

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 August 2023

DOCKET NUMBER: AR20230000393

APPLICANT REQUESTS:

a. Correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show the following awards:

- Purple Heart
- Parachutist Badge-Basic
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar
- Republic of Vietnam Campaign Medal with Device (1960)
- four bronze service stars for his previously awarded Vietnam Service Medal
- Expert Marksmanship Qualification Badge with Auto Rifle Bar instead of the Expert Rifle
- Bronze Star Medal with "V" device instead of Bronze Star Medal

b. A change in his character of service from under honorable conditions to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 22 September 2022
- DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge)
- National Personnel Records Center letter, 10 March 2015
- VA Form 21-22 (Appointment of Veterans Service Organization as Claimant's Representative), 22 September 2022

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 he was awarded various awards and badges that are not posted or incorrectly posted on his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge).

a. He was assigned to the 173rd Combat Engineer Company, 173rd Airborne Brigade, in Vietnam. He was 19 years old and awarded the military occupational specialty (MOS) 12B2P (Combat Engineer Parachutist). While on combat missions he would construct and fix floating bridges, clear barriers with explosives, detect and avoid mines and other environmental hazards.

b. After being wounded, he was transferred to the U.S. and diagnosed with combat post-traumatic stress disorder (PTSD) with hypertension, anxiety, and depression. During Independence Day (4th of July) he has experienced flashbacks due to combat. Therapy has helped him to live and manage a normal life. (See full statement).

3. The applicant's service records were signed out to another agency and were not available for review. The only documents available were the documents provided by the applicant. These documents are sufficient for the Board to conduct a fair and impartial review of this case.

4. The applicant's records contain sufficient evidence to support additional awards not shown on his DD Form 214. His DD Form 214 will be administratively corrected without Board action by adding:

- four bronze service stars to his previously issued Vietnam Service Medal
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

5. On 3 July 1969, the applicant enlisted in the Regular Army. He held MOS 12B (Combat Engineer).

6. His DD Form 214 shows he was released from active duty on 19 April 1973 and transferred to the U.S. Army Reserve with his service characterized as under honorable conditions. His DD Form 214 shows:

a. The reason and authority for his separation as "Sec VI Chap 2 AR 635-200 SPN 201."

b. His MOS contains the additional skill indicator "P," which indicates he attended the Airborne Course and was a qualified parachutist.

c. He completed 3 years of net service this period.

d. He was awarded or authorized the National Defense Service Medal, Vietnam Service Medal, Republic of Vietnam Campaign Medal with Device (1960), Bronze Star Medal, and the Expert Marksmanship Qualification Badge with Rifle Bar.

e. He served in Vietnam from 23 September 1969 to 22 September 1970.

f. He had 291 lost days under 10 USC 972: from 26 October 1970 to 4 March 1971; 20 May 1971 to 21 May 1971; 21 January 1972 to 20 February 1972; 21 September 1972 to 11 January 1973; and 23 January 1973 to 7 February 1973.

7. The applicant's name does not appear on the Vietnam Casualty Roster.

8. The applicant provides a letter from the National Personnel Records Center (NPRC), dated 10 March 2015.

a. The letter from NPRC states they authorized the shipment of the following awards to the applicant:

- Bronze Star Medal
- Purple Heart
- National Defense Service Medal
- Vietnam Service Medal with 4 bronze service stars
- Republic of Vietnam Campaign Medal with Device (1960)
- "Expert [Marksmanship Qualification] Badge with Auto[matic] Rifle Bar"
- "Sharpshooter [Marksmanship Qualification] Badge with Rifle Bar"
- Parachutist Badge - Basic

b. The letter from NPRC also states, "While NPRC authorizes shipment of awards, the Department of the Army maintains jurisdiction for issuing the actual awards."

9. There is no indication that the applicant requested an upgrade of his discharge from the Army Discharge Review Board within its 15-year statute of limitations.

10. 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.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting changes to his DD214 and a change to his character of service from under honorable conditions to honorable. He reports experiencing PTSD, anxiety, and depression as a result of his deployment to Vietnam.

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's service records are not available for review. However, the applicant did provide some records; 2) The applicant enlisted in the Regular Army on 3 July 1969; 3) He served in Vietnam from 23 September 1969-22 September 1970; 3) The records the applicant provides are void of the specific facts and circumstances surrounding his discharge processing. However, he was discharged on 19 April 1973, under the provisions of Army Regulation 635-200 (Personnel Separations) with the issuance of an under other than honorable certificate.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also reviewed.

d. The applicant asserts he was experiencing PTSD, anxiety, and depression as a result of his deployment to Vietnam. There is insufficient evidence the applicant reported behavioral health symptoms while on active service. A review of JLV provided evidence the applicant has been seen and treated for PTSD related to his deployment to Vietnam. He also receives service-connected disability for PTSD (70%) since 2013.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant was experiencing PTSD while on active service. However, there is an insufficient information concerning the nature of events surrounding the applicant's discharge to provide an appropriate opinion on possible the mitigation of the applicant's discharge status at this time.

Kurta Questions

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant was experiencing PTSD while on active service. However, there is an insufficient information concerning the nature of events surrounding the applicant's discharge to provide an appropriate opinion on possible the mitigation of the applicant's discharge status at this time.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found partial relief is warranted.
2. The Board found the applicant's under honorable conditions (general) character of service was likely related to the significant amount of lost time documented on his DD Form 214. A majority of the Board noted, however, that the applicant was not discharged for misconduct, rather he was allowed to complete his active duty service obligation and was transferred to the U.S. Army Reserve to complete his statutory service obligation. Although the member in the minority found no basis for clemency in this case, a majority of the Board found the evidence cited above sufficient as a basis for clemency. Based on a preponderance of the evidence, a majority of the Board determined the applicant's character of service should be changed to honorable.
3. The Board found sufficient evidence to confirm the applicant met the criteria for the Parachutist Badge (Basic). The Board determined this badge should be added to his DD Form 214.
4. The Board found insufficient evidence to confirm the applicant met the criteria for or was awarded the following:
 - Purple Heart
 - Sharpshooter Marksmanship Qualification Badge with Rifle Bar
 - Expert Marksmanship Qualification Badge with Auto Rifle Bar instead of the Expert Rifle
 - Bronze Star Medal with "V" device

The applicant is advised that he should submit a new application requesting addition of these awards to his DD Form 214 if he is able to provide a copy of his service record or when his service record becomes available at NPRC.

5. The Board noted the Republic of Vietnam Campaign Medal with Device (1960) is listed on the applicant's DD Form 214 as "Vietnam Campaign Medal" and determined no corrective action is required for this medal. However, for the sake of clarity, this will be addressed in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is 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 reissuing his DD Form 214 to show his character of service as honorable, adding the Parachutist Badge (Basic), and incorporating the corrections described in Administrative Note(s) below.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

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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):

The evidence supports administrative correction of the applicant's DD Form 214 as follows:

- Delete – Vietnam Service Medal and Vietnam Campaign Medal
- Add – Vietnam Service Medal with four bronze service stars, Republic of Vietnam Campaign Medal with Device (1960), Republic of Vietnam Gallantry Cross with Palm 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 600-8-22 prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. Army Regulation 600-8-22 (Military Awards) states the Purple Heart is awarded to any member who, while serving under competent authority in any capacity with one of the Army Services, has been wounded or killed or who has died or may hereafter die after being wounded:

(1) In any action against an enemy of the United States;

(2) In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States are or have been engaged;

(3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party;

(4) As a result of an act of any such enemy of opposing armed forces;

(5) As a result of an act of any hostile foreign force;

(6) After 23 March 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of the Army, or jointly by the Secretaries of the separate

armed services concerned if persons from more than one service are wounded in the attack;

(7) After 28 March 1973, as a result of military operations while serving outside the territory of the United States as part of a peacekeeping force; or

(8) Members killed or wounded by friendly fire.

(9) Substantiating evidence must be provided to verify that the wound was the result of hostile action, the wound must have required treatment by a medical officer, and the medical treatment must have been made a matter of official record.

b. The basic Parachutist Badge requires that an individual must have satisfactorily completed the prescribed proficiency tests while assigned or attached to an airborne unit or the Airborne Department of the Infantry School or have participated in at least one combat parachute jump.

c. The qualification badge is awarded to indicate the degree – Expert, Sharpshooter, and Marksman -- in which an individual has qualified in a prescribed record course. An appropriate bar is furnished to denote each weapon with which the individual has qualified.

d. A bronze service star is worn on the appropriate service ribbon, to include the Vietnam Service Medal, for each credited campaign.

e. The Bronze Star Medal is awarded in time of war for heroism and for meritorious achievement or service, not involving participation in aerial flight, in connection with military operations against an armed enemy, or while engaged in military operations involving conflict with an opposing armed force in which the United States is not a belligerent party. As with all personal decorations, formal recommendations, approval through the chain of command, and announcement in orders are required.

f. The bronze “V” device indicates acts of heroism involving conflict with an armed enemy and authorizes the device in conjunction with awards of the Army Commendation Medal, the Air Medal, and the Bronze Star Medal. Although more than one award of the Army Commendation Medal, the Air Medal, or the Bronze Star Medal may be made for heroism to the same person, only one “V” device may be worn on awards of these medals.

g. Department of the Army General Orders Number 8, dated 1974, announced award of the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, U.S. Military Assistance Command, and its subordinate units during the

period 8 February 1962 to 28 March 1973 and to Headquarters, U.S. Army Vietnam, and its subordinate units during the period 20 July 1965 to 28 March 1973.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 2 provides for the release from active duty of Soldiers who have completed their contractual active duty obligation.

a. The honorable character or service 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. An under honorable conditions (general) character of service is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable character of service.

4. 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.

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; 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.

6. 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.

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, 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.

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.

7. 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//