Court marital charges were preferred against the applicant on 8 November 1973 for violations under the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 6 December 1969 and did remain so absent in desertion until on or about 7 November 1973.
11. A Report of Medical History, dated 9 November 1973, shows in item 25 (Physician's summary and elaboration) ailments to include, trouble sleeping and excessive worry. The Report of Medical examination shows he was found medically qualified for separation.
12. The applicant consulted with legal counsel on 12 November 1973 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him.
  - a. He voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the VA, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

b. He provided a statement in his own behalf in which he states, in effect, he has no convictions and considers himself a Christian, he joined the Army on his 18th birthday after graduating from high school. He was assigned to Vietnam and given a 15 day leave at home after he was held over at advanced individual training after he fractured his ankle. He took the liberty of taking 26 days extra before he went to Vietnam to either get killed in action or badly deformed. For this he received an Article 15. He proceeded to Vietnam where he was an M-60 gunner. He got to the point where he was beginning to enjoy killing and all kinds of freakish things were beginning to happen to him, and nothing was being done about it. He may have been hit by lightning and he saw his life before his eyes. He thought he was dead and paralyzed his left side for the rest of the night. He reenlisted to get out of the field. He states he had two MOSs. He was given leave and a discharge which he thought was a discharge that meant he was out of the service. He went home worked and got married and the Federal Bureau of Investigation contacted him, and he turned himself in at Fort Sill, OK. No one in the Army had tried to contact him and tell him he was AWOL. He wasn't trying to get out of the Army he was trying to get out of the field. He just went all the way crazy.

13. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 29 November 1973. He directed the applicant be issued a DD Form 258A (Undesirable Discharge Certificate) and reduced to private/E-1.

14. The applicant was discharged on 3 December 1973. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, with Separation Program Designator (SPD) code 246 [for the good of the service]. His service was characterized as UOTHC with Reenlistment Code RE-4. He completed 11 days of net active service this period, he had 1485 days of lost time. He was awarded or authorized the National Defense Service Medal, Vietnam Campaign Medal, Combat Infantryman Badge, and the Republic of Vietnam Campaign Medal with 1960 device.

15. Chapter 10, provided that a member who committed an offense or offenses under the UCMJ, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred.

16. On 21 August 1981, the Army Discharge Review Board (ADRB) determined the applicant was properly discharged and denied his request for a change in the type and nature of his discharge.

17. In reference to benefits, decisions of the VA are solely within the jurisdiction of that agency. While the Army Board for Correction of Military Record can correct errors in an individual's military records it has no authority to direct or influence decisions by other agencies.

18. 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.

19. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade his under other than honorable conditions (UOTHC) discharge to honorable. He contends he had PTSD that mitigated his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted into the Army on 30 August 1968; 2) The applicant served in Vietnam from 26 April 1969-4 May 1970; 3) Court marital charges were preferred against the applicant on 8 November 1973 for being AWOL from 6 December 1969-7 November 1973; 4) The applicant was discharged on 3 December 1973, Chapter 10. His service was characterized UOTHC.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and medical records. The VA's Joint Legacy Viewer (JLV) was also reviewed.

d. The applicant asserts he was experiencing PTSD as a result of his deployment to Vietnam. A Report of Medical History, dated 9 November 1973, shows the applicant was reporting trouble sleeping and excessive worry. A review of JLV shows the applicant has been diagnosed service-connected PTSD since 2019.

e. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant had a mitigating behavioral health condition, PTSD.

Kurta Questions

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with service-connected PTSD by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reported he experienced PTSD while on active service and he receives service-connected disability from the VA for PTSD

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is a nexus between PTSD and avoidant behavior such as going AWOL. Therefore, the applicant's misconduct is mitigatable, and it is recommended his discharge be upgraded.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents and the evidence found within the military record, the Board determined that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board considered the frequency and nature of the misconduct, the reason for separation and his prior period of honorable service. The Board found sufficient evidence of in-service mitigating factors for the misconduct to weigh in favor of a clemency determination. Based on the preponderance of the documentation available for review, the Board determined that an upgrade to his characterization of service to under honorable conditions was warranted.

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 sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 dated 3 December 1973 showing in:

- block 13a (Character of Service): Under Honorable Conditions (general)
- block 30 (Remarks): Prior Period of Honorable Service 19680830 – 19691028

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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.

ADMINISTRATIVE NOTE(S): Not Applicable

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, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation (AR) 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states 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 a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10, provided that a member who committed an offense or offenses under the UCMJ, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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.

5. 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; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are 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 misconduct that led to the discharge.

6. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//