

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 January 2024

DOCKET NUMBER: AR20230005928

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty)

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 AC95-06185 on 13 September 1995.
2. The applicant states the Veterans Administration (VA) has awarded him 100% disability for post-traumatic stress disorder (PTSD). He was not sure he needed this as he has 100% through the VA.
3. The applicant enlisted in the Regular Army on 12 April 1968 for three years. His military occupational specialty was 11B (Infantryman).
4. He served in the Republic of Vietnam from on or about 18 December 1968 through on or about 9 January 1970.
5. The applicant was absent without leave (AWOL) on 10 August 1970 and subsequently dropped from the rolls. He was attached to a unit on 27 October 1970.
6. Presidential Proclamation Number 4313, dated 16 September 1974, shows the President of the United States established a program of clemency for individuals who absented themselves without leave, were dropped from the rolls, or who missed movement during the time frame 4 August 1964 to 28 March 1973, and who had no offenses other than those listed above. Accordingly, the applicant's records had been reviewed and he was determined to be eligible to participate in this program.

7. Military Police Report, dated 16 December 1974, shows the applicant reported in with a letter in his possession from the Joint Clemency Processing Point, Fort Benjamin Harrison, IN, stating he wished to claim amnesty and needed transportation to Fort Harrison in accordance with the letter in his possession. His status was verified, and he was ordered transportation to Fort Harrison, after it was determined he was qualified for amnesty.

8. On 17 December 1974, the applicant declined a separate document explaining the narrative reason for his separation from the U.S. Army.

9. The applicant consulted with legal counsel on 18 December 1974 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ); the possible effects of a UOTHC discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Presidential Proclamation Number 4313. He understood that his absence was characterized as a willful and persistent unauthorized absence for which he was subject to trial by court-martial for violation of the UCMJ and could lead to the imposition of a bad conduct or dishonorable discharge.

b. He made this request of his own free will and had not been subject to any coercion whatsoever by any person. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the VA, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

c. He understood that within 15 days of the date of receipt of the Undesirable Discharge Certificate he must report to his State Director of Selective Service to arrange for performance of alternate service. He further understood that satisfactory completion of such alternate service will be acknowledged by issuance a Clemency Discharge Certificate. He realized, however that such a certificate will not alter his ineligibility for any benefits predicated upon his military service.

10. The applicant reaffirmed his allegiance and pledged to complete alternate service on 18 December 1974. His statement to the board for alternate service shows the reason for his absence from military service is that before he went to Vietnam, he went to infantry training and was sent back to the same training. He needed some help but couldn't get it, so he left. He did not disaffirm his allegiance to the United States when he went AWOL. He would rather have a better discharge for the welfare of this family since he was married with two children. He was not married when he entered the service.

11. The applicant was discharged on 18 December 1974. His DD Form 214 shows he was discharged under the provisions of Presidential Proclamation and Department of Defense Memorandum, for the good of the service. He was assigned Separation Program Designator code KNL with Reenlistment Code 4. His service was characterized as UOTHC. He completed 2 years, 3 months, and 16 days of net active service. His DD Form 214 shows in:

- Item 26 (Decorations, Medal, Badges, Commendations, Citations and Campaign Awarded or Authorized): National Defense Service Medal, Republic of Vietnam Gallantry Cross with Palm Unit Citation, Vietnam Service Medal, Combat Infantryman Badge, Republic of Vietnam Campaign Medal with 1960 device, Overseas Bar, and the Army Commendation Medal.
- Item 27 (Remarks)-Time lost before normal expiration of term of service (ETS): 257 days; time lost after normal ETS 11 April 1971: 1339 days; the applicant agreed to serve 10 months alternate service pursuant to Presidential Proclamation #4313; and separation for the good of the service by reason of willfully and persistent unauthorized absence pursuant to Presidential Proclamation #4313

12. National Headquarters, Selective Service System Memorandum, Washington, D.C., dated 8 August 1975, shows the Director terminated the applicant from enrollment in the Reconciliation Service Program. He did not complete his required period of alternate service.

13. The applicant provides a copy of his DD Form 214 as discussed above.

14. The Presidential Proclamation Number 4313, 16 September 1974, stated the President of the United States established a program of clemency for individuals who absented themselves without leave, were dropped from the rolls, or who missed movement during the time frame 4 August 1964 to 28 March 1973, and who had no offenses other than those listed above. Accordingly, the individual's record could be reviewed, and the individual may be determined to be eligible to participate in this program.

15. On 1 March 1982 and 15 October 1987, the Army Discharge Review Board determined the applicant was properly and equitably discharged and denied his request for a change in the type and nature of his discharge.

16. On 13 September 1995, the ABCMR denied the applicant's request for upgrade of his discharge characterization. The Board determined the records did not contain sufficient justification to conclude that it would be in the interest of justice to grant the relief requested or to excuse the failure to file within the time prescribed by law.

17. 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.

18. MEDICAL REVIEW:

a. Background: The applicant is requesting a reconsideration of his previous request for 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 12 April 1968.
- Applicant served in the Republic of Vietnam from on or about 18 December 1968 through on or about 9 January 1970.
- Applicant was absent without leave (AWOL) on 10 August 1970 and subsequently dropped from the rolls. He was attached to a unit on 27 October 1970.
- Presidential Proclamation Number 4313, dated 16 September 1974, shows the President of the United States established a program of clemency for individuals who absented themselves without leave, were dropped from the rolls, or who missed movement during the time frame 4 August 1964 to 28 March 1973, and who had no offenses other than those listed above. Accordingly, the applicant's records had been reviewed and he was determined to be eligible to participate in this program.
- Applicant reaffirmed his allegiance and pledge to complete alternate service on 18 December 1974.
- Applicant was discharged on 18 December 1974. His DD Form 214 shows he was discharged under the provisions of Presidential Proclamation and Department of Defense Memorandum, for the good of the service. He was assigned Separation Program Designator code KNL with Reenlistment Code 4. His service was characterized as UOTHC.
- National Headquarters, Selective Service System Memorandum, Washington, D.C., dated 8 August 1975, shows the Director terminated the applicant from enrollment in the Reconciliation Service Program. He did not complete his required period of alternate service.
- On 1 March 1982 and 15 October 1987, the Army Discharge Review board determined the applicant was properly and equitably discharged and denied his request for a change in the type and nature of his discharge.
- On 13 September 1995, the ABCMR denied the applicant's request for upgrade of his discharge characterization.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, his ABCMR Record of Proceedings (ROP), 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 100% service-connected for PTSD and his VA electronic record indicates long-standing ongoing treatment for his symptoms of PTSD, including multiple inpatient psychiatric hospitalizations.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is evidence 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 is 100% service-connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant's VA record indicates he has been treated for severe symptoms of PTSD since April 1996, including repeated inpatient psychiatric hospitalizations. Given the nexus between PTSD and avoidance, his AWOL is mitigated by his behavioral health condition.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, 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.

2. The Board concurred with the conclusion of the medical advising official regarding his misconduct being mitigated by PTSD. Based on a preponderance of the evidence,

the Board determined the applicant’s character of service should be changed to under honorable conditions (general). Because the basis for his reduction to pay grade E-1 was the original character of service, this correction will result in restoration of the rank/grade of specialist four/E-4.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 partial amendment of the decision of the ABCMR set forth in Docket Number AC95-06185 on 13 September 1995. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as under honorable conditions (general) and to show he held the rank/grade of specialist four/E-4 with a date of rank of 6 July 1969.
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 an honorable character of service.

4/24/2024

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 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.
2. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. Currently in effect:
 - 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.
3. The Presidential Proclamation Number 4313, 16 September 1974 stated the President of the United States established a program of clemency for individuals who absented themselves without leave, were dropped from the rolls, or who missed movement during the time frame 4 August 1964 to 28 March 1973, and who had no offenses other than those listed above. Accordingly, the individual's record could be reviewed, and the individual may be determined to be eligible to participate in this program.
4. 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 Service Discharge Review Boards (DRB) and Service 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 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.
5. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service DRBs and BCM/NRs 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//