

IN THE CASE OF: ██████████

BOARD DATE: 14 February 2024

DOCKET NUMBER: AR20230005009

APPLICANT REQUESTS: in effect:

- upgrade of his undesirable discharge to honorable due to post-traumatic stress disorder (PTSD)
- correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show award of the Purple Heart (PH)
- a telephonic hearing with the Board

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

- DD Form 149 (Application for Correction of Military Record), 27 February 2023
- Self-authored Statement, undated
- DA Form 4980 (Purple Heart Certificate), 10 May 1969 (9 May 1969)
- Special Order Number 119, 106th General Hospital, 20 May 1969
- Letter Order 69-104, Fort Carson Medial Department Activity, 28 May 1969 (Convalescent Leave)
- DA Form 1341 (Allotment Authorization), 10 July 1969
- Army Review Boards Agency (ARBA) Letter, 17 July 2023

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, in effect:

a. He requests an upgrade from undesirable to honorable. Under the same PTSD standards as today, he would not have received the same type of discharge when he served during the Vietnam era. He had combat service and was awarded a Purple Heart.

b. His DD Form 214 does not reflect he was awarded the Purple Heart on 10 May 1969 for wounds he received in action. He received no physical or psychiatric evaluation prior to his discharge.

c. He had an excellent military record prior to his service in Vietnam, which was honorable. His exemplary service in Vietnam was not considered in determining his type of discharge.

d. He indicated that PTSD was a factor and a condition related to his request for an upgrade of his undesirable discharge.

3. The applicant provided copies of:

a. His application and statement outlined above.

b. A Certificate of the Purple Heart, showing he was wounded in the Republic of Vietnam on 9 May 1969 and received a PH on 10 May 1969.

c. Special Orders 119, 20 May 1969, showing he was released from the Medical Holding Company, 106th General Hospital, Japan, and reassigned to the US Army Hospital at Fort Carson.

d. Letter Orders 69-104 issued by the Medical Holding Company, Fort Carson Medical Department Activity on 28 May 1969, releasing him to convalescent leave for 30 days, with a departure date of 29 May 1969.

e. A letter from ARBA notifying him his case was placed on hold for 30 days to provide him an opportunity to submit additional medical documents supporting his issue of PTSD.

f. Additional evidence provided on 17 January 2024, consisting of a two page statement and 11-pages of behavioral health treatment notes.

4. A review of the applicant's available service records shows:

a. On 21 February 1968, he enlisted in the Regular Army for 3 years. Following Basic Combat Training and Advanced Individual Training, he was awarded military occupational specialty 11B (Light Weapons Infantryman).

b. His DA Form 20 shows in:

- item 31 (Foreign Service), Vietnam service from 6 April 1969 to 15 May 1969

- item 33 (Appointments and Reductions), his highest grade achieved was private first class on 20 July 1970
- item 40 (Wounds), fragment wound, right leg, 9 May 1969
- item 41 (Awards and Decorations):
 - National Defense Service Medal
 - Sharpshooter Marksmanship Qualification Badge with Machine Gun Bar (M-60)
 - Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
 - Parachutist Badge
 - Vietnam Service Medal

c. DA Forms 188 (Extract of Morning Report) shows while he was assigned to 1st Battalion, 19th Artillery, Fort Carson, his status changed:

- on 3 November 1970 from present for duty (PDY) to absent without leave (AWOL)
- on 3 December from AWOL to dropped from the rolls (DFR)
- on 1 February 1971 from PDY to AWOL

d. On 11 August 1972, U.S. Army Personnel Control Facility, Fort Carson, notified the commanding officer, he was confined in (City) Jail, ██████████, pending trial on 22 August 1972, for armed robbery.

e. On 11 September 1972, the (County) Court, State ██████████, found he was guilty of aggravated robbery and sentenced him to serve not less than 5 years and not more than 12 years. On 11 September 1972, the Clerk of the Court delivered a certified copy of the judgement to the (County) Sheriff and to the applicant.

f. On 6 January 1973, the applicant provided a statement to the Commanding General, Fort Carson, that he did not like the Army, and he would be rehabilitated by the State ██████████.

g. On 8 January 1973, the applicant was advised in writing that a re-characterization of a less than honorable discharge was unlikely. He understood that any discharge he received characterizes the quality of service during the period of military service and that subsequent conduct in civilian life would provide no basis for changing the discharge.

h. On 5 February 1973, the Commanding Officer, 19th Artillery, Fort Carson, provided a summarized list of the company grade nonjudicial punishment (NJP) the applicant received. It shows he received the following NJP's under provisions of Article 15 of the Uniform Code of Military Justice (UCMJ):

(1) On 17 December 1969: for failure to go to the appointed place of duty; and on 16 December 1969, for attempting to pass through the MP checkpoint after being off post without a valid pass. His punishment consisted of reduction to the grade of private and forfeiture of \$29.00 pay for one month.

(2) On 15 October 1970: for failing to go to his appointed place of duty on 12 October 1970. His punishment consisted of forfeiture of \$25.00 pay for 2 months.

(3) On 28 October 1970: for failing to go to his appointed place of duty on 24 October 1970. His punishment consisted of forfeiture of \$30.00 pay for 1 month, extra duty for 7 days, and reduction to private 2, which was suspended for 60 days.

(4) On 7 November 1970, his commander vacated the suspension of his reduction of grade to private and remitted the punishment.

i. A DA Form 493 (Extract of Military Records of Previous Convictions), shows on 19 February 1970, a special court martial found him guilty of AWOL from 6 January 1970 to 19 January 1970 and AWOL from 31 January 1970 to 1 February 1970. He was sentenced to confinement at hard labor for two months, forfeiture of \$82.00 for two months, and reduction not private/E-1. The sentence was adjudged on 19 February 1970 and the sentence was approved on 23 February 1970.

j. The findings and recommendations of an administrative discharge proceedings which was held on 3 April 1973 by a board of officers to determine the desirability of retention in the military service of the applicant is not contained in the available records.

k. On 10 April 1973, the Commanding Officer, Headquarters, Fort Carson concurred with the findings and recommendation of the board of officers and recommended his discharge be approved under the provisions of Army Regulation 635-206 (Discharge Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence without Leave or Desertion)).

l. On 24 April 1973, the Commanding General, Headquarters, Fort Carson, accepted and approved the findings of the board of officers convened on 3 April 1973. He directed reduction to the lowest enlisted grade, he approved the applicant's discharge under provisions of Army Regulation 635-206, and he directed issuance of an Undesirable Discharge Certificate.

m. On 26 June 1973, he was discharged. His DD Form 214 shows he was discharged under provisions of Army Regulation 635-206 with Separation Program Number 284 with a character of service of under other than honorable conditions. He completed 3 years, 10 months, and 5 days of net service this period with 548 total days of time lost. In addition, he had time lost from 2 February 1971 to 30 April 1972;

31 January 1970 to 1 February 1970; 3 November 1970 to 31 January 1971, and from 6 January 1970 to 18 January 1970. He completed 1 month and 10 days service in Vietnam. He was awarded or authorized:

- National Defense Service Medal
- Vietnam Campaign Medal with Device (1960)
- Vietnam Service Medal with one bronze service star
- Parachutist Badge
- Sharpshooter Marksmanship Qualification Badge with Machine Gun Bar (M-60)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)

n. On 22 April 1974, the Army Discharge Review Board found his discharge was both proper and equitable.

o. The applicant's records are void of orders showing was awarded the PH.

p. A check of the Vietnam Casualty Roster shows the applicant's name is listed. The entry for his name confirms the date of casualty as 9 May 1969 and the major attributing cause code 'H' as the result of hostile enemy action in Vietnam.

5. On 17 July 2023, the Director, Case Management Division, requested the applicant provide copies of medical documents in support of his issue of PTSD and placed his case on hold for 30 days to give him an opportunity to obtain these documents.

6. On 17 January 2024, the applicant responded with a two-page self-authored written statement and 11-pages of behavioral health treatment records showing he received counseling and treatment in 2023 for trauma, depression, anxiety, and PTSD.

7. The applicant provided evidence and personal statements in support of his application that the Board should consider in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his undesirable discharge to honorable and a correction of his DD Form 214 to show award of the Purple Heart (PH). He contends PTSD mitigates his discharge. This opine will narrowly focus on the applicant's contention of PTSD and his request for a discharge upgrade. The issue of his award of the Purple Heart will be deferred to the Board.

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 21 February 1968.
- His DA Form 20 shows, Vietnam service from 6 April 1969 to 15 May 1969 and fragment wound, right leg, 9 May 1969.
- DA Forms 188:
- on 3 November 1970 from present for duty (PDY) to absent without leave (AWOL)
- on 3 December from AWOL to dropped from the rolls (DFR)
- on 1 February 1971 from PDY to AWOL
- On 11 August 1972, U.S. Army Personnel Control Facility, Fort Carson, notified the commanding officer, applicant was confined in (City) Jail, [REDACTED], pending trial on 22 August 1972, for armed robbery.
- On 11 September 1972, the (County) Court, State [REDACTED], found he was guilty of aggravated robbery and sentenced him to serve not less than 5 years and not more than 12 years. On 11 September 1972, the Clerk of the Court delivered a certified copy of the judgement to the (County) Sheriff and to the applicant.
- On 26 June 1973, he was discharged. His DD Form 214 shows he was discharged under provisions of Army Regulation 635-206 with Separation Program Number 284 with a character of service of 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 149, his ABCMR Record of Proceedings (ROP), Purple Heart certificate, ADRB 22 April 1974, Criminal Action No.68508 Judgement and Sentence dated 11 September 1972, 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, he had an excellent military record prior to his service in Vietnam, which was honorable, and it was not considered in determining his type of discharge. He requests an upgrade from undesirable to honorable. He reports having combat service and was awarded a Purple Heart on 10 May 1969, for wounds he received in action, which is not reflected in his DD Form 214. In addition, he reports receiving no physical or psychiatric evaluation prior to his discharge.

e. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted no hard copy medical documentation from his time of service evidencing a behavioral health condition. No VA electronic medical

records were available for review and the applicant is not service connected. The applicant submitted medical documentation dated 1 August 2023, in which he self-referred for a behavioral health screening to support his ABCMR application. He shared having completed a 33-year prison sentence, the prior year, and reported symptoms of insomnia and anxiety. The applicant declined therapy and was referred for an in-depth intake on 18 October 2023, that assessment does not provide a diagnosis but indicates psychosocial stressors and his severity of any behavioral health index or problems is rated as low.

f. 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 health diagnosis that mitigates his misconduct. However, regardless of diagnosis, the applicant's misconduct would not be mitigated by a BH condition.

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 self-asserts PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. And while the applicant self-asserted PTSD, he did not provide any medical documentation substantiating the diagnosis. Per Liberal Consideration guidelines, the applicant's self-assertion of PTSD merits consideration by the Board. However, regardless of diagnosis, PTSD would not mitigate aggravated armed robbery. His misconduct is not part of the natural history or sequelae of any behavioral health condition. And, even if PTSD symptoms were present at the time of his misconduct, it does not affect one's ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient

evidence to support the applicant had a behavioral health diagnosis that mitigates his misconduct. The Board noted, the opine found no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of aggravated armed robbery. The Board agreed the applicant’s behavioral health conditions would not affect his ability to know right from wrong. Furthermore, the Board found the applicant provided no post service achievements or character letters of support attesting to his honorable conduct for the Board to weigh a clemency determination. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to honorable. However, the Board determined there is sufficient evidence to show the applicant was wounded during his deployment in the Republic of Vietnam, correction to his DD Form 214 is warranted to show award of the Purple Heart and Republic of Vietnam Gallantry Cross with Palm Unit Citation. Based on this, the Board granted partial relief.

3. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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:

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 amending the applicant's DD Form 214 for the period ending 26 June 1973 to show award of the Purple Heart and Republic of Vietnam Gallantry Cross with Palm Unit Citation.

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 upgrade of the applicant's undesirable discharge to honorable due to post-traumatic stress disorder (PTSD).

3/29/2024

X

[Redacted Signature]

CHAIRPERSON

[Redacted Name]

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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR will decide cases on the evidence of record. It is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation (AR) 635-206 (Discharge – Misconduct – Fraudulent Entry, Conviction by Civil Court, and Absence Without Leave or Desertion), in effect at the time, established policy and prescribed procedures for the elimination of enlisted personnel for misconduct by reason of fraudulent entry into the service, conviction by civil court, and absence without leave or desertion.

a. Section VI provided procedures for processing cases of individuals who, during their current term of active military service, have been initially convicted or adjudged juvenile offenders.

b. Paragraph 36 provided an individual discharged for conviction by civil court normally will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be furnished if the individual being discharged has been awarded a personal decoration, or if warranted by the particular circumstances in a given case.

c. Paragraph 37a provided the authority for discharge or retention. The convening authority is authorized to order discharge or direct retention in military service when disposition of an individual has been made by a domestic court of the United States or its territorial possessions. Upon determination that an individual is to be separated with an Undesirable Discharge, the convening authority will direct reduction to the lowest enlisted grade by the reduction authority under provisions of AR 600-200 (Enlisted Personnel Management System).

3. Army Regulation 635-200 (Personnel Separations) in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

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.

4. Army Regulation 635-5-1 (Separation Program Designators), in effect at the time, provided the separation program number 284 corresponded to the authority Army Regulation 635-206, Section VI, and the narrative reason "Misconduct, convicted or adjudged a juvenile offender by a civil court during current term of active military service."

5. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards. It provides that the Purple Heart is awarded for a wound sustained in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify 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. The Purple Heart differs from all other decorations in that an individual is not "recommended" for the decoration; rather, he or she is entitled to it upon meeting specific criteria. A Purple Heart is authorized for the first wound suffered under conditions indicated above; an oak leaf cluster is awarded to be worn on the medal or ribbon for each subsequent award. Not more than one award will be made for more than one wound or injury received at the same instant or from the same missile, force, explosion, or agent.

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. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. 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 based on 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.

9. 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//