

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2024

DOCKET NUMBER: AR20230005532

APPLICANT REQUESTS: reconsideration of his previous request to upgrade his discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Certificate of License, [REDACTED]
- Certificate of Ordination, 24 March 1990
- Certificate of Perfect Attendance, 24 May 1991
- Certificate of Recognition, 12 September 1993
- Certificate of Perfect Attendance, 7 June 1994
- Certificate of Perfect Attendance, 28 April 1996
- Veterans of Foreign Wars (VFW) Certificate, 16 December 2004
- Certificate of Appreciation, 14 December 2006
- Certificate of Appreciation, 14 December 2006

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20050000958 on 22 September 2005.

2. The applicant states he went absent without leave (AWOL) several times, spent time in the stockade, and he was finally given a discharge by special court-martial.

a. After his expiration of term of service in 1962-1964, he married his first wife, and they separated after one and half years. Due to his elementary education (6th grade) it was difficult for him to find work, so he decided to go back in the Army. Six months later he was sent to Vietnam. During the later part of his tour, September 1967, he received word that his mother passed away and it was hard for him to deal with, especially with all that he witnessed in Vietnam. He was incapable of making proper decisions after his service in Vietnam.

b. He remarried in May 1971, and they are still married today. His wife convinced him that he needed to attend church and he has been involved in the ministry for all 52 years of their marriage. They have two sons, with college degrees and good paying jobs. He is a life member of the VFW and Chapter 31, and he has been faithful to the order, until he became disabled last year.

3. The applicant provides:

- a. A certificate of license as an ordained minister, dated 23 August 1985.
 - b. A certificate of ordination dated 24 March 1990, which shows the applicant completed all the requirements for ordination as a minister.
 - c. A certificate of perfect attendance dated 24 May 1991, which states he attained special recognition for perfect attendance in Sunday school.
 - d. A certificate of recognition dated 12 September 1993, which shows he attained special honor for excellence in faithful attendance in Sunday school.
 - e. A certificate of perfect attendance dated 7 June 1994 and 28 April 1996, and states he obtained special recognition for perfect attendance in Sunday school at the Cucumber Pentecostal Holiness Church.
 - f. A certificate from the VFW of the United States, dated 16 December 2004, which was presented to the applicant for meritorious and distinguished service in furthering the aims and ideals of the VFW.
 - g. A certificate of appreciation dated 14 December 2006, from the American Veterans Honor Guard Association in recognition of his outstanding service.
 - h. A certificate of appreciation dated 14 December 2006, from Chapter Number 31 of the Disabled American Veterans for his outstanding service to disabled veterans.
4. A review of the applicant's service record shows:
- a. The applicant was inducted into the Army of the United States on 29 May 1962.
 - b. He was honorably released and transferred to the United States Army Reserve (USAR) Control Group on 28 May 1964. He was honorably discharged from the USAR Control Group on 9 May 1966 for enlistment in the Regular Army.
 - c. On 10 May 1966, he enlisted in the Regular Army.

d. The applicant received an honorable discharge on 1 April 1968 for the purpose of his immediate reenlistment on 2 April 1968.

e. Special Court-Martial Order Number 1155, issued by Headquarters Special Troops, U.S. Army Armor Center, Fort Knox, KY, dated 27 August 1968 shows the applicant was tried and convicted of two specifications of without authority, absenting himself from his unit from on or about 10 June 1968 to on or about 27 June 1968 and from on or about 30 June 1968 to on or about 16 July 1968. The court sentenced him to reduction to private first class (PFC)/E-3) and restriction to the limits of Fort Knox, KY for 30 days.

g. Special Court-Martial Order Number 1650, issued by Headquarters Special Troops, U.S. Army Armor Center, Fort Knox, KY, dated 4 December 1968, shows he was tried and convicted of:

- Charge I, one specification of AWOL from on or about 29 August 1968 to on or about 23 October 1968
- Charge II, one specification of breaking restriction on or about 29 August 1968

h. The court sentenced him to confinement at hard labor for 5 months and forfeiture of \$70.00 pay per month for 5 months.

i. Special Court-Martial Order Number 125, issued by Headquarters Special Troops, Fort Knox, KY, dated 24 January 1969 shows he was tried and convicted of:

- Charge I, one specification of being AWOL from the U.S. Army Correctional Holding Detachment from on or about 10 December 1968 to on or about 19 December 1968
- Charge II, one specification of violating the conditions of his parole, by going outside the area defined in his parole limits.

j. The court sentenced him to confinement at hard labor for 6 months.

k. DA Form 2496-1 (Disposition Form), dated 24 February 1969, shows the applicant was counseled by his commander. His immediate commander recommended that he be eliminated under the provisions of Army Regulation (AR) 635-212 (Personnel Separations – Discharge Unfitness and Unsuitability), by reason of unfitness. The counseling stated that the applicant served in the Republic of Vietnam from 3 November 1966 to 4 September 1967 and was awarded the Vietnam Service Medal, the Republic of Vietnam Campaign Medal, and one oversea service bar. The applicant claimed he had financial problems at home. He wanted out the service and he would have taken a “212” just to get out of the service. He had a very poor attitude and bad past records.

l. A review of the discharge document shows the separation authority informed the applicant that he was being discharged from the Army of the United States with an undesirable discharge. He informed the applicant that if he felt he should have received a higher type of discharge, he may request a review of his discharge by the Army Discharge Review Board (ADRB) and his application for review of his discharge must be received by the Department of the Army within 15 years after the effective date of his discharge.

m. On 6 March 1969, the applicant acknowledged receipt of the letter and stated that he fully understood that if he desired, he may request a review of his discharge by the ADRB.

n. The applicant was discharged on 6 March 1969. His DD Form 214 shows he was discharged under the provisions of AR 635-212, by reason of unfitness, in the rank/grade of private (PV1)/E-1, and his service was characterized as under conditions other than honorable. This form shows in:

- Item 22a (1) (Net Service This Period): 2 months and 20 days
- Item 22b (Total Active Service): 4 years, 1 month, and 7 days
- Item 26a (Non-Pay Periods Time Lost):
 - 10 June 1968 – 26 June 1968
 - 30 June 1968 – 22 August 1968
 - 29 August 1968 – 3 March 1969
- Item 30 (Remarks): 258 days of lost time

5. On 16 October 1978, the Army Discharge Review Board determined that the applicant was properly discharged and his request for a change in the type and nature of his discharge was denied.

6. The ABCMR considered the applicant's request to upgrade his discharge in ABCMR Docket Number AR20050000958 on 22 September 2005. The Board determined that the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of the case were insufficient as a basis for correction of the applicant's records.

7. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR for reconsideration for his request for an upgrade his discharge. He contends he experienced PTSD that mitigates his misconduct. 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 was inducted into the Army of the United States on 29 May 1962; 2) The applicant deployed to Vietnam during his active service; 3) The applicant was found guilty of being AWOL three times between June 1968-March 1969; 4) The applicant was discharged on 6 March 1969, by reason of unfitness, and his service was characterized as under conditions other than honorable; 5) On 16 October 1978, the ADRB reviewed and denied; 6) The ABCMR reviewed and denied the applicant's request on 22 September 2005.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) provided by the applicant were also examined. No additional medical documentation was provided by the applicant.

c. 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 including PTSD while on active service.

d. A review of JLV provided evidence the applicant has been evaluated and diagnosed with service-connected PTSD since 2022. He has been actively engaged in behavioral health treatment at the VA. Currently, the applicant does not receive service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service. The VA has diagnosed the applicant with service-connected PTSD.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did go AWOL after combat exposure. Going AWOL can be avoidant behavior, which is a natural sequelae to PTSD. Therefore, per

Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for unfitness with the commander citing multiple convictions by special court martial for being absent without leave, breaking restriction, and violating the conditions of his parole. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. The Board noted the medical advisor's review the applicant was rating by the Department of Veterans Affairs for post-traumatic stress disorder; however, found insufficient evidence to support the existence of a behavioral condition while on active duty. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was appropriate.

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 amendment of the ABCMR decisions rendered in Docket Number AR20050000958 on 22 September 2005.

10/28/2024

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. Army Regulation 635-212 (Personnel Separations – Discharge Unfitness and Unsuitability), in effect at the time, established policy and guidance for eliminating enlisted personnel who were found to be unfit or unsuitable for further military service. It states:

a. Action will be taken to separate an individual for unfitness when it is clearly established that:

(1) Despite attempts to rehabilitate or develop him as a satisfactory Soldier further effort is unlikely to succeed; or

(2) Rehabilitation is impracticable, or he is not amenable to rehabilitation measures; or

(3) An unfitting medical condition is not the direct or substantial contributing cause of his unfitness.

b. An individual separated by reason of unfitness will be furnished an undesirable discharge certificate except that an honorable or general discharge certificate may be awarded if the individual being discharged has been awarded a personal decoration or if warranted by the particular circumstances in a given case.

3. 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.

4. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

5. 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.

6. Army Regulation 15-185 (ABCMR) 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, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//