

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 December 2023

DOCKET NUMBER: AR20230005623

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge, and to appear before the Board via video/telephone.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)

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 AR20090010517 on 10 November 2009.
2. The applicant previously requested that his discharge be upgraded from UOTHC to under honorable conditions (general). He now respectfully requests that his discharge be upgraded to either honorable or under honorable conditions (general). On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) is related to his request.
3. The applicant's complete service record, to include a separation packet containing the specific facts and circumstances surrounding his discharge processing is not available for the Board to review. Therefore, this case is being considered based upon the available record documents.
4. The applicant enlisted in the Regular Army for a period of 3 years on 7 November 1969. Upon completion of initial entry training, he was assigned to unit at Fort Bragg, NC.
5. The applicant accepted company grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 13 January 1970 for, without authority, absenting himself from his unit on or about 11 January 1970

and remaining so absent until on or about 12 January 1970. His punishment consisted of forfeiture of \$26.00 and 10 days of extra duty.

6. Special Court-Martial Order Number 23 issued by Headquarters, Special Processing Battalion, Fort George G. Meade, MD on 14 January 1971 shows the applicant was found guilty of being absent without leave (AWOL) from on or about 9 July 1970 until 9 December 1970. The court sentenced him to confinement at hard labor for one month. The sentence was adjudged on 21 December 1970.

7. The applicant was assigned to a unit in Vietnam on 15 February 1971.

8. The applicant accepted field grade NJP under the provisions of Article 15, UCMJ on 29 May 1971 for, without authority, absenting himself from his unit on or about 27 April 1971 and remaining so absent until on or about 4 May 1971. His punishment consisted of forfeiture of \$50.00.

9. The applicant accepted company grade NJP under the provisions of Article 15, UCMJ on 30 June 1971 for, being derelict in the performance of his duties on or about 27 June 1971. His punishment consisted of forfeiture of \$27.00 and 14 days of restriction.

10. The applicant returned to the Continental United States on 31 January 1972.

11. The applicant's DA Form 20 (Enlisted Qualification Record) and DD Form 214 shows his duty status changed as follows:

- AWOL from 9 July 1970 to 8 December 1970
- AWOL from 10 December 1970 to 14 January 1971
- AWOL from 27 April 1971 to 3 May 1971
- patient at Womack Army Hospital, Fort Bragg, NC, from 17 February 1972 to 15 March 1972
- AWOL from 17 March 1972 to 29 June 1972
- AWOL from 3 July 1972 to 9 August 1972
- AWOL from 21 August 1972 to 30 January 1973
- confined from 1 February 1973 to 13 March 1973

12. The applicant's DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) for the good of the service on 14 March 1973 in the rank/grade of private/E-1. His service was characterized as UOTHC, his separation program number was "246", with reenlistment code "RE-3." He was credited with completion of 1 year, 11 months, and 16 days of net active service. He had several periods of lost time due to AWOL and confinement.

13. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in lieu of trial by court martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

14. The applicant petitioned the ABCMR for relief. On 10 November 2009, the ABCMR considered his application under procedures established by the Secretary of the Army and denied his request.

15. By regulation, an applicant is not entitled to a hearing before the Board. Hearings may be authorized by a panel of the Board or by the Director of the ABCMR.

16. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

17. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, his previous ABCMR denial (9 October 1991, AC91-05639), the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 14 March 1973 discharge characterized an under conditions other than honorable. On his DD form 149, he notes that PTSD is related to his request.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 7 November 1969 and was discharged on 14 March 1973 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel: Discharge for the Good of the Service. His separation program number of 246 denotes "Discharge for the Good of the Service." It shows Service in Vietnam from 6 February 1971 thru 14 February 1972 and 502 days lost under 10 USC § 972.

d. His request for a discharge upgrade was denied by the ABCMR on 10 November 2009 (AR20090010517). Rather than repeat their findings here, the board is referred to the record of proceedings for that case. Because this denial was before the institution of liberal consideration polices, this review will concentrate on evidence of a potentially

mitigating mental health condition as well as new evidence submitted with this application.

e. No medical documentation or new evidence was submitted with the application.

f. The applicant went absent without leave for 10½ months following his 31 January 1972 return from Vietnam (17 March 1972 thru 31 January 1973). The applicant subsequently requested and was granted a discharge for the good of the service.

g. JLV shows the applicant was seen at a VA emergency department (ED) for suicidal ideation (SI) on 17 April 2022 and was kept in the ED overnight pending transfer to a civilian facility because his Chapter 10 discharge made him ineligible for VA health care. Excerpts from his provider documents:

“Veteran states he is depressed and 'read on the internet that all Vietnam Veterans are eligible for care at the VA'. Veteran states that he 'served his country well' and was 'treated like shit'. Veteran states he has PTSD and wants treatment. Veteran states he is depressed and no one will help him. Veteran states that he has a gun at home and plans to shoot himself ...

Patient was brought to ED by a cousin yesterday, 4/17/22 due to suicidal thoughts with plan to shoot himself with a gun at home. He was assessed by the BEACON MH SW yesterday. He is being reassessed today by BEACON SW for continual need for inpatient psychiatric hospitalization. He is presently awaiting transfer to an outside facility ...

Patient denies current SI stating because he is here, but if he goes home, he may harm himself. Patient states he keeps his gun in the closet during the day but he put the gun near his bed at night as a protection since he lives alone ...

Patient is not currently engaged in MH [mental health services]. Patient said he saw a psychiatrist six months ago and put on antidepressant, but it made him feel lethargic. Patient said he stopped seeing the psychiatrist because he could not afford it.

Patient states he went to a VA Clinic in Jacksonville, NC and was told he is eligible for medical care services only. Patient expressed feeling frustrated and angry stating he served in the military and was deployed to Vietnam and has PTSD, and he is a veteran, but unable to get care at the VA. Patient said he has Medicare and Medicaid.”

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Claim of PTSD.

(2) Did the condition exist or experience occur during military service? The applicant served 1 year in Vietnam

(3) Does the condition or experience actually excuse or mitigate the discharge? Though there was no probative evidence the applicant has been diagnosed with PTSD, his April 2022 VA encounter makes clear he has PTSD or some other behavioral health disorder which is quite likely related to his 1 year of Service in Vietnam, particularly with him going absent without leave within weeks of his return from Vietnam.

h. Under liberal consideration policies, the applicant's self-assertion of PTSD is sufficient per se to merit consideration by the board. As there is an association between PTSD and avoidant behaviors, there is a nexus between this condition and his periods of AWOL. Thus, a diagnosis of PTSD or a similar diagnosis would mitigate the period of absence without leave which lead to his involuntary separation.

i. It is the strong opinion of the ARBA medical advisor this Vietnam era Veteran would certainly benefit from consistent Veteran-centric mental health services

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 contentions, the military record, and regulatory guidance. The Board considered the applicant's time of service in Vietnam, the length of the applicant being absent without leave and the lack of post-service accomplishments or letters of support attesting to post-service service. After due consideration of the request, the Board determined the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

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 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 to amend the decision of the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20090010517 on 10 November 2009.

█

█ █

█

█

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 (USC), Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-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 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.

4. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

b. 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.

c. 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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

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 (DRB) and Boards for Correction of Military/Naval Records

(BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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.

6. 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.

//NOTHING FOLLOWS//