

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230004877

APPLICANT REQUESTS: His undesirable discharge (UD) be upgraded.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) treatment records (32 pages)
- VA denial letter
- DD Forms 214 (Armed Forces on 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 he was treated unjustly upon his return from service in Vietnam. He tried to get help, but there was none to be offered. He was reduced to private and jailed repeatedly. His head was never right after his service in Vietnam and he is diagnosed with post-traumatic stress disorder (PTSD).
3. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD), as a contributing and mitigating factor in the circumstances that resulted in his separation.
4. A review by the National Archives and Records Administration (NARA), who are the custodian of former servicemembers' records, failed to locate the applicant's service records. Information herein was obtained from two DD Forms 214 provided by the applicant.
5. The applicant's available record shows he enlisted in the Regular Army on 12 April 1965 and completed training with award of the military occupational specialty 11B (Light Weapons Infantryman). The highest grade he appears to have held was E-4.

6. The applicant's 16 February 1967 DD Form 214 shows service in Vietnam with Headquarters and Headquarters Company, 1st Battalion 506th Infantry Regiment, 101st Airborne Division, for 11 months and 19 days.

7. He reenlisted on 17 February 1967 for 4 years.

8. The applicant's DD Form 214 also shows he was discharged on 10 April 1970, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted), Chapter 10, with Separation Program Number 246 (for the good of the service - in lieu of trial by court-martial). He was discharged in the grade of E-1, and his service was characterized as under other than honorable conditions. He completed 1 year and 7 months net service this period with 1 year, 10 months, and 5 days of prior active service, and eight periods of AWOL totaling 572 days of lost time. His awards are listed as the:

- Army Commendation Medal
- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal
- Combat Infantryman Badge
- Parachutist Badge
- Marksman Qualification Badge with Rifle Bar

9. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Under normal circumstances, the applicant would have consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

10. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested discharge from the Army voluntarily, willingly, and in writing, in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met and the rights of the applicant were fully protected throughout the separation process. The applicant has provided no evidence that would indicate the contrary.

11. The VA Discharge Summary indicates the applicant had been treated for several conditions including PTSD with ongoing psychotherapy in August 2013. The records show that the applicant was diagnosed with:

- Posttraumatic stress disorder
- Major depressive disorder
- History of attempted suicide

- Suicidal thoughts
- Alcohol dependence
- Diabetes mellitus
- Diabetic nephropathy
- Benign prostatic hyperplasia
- Degenerative joint disease
- History of colonic polyps
- Occupational maladjustment
- Homelessness

12. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his undesirable discharge (UD). He contends he experienced PTSD that mitigates 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) A review by the National Archives and Records Administration (NARA), who are the custodian of former servicemembers records, failed to locate the applicant's service records. It is possible that the applicant's military records were lost or destroyed in the National Personnel Records Center fire of 1973. Information herein was obtained from two DD Forms 214 provided by the applicant; 2) The applicant enlisted in the Regular Army on 12 April 1965; 3) The applicant was deployed to Vietnam as an 11B for 11 months and 19 days; 3) The applicant was discharged from active duty on 10 April 1970, Chapter 10, for the good of the service - in lieu of trial by court-martial. His service was characterized as under other than honorable conditions; 4) He completed 1 year and 7 months net service this period with 1 year, 10 months, and 5 days of prior active service, eight periods of AWOL totaling 572 days of lost time.

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

d. The applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition during his active service. A review of JLV provided evidence the applicant has been diagnosed with service-connected PTSD for treatment purposes only.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had a mental health condition that mitigates his misconduct of going AWOL. However, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide a full and complete opinion on possible mitigation as the result of mental health condition or experience.

**Kurta Questions:**

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing PTSD while on active service, and he has been diagnosed with service-connected PTSD by the VA for treatment purposes.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing PTSD while on active service, and he has been diagnosed with service-connected PTSD by the VA for treatment purposes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence that the applicant was experiencing PTSD while on active service. There is evidence applicant went AWOL during his active service, and this type of avoidant behavior can be a natural sequelae to PTSD. However, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide a full and complete opinion on possible mitigation as the result of mental health condition or experience. Yet, the applicant contends he was experiencing a mental health condition or experience that mitigated his misconduct, and per Liberal Consideration his assertion is sufficient for the board's consideration.

**BOARD DISCUSSION:**

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding the fact that, other than evidence of being AWOL, the available records do not contain enough information to determine if all his misconduct was

mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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.

7/24/2024

X

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. Title 10, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (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 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that time provided that:

a. 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. 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 the Soldier's separation specifically allows such characterization.

c. Chapter 10 of that regulation provided, in pertinent part, that a member who had committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an undesirable discharge certificate.

4. Army Regulation 635-5-1 (Separation Program Numbers), as then in effect, indicates that an SPN of 246 was used for discharges under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) , chapter 10. It denotes a reason for separation as for the good of the service in lieu of trial by court-martial.

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 Discharge Review Boards (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 a 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 for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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//