

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 October 2023

DOCKET NUMBER: AR20230002825

APPLICANT REQUESTS: in effect, upgrade his undesirable discharge under other than honorable conditions.

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

- DD Form 149 (Application for Correction of Military Record)
- Letter of support
- Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim)
- VA medical records

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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, in effect, after turning 17, his mother signed papers so he could join the Army.

a. While the applicant was in basic combat training (BCT), he received news that his cousin had been killed in Vietnam. As he was saying his goodbyes, he reached into his cousin's casket to pat him on the arm; he later learned an enemy mine had caused his cousin's death. Not long after that, the applicant got orders for Vietnam.

b. On his arrival in Vietnam, they first assigned the applicant to the 1st Infantry Division, but later moved him to the 19th Light Equipment Maintenance (LEM) Company. At least once a week, the enemy would attack the LEM company with mortars; a few months later, the enemy killed one of the applicant's friends. The applicant adds that his oldest son was also born while he was in Vietnam.

c. The applicant's job at the 19th LEM Company was to pull nightly 12-hour guard shifts; as he guarded his post, he witnessed men and women fighting, exploding rockets, and gun fire, all the while knowing his fellow Soldiers were being killed and wounded. A medical evacuation hospital was next to his compound, and even off-duty, its presence constantly reminded him of the war's cost; up to 30 or 40 times a day, helicopters would arrive with injured or dead Soldiers. With only a few months left on his Vietnam tour, the applicant lost another friend to combat.

d. When he came home, he found that people treated him like he had a mental problem; "I was called everything, I had to get into fights to defend myself." It was not long before the applicant refused to talk about Vietnam. The applicant did not to leave his house, and he was not comfortable around crowds; he felt hemmed in and got the sense that people were staring at him, and he felt his blood pressure rise. The applicant states, "I feel like I'm a prisoner" "most people like fireworks (but) I don't...to me it all sounds like mortars, artillery fire. I feel like my life stopped when I returned home from Vietnam."

3. The applicant provides a letter of support from his spouse; a VA Form 21-4138, wherein he offers additional information; and an extract from his VA medical records. The medical records reflect diagnoses for depression, post-traumatic stress disorder (PTSD), and depressive disorder.

a. VA Form 21-4138. The applicant states, when he returned from Vietnam, he was not in the "right frame of mind and was dealing with PTSD."

(1) The Army sent him to Fort Bragg, NC; while there, the Finance Office called him in to discuss the money he owed after he took excess leave. They said that, until he repaid his debt, he would only be receiving \$28 a month. At the time, he had a wife and two young children, ages 1 and 2-months' old, and he tried to explain, without success, that he could not support his family on only \$28 a month.

(2) Because he was not in the right frame of mind and suffering from PTSD, the applicant panicked and decided to go absent without leave (AWOL). He took his family back to their home, and he started working for his father-in-law.

(3) Ultimately, the applicant and his wife separated, and she turned him in to the authorities. They transported him to Fort Leonard Wood, MO, where he spent the next 4 months in confinement. "Once I did my time, I was released and discharged from the US Army. My military records during my first enlistment contained no writeups or bad marks. My evals were always good, and I rose through the ranks fairly quickly. I was squared away and never got into any kind of trouble."

(4) The applicant continues, "I was able to enter back into the service 6-8 weeks later, and my final discharge from the service was honorable. I screwed up and did my time. I have been ashamed of how I reacted to the situation and going AWOL, but I feel that I made up for it when I reenlisted into the U.S. Army and served my country once again and was released with an honorable discharge."

b. The applicant's spouse writes she and the applicant have been married almost 19 years, and she has been with him through thick and thin. She can always tell what will trigger her husband's PTSD.

(1) The applicant's wife states, in effect, they do not attend fireworks shows together because of the way the loud booms and explosions affect the applicant. Also, they cannot go shopping due to the crowds; the applicant always asks for the keys so he can retreat to the car, or he will simply stay home. When the applicant's anxiety sets in, he no longer wants to do anything; all he does is sit there on the couch and blankly stare at the television.

(2) The applicant often talks about the medical evacuation helicopters that would arrive near his Vietnam compound; the fact that she and the applicant live near a hospital and medical flights pass by their home is enough to trigger his PTSD. "He always says, 'Soldiers coming in' or 'medevac.'"

(3) The applicant starts to talk about the friends he had in Vietnam and how they were killed in combat. He also speaks of his cousin, who served in Vietnam as a medic; after recovering from a gunshot wound, his cousin returned to duty, only to be killed while helping other Soldiers. All that remained of his cousin was his head and his torso; the applicant describes how he reached out to touch his cousin's arm, but there was no arm left, only a hand.

(4) At night, the applicant lays in bed and is restless with thoughts of Vietnam and how people called him a baby killer and spat on him. The applicant's spouse discloses she worked at a Veterans' Home nearby. The Veterans would tell her stories, and some of their descriptions were quite horrific; she listened, nonetheless, and they came to trust her. It took a couple of years for her husband to trust her enough to open up about what he had experienced.

(5) The applicant's spouse states, as a retired Emergency Medical Technician and First Responder, she knows what PTSD will do to you, and, as a result, she understands her husband's situation. "We are fighting PTSD together."

4. A review of the applicant's service record reveals the following:

a. On 30 August 1968, after obtaining his parent's permission, the applicant enlisted into the Regular Army for 3 years; he was 17 years old. Upon completion of BCT, orders sent the applicant to Fort Campbell, KY, for military occupational specialty (MOS) 76A (Supplyman) advanced individual training.

b. On 13 January 1969, U.S. Army Training Center (USATC), Fort Campbell Special Orders (SO) assigned the applicant as permanent party to the Headquarters and Headquarters Company, USATC, and awarded him primary MOS 76A. Effective 21 March 1969, SO promoted the applicant to specialist four (SP4)/E-4 in primary MOS 63J (Quartermaster Light Equipment Repairman); MOS 76A was identified as his secondary.

c. The applicant's DA Form 20 (Enlisted Qualification Record) indicates that, on 25 May 1969, he was enroute to Vietnam. However, effective 8 July 1969, he was reassigned as an armorer for a training company at Fort Leonard Wood; (orders or other documentation explaining his reassignment are unavailable for review). On 12 December 1969, USATC, Fort Leonard Wood SO directed the applicant's transfer to Vietnam, and he arrived, on 16 February 1970. On 26 February 1970, Headquarters, 1st Infantry Division SO further assigned him to Headquarters and Headquarters and Band, Support Command.

d. On 16 April 1970, Headquarters, U.S. Army Support Command, Saigon SO transferred the applicant to the 19th LEM Company. On 18 June 1970, orders honorably discharged the applicant so he could immediately reenlist.

(1) The applicant's DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 1 year, 9 months, and 19 days of his 3-year enlistment contract, with 4 months and 3 days of foreign service in Vietnam.

(2) Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) listed the Vietnam Service Medal and National Defense Service Medal.

e. On 19 June 1970, the applicant immediately reenlisted for 3 years. On 21 July 1970, the applicant's unit reported him as AWOL; he returned to military control, on 9 August 1970. On 24 August 1970, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for having been AWOL, from 21 July to 9 August 1970 (19 days); punishment consisted of reduction to private first class (PFC)/E-3.

f. Effective 12 November 1970, the applicant's leadership promoted him back to SP4 and awarded him MOS 63C (Track Vehicle Mechanic). On 25 January 1971, the applicant completed his Vietnam tour, and orders reassigned him to the U.S. Army

Overseas Replacement Station at Fort Dix, NJ, with a 7 March 1971 reporting date; the orders additionally stated he was to be further assigned to the 21st Adjutant General Replacement Battalion in Germany.

g. On 1 March 1971, Headquarters, U.S. Army Personnel Center, Fort Dix SO issued orders changing the applicant's assignment instructions and sending to a combat support company on Fort Bragg. On 7 March 1971, the applicant arrived at Fort Bragg.

h. On 24 May 1971, the applicant's Fort Bragg unit reported him as AWOL and subsequently dropped him from unit rolls. On 4 September 1971, civilian authority arrested the applicant, and, on 21 September 1971, returned him to military control; orders reassigned the applicant to the U.S. Army Personnel Control Facility (PCF) at Fort Leonard Wood.

i. On 14 October 1971, the PCF preferred court-martial charges against the applicant for AWOL, from 24 May until 21 September 1971 (120 days). On 17 October 1971, after consulting with counsel, the applicant voluntarily requested discharge, in accordance with chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel); in his request, he acknowledged that no one had coerced him into requesting this separation, and counsel had advised him of the implications of his actions. The applicant elected not to submit a statement in his own behalf.

j. On 20 November 1971, the separation authority approved the applicant's separation request and directed his undesirable discharge under other than honorable conditions; the separation authority also ordered the applicant's reduction to the lowest enlisted grade.

k. On 14 December 1971, orders discharged the applicant under other than honorable conditions; his DD Form 214 shows he completed 11 months and 28 days on his 3-year reenlistment contract, with 182 days of lost time (AWOL and confinement). Item 24 reflects the following:

- National Defense Service Medal
- Vietnam Service Medal with one bronze service star
- Republic of Vietnam Campaign Medal with Device (1960)
- One overseas service bar
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)

l. The applicant's available service record is void of any other period of U.S. Army service after his 14 December 1971 discharge.

5. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

6. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. He contends PTSD mitigates his discharge.

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 30 August 1968 and reenlisted on 19 June 1970.
- On 21 July 1970, the applicant's unit reported him as AWOL; he returned to military control, on 9 August 1970. On 24 August 1970, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for having been AWOL, from 21 July to 9 August 1970 (19 days)
- On 24 May 1971, the applicant's Fort Bragg unit reported him as AWOL and subsequently dropped him from unit rolls. On 4 September 1971, civilian authority arrested the applicant, and, on 21 September 1971, returned him to military control.
- On 14 October 1971, the PCF preferred court-martial charges against the applicant for AWOL, from 24 May until 21 September 1971 (120 days). On 17 October 1971, after consulting with counsel, the applicant voluntarily requested discharge, in accordance with chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel); in his request, he acknowledged that no one had coerced him into

requesting this separation, and counsel had advised him of the implications of his actions. The applicant elected not to submit a statement in his own behalf.

- On 14 December 1971, orders discharged the applicant under other than honorable conditions; his DD Form 214 shows he completed 11 months and 28 days on his 3-year reenlistment contract, with 182 days of lost time (AWOL and confinement).

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 293, DD Form 149, his ABCMR Record of Proceedings (ROP), self-authored statement, letter from his wife, treatment records, 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. Due to the period of service, no active-duty electronic medical records were available for review. The applicant is 10% service-connected for tinnitus but not for any behavioral health condition. However, when he initially presented to the VA requesting mental health treatment, a mental health note dated 12 July 2021 diagnosed him with Anxiety Disorder, Unspecified. At the time, the applicant stated he might have PTSD but denied experiencing direct combat or other criteria that would be applicable. He denied symptoms congruent with PTSD but endorsed symptoms of anxiety and depression. In addition, the record indicates, he was prescribed numerous medications by a private provider, including medication for dementia. His presentation was diagnostically unclear. Given the complexity of the applicant's mental health presentation he was referred for a mental health consult. The mental health consult dated 13 October 2021 diagnosed the applicant with Adjustment Disorder with Mixed Anxiety and Depressed Mood and Dementia. The dementia was diagnosed per records from a private neurologist. A VA mental health encounter on 03 January 2022, diagnosed the applicant with PTSD and Unspecified Depressive Disorder; the treatment plan stated the applicant was treated with medication stabilization, monitoring of his cognition, and supportive counseling. The plan was to offer supportive services until the applicant undergoes a comprehensive neuropsychological evaluation to explore his symptoms of dementia and determine if his symptoms are the result of a neurodegenerative condition. A C and P evaluation dated 14 February 2023 diagnosed the applicant with Other Specified Trauma- and Stressor-Related Disorder. The applicant's self-ratings on a symptom validity scale indicated his self-report was unreliable for diagnostic purposes. However, his diagnosis was based on his receiving psychiatric treatment through the VA in which trauma symptoms have been consistently identified and his records confirming his combat deployment to Vietnam.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is evidence that the applicant had a behavioral health condition during military service that would mitigate his discharge.

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 asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing traumatic incidents while in military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. In his most recent evaluation by the VA, a C and P evaluation dated 14 February 2023, the applicant was diagnosed with Other Specified Trauma and Stressor Related Disorder since he did not meet full diagnostic criteria for PTSD but evidenced signs and symptoms consistent with trauma. Given the nexus between trauma/anxiety and avoidance, his AWOLs are mitigated by his behavioral health condition.

BOARD DISCUSSION:

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

2. Prior to closing the case, the Board did note the analyst of record administrative notes below referencing corrections to the applicant's DD214 which will more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	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 relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD214 for the period ending 14 December 1971 showing the character of service as under honorable conditions.

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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):

1. AR 635-5, in effect at the time, stated the DD Form 214 was to list all decorations, service medals, campaign credits, and badges awarded or authorized. Additionally, change 11, effective January 1970, required the DD Form 214 to show a separating Soldier's Vietnam service in remarks.
2. AR 600-8-22 (Military Awards), currently in effect, states the Vietnam Service Medal is awarded to all members of the Armed Forces of the United States based on their qualifying service in Vietnam after 3 July 1965 through 28 March 1973. A bronze service

star will be granted for the Soldier's participation in each recognized campaign. Vietnam campaigns include:

- Winter-Spring 1970 (1 November 1968 to 30 April 1970)
- Sanctuary Counteroffensive (1 May 1970 to 30 June 1970)
- Counteroffensive, Phase VII (1 July 1970 to 30 June 1971)

3. Department of the Army Pamphlet (DA PAM) 672-3 (Unit Citation and Campaign Participation Credit Register), currently in effect, shows the following:

a. Department of the Army General Orders (DAGO) Number 43, dated 1973, awarded the Meritorious Unit Commendation to the 19th Maintenance Company, for the period 1 January 1969 to 30 June 1970.

b. DAGO Number 8, dated 1974, authorized all units that served in Vietnam to receive the Republic of Vietnam Gallantry Cross with Palm Unit Citation.

4. Based on the foregoing, amend the applicant's DD Form 214, ending 14 December 1971, as follows:

a. Delete the Vietnam Service Medal.

b. Add the following to item 24, ending 14 December 1971:

- Vietnam Service Medal with three bronze service stars
- Meritorious Unit Commendation
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

c. In item 30 (Remarks), add the comment: "SERVICE IN VIETNAM FROM 6 February 1970 TO 26 JANUARY 1971."

REFERENCES:

1. Title 10, USC, 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, United State Code, section 1556 (Ex Parte Communications Prohibited) 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. AR 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 1-9d (Honorable Discharge). An honorable discharge was a separation with honor; commanders issued an honorable discharge certificate based on the Soldier's proper military behavior and proficient duty performance. Separation authorities could characterize a Soldier's service as honorable if he/she received at least "Good" for conduct, and at least "Fair" for efficiency. In addition, the Soldier could not have one general court-martial or more than one special court-martial conviction.

b. Paragraph 1-9e (General Discharge). A general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 permitted a Soldier to request discharge for the good of the service when they had committed an offense or offenses which, under the UCMJ and MCM, included a punitive discharge as a punishment.

(1) The Soldier could submit such a request at any time after court-martial charges were preferred; commanders had to insure no one coerced the Soldier into submitting a request for discharge and that the Soldier had a reasonable amount of time to consult with counsel. If, after consulting with counsel, the Soldier chose to submit a separation request, he/she had to do so in writing, and the Soldier's counsel had to sign as a witness.

(2) Once the separation authority approved the Soldier's discharge request, an undesirable discharge was normally furnished, but the separation authority could direct either an honorable or a general discharge, if warranted.

4. The MCM then in effect stated the punishment for violations of Article 86 (AWOL for 30 or more days) included a punitive discharge.

5. AR 600-200 (Enlisted Personnel Management System), in effect at the time, stated in paragraph 7-30b (3) (Reasons for Reduction – Approved for Discharge from Service with an Undesirable Discharge) that Soldiers approved for administrative separation with an undesirable discharge under other than honorable conditions were to be reduced to private/E-1 prior to discharge.

6. 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.

7. 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.

8. 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, 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.

//NOTHING FOLLOWS//