

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2024

DOCKET NUMBER: AR20230006445

APPLICANT REQUESTS:

- Correction of item 3 (Social Security Number) on his DD Form 214 (Report of Separation from Active Duty) from [REDACTED] to [REDACTED]
- Upgrade of his undesirable discharge under other than honorable conditions

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

- DD Form 149 (Application for Correction of Military Record)
- Social Security Card

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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's requested relief for correction of his social security number on his DD Form 214 is supported by sufficient evidence; as a result, this portion of the requested relief will be addressed in the "ADMINISTRATIVE NOTE(S)" section and will not be considered by the Board.

3. The applicant states, in effect, his discharge was unfair. He recently applied for Veterans benefits and this was the first time he saw his DD Form 214.

4. A review of the applicant's service records reveals the following:

a. On 26 June 1969, the Army of the United States (AUS) inducted the applicant for a 2-year term. Upon completion of initial entry training and the award of military occupational specialty 11B (Light Weapons Infantryman), orders directed the applicant to report, not later than 12 December 1969, to the U.S. Army Overseas Replacement Station (USAOSREPLSTA) at Fort Lewis, WA for further transfer to Vietnam.

b. On 12 December 1969, the USAOSREPLSTA reported the applicant as absent without leave (AWOL); on 16 December 1969, the applicant returned to military control at the USAOSREPLSTA. On 16 December 1969, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for having been AWOL, from 12 to 16 December 1969 (4 days).

c. After receiving the NJP, the applicant went AWOL again and remained absent until 3 January 1970. On 3 January 1970, the applicant accepted NJP for AWOL during the period 16 December 1969 to 3 January 1970 (18 days).

d. Subsequently, the applicant departed for Vietnam; entries on his DA Form 20 (Enlisted Qualification Record) show that, on 6 January 1970, the applicant arrived in Vietnam, and his new command (101st Airborne Division (Airmobile) promoted him to private first class (PFC)/E-3. On 17 January 1970, the applicant arrived at his unit: 3rd Battalion, 187th Infantry Regiment (Airmobile), 101st Airborne Division (Airmobile).

d. On 12 June 1970, based on intra-theater reassignment orders, the applicant moved to the 158th Aviation Battalion. On or about 18 July 1970, intra-theater orders reassigned the applicant to the 2nd Battalion, 501st Infantry Regiment; in or around June/July 1970, the applicant took rest and recreation leave (R&R) to the continental United States. On 23 August 1970, after initially reporting the applicant as AWOL, the 2nd Battalion, 501st Infantry Regiment dropped him from unit rolls.

e. On 7 April 1971, the applicant surrendered himself to military authority and orders reassigned the applicant to the U.S. Army Personnel Control Facility (PCF) at Fort Riley, KS. On 10 April 1971, prior to his arrival at the Fort Riley PCF, the applicant went AWOL again, and, on 14 April 1971, the Holding Detachment at Fort Sheridan, IL dropped the applicant from its rolls.

f. On 8 January 1974, the applicant surrendered himself to the military police at Fort Huachuca, AZ; military authority then transferred him to the PCF at Fort Ord, CA, and he arrived, on or about 21 January 1974. On 21 January 1974, a member of the PCF cadre interviewed the applicant and the applicant disclosed he had received both long-term and short-term psychiatric treatment.

g. On 21 January 1974, the PCF preferred court-martial charges against the applicant for two periods of AWOL: 20 July 1970 to 7 April 1971 (261 days) and 12 April 1971 to 8 January 1974 (1,002 days).

h. On 25 January 1974, the applicant underwent a separation physical.

(1) On his Standard Form (SF) 93 (Report of Medical History), the applicant reported that, in January 1971, doctors had hospitalized him for two weeks based on a

mental condition; the applicant did not offer further details as to the condition but indicated a Doctor D__ had been the physician who examined him during the 2-week period. The physician who conducted the applicant's separation physical did not add any comments concerning the hospitalization.

(2) SF 88 (Report of Medical Examination). The examining physician reported "no problems" and declared the applicant qualified for separation.

i. On 6 February 1974, after consulting with counsel, the applicant voluntarily requested discharge, in accordance with chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel); in his request, he acknowledged that no one had coerced him into requesting this separation, and counsel had advised him of the implications of his actions. The applicant elected to submit a statement in his own behalf, wherein he stated the following:

(1) The applicant indicated he was drafted, received two NJP, but had undergone no courts-martial. He expressed his disdain of the military and felt it had ruined his life and made him a "mixed up, frustrated man." He declared, if the Army returned him to duty, he would go AWOL again and try to be discharged.

(2) With regard to the reason he went AWOL, "I felt my life was endangered by the people who were in command over me. (Their) incompetence was a threat to my life. There were certain things that happen(ed) to me that endangered my life. I was out on a patrol one day and our own 155 rounds came down on us and wounded two men...that was never explained."

(3) "Another time, we were out on (an) ambush patrol with the CO (commanding officer) and (we) split up into two three-man teams...this was also at night. The CO and two men went down the trail to set up with the only (communications) we had. They got lost or whatever and came back in our direction and fired us up before we could stop (them) (and) one man killed and one man badly injured. On returning to the base there was no explanation for this (incident). At which point I refused to return to the field and was allowed two or three days in the company area."

(4) "I also refused to (carry) a weapon again in the field. I tried to go (through channels) in order to get out or get a CO (conscientious objector) status (but) I was never given an answer. My CO put me under guard, and I was (sent) to the field for two days without a weapon. On returning back to the company...the CO had a patrol out and they (shot) a VC (Vietcong). He brought (the dead VC) back to the company, at which time he had the man hung in from of the orderly room and skinned partially. (While) this was going on, the commander came by and had him arrested. Those were the

reason(s) I left...I was scared for my life and sick of what had happen(ed). There was just no one to listen to me at all."

(5) The applicant noted that, while he was AWOL, he got married and now had a 10-month old son.

j. The applicant's immediate commander at the PCF completed an indorsement, wherein he recommended approval of the applicant's request with an undesirable discharge. He summarized what the applicant had told him:

(1) The applicant had maintained that Captain (CPT) D__, the applicant's company commander in Vietnam, had created friction dissatisfaction within the unit, and no one ever explained the friendly fire incident on the applicant's patrol. Additionally, the applicant had stated he believed other members of his company had fired on his squad while they were on night patrol. Following the above-cited incidents, the applicant's great fear caused him not to return to Vietnam from his R&R.

(2) While still in Vietnam, the applicant had refused to carry a weapon, and CPT D__ and the applicant's battalion commander referred the applicant to a social worker and then a chaplain. After this, they transferred the applicant to another unit before the applicant could officially apply for conscientious objector status; shortly thereafter, the applicant left Vietnam on R&R.

k. On 6 March 1971, the separation authority approved the applicant's separation request and directed his undesirable discharge under other than honorable conditions; additionally, the separation authority ordered the applicant's reduction from PFC to private (PV1)/E-1. On 15 March 1974, orders discharged the applicant accordingly.

l. The applicant's DD Form 214 shows he was discharged on 15 March 1974 under the provisions of chapter 10 of AR 635-200, in lieu of trial by court-martial, with an under other than honorable conditions characterization of service (Separation Code 246 and Reentry Code 3B). His DD Form 214 shows he completed 1 year and 17 days of his 2-year term, with 1,263 days of lost time. Item 18(f) (Record of Service – Foreign and/or Sea Service This Period) indicates he served 7 months and 18 days in Vietnam, and item 26 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) lists the:

- Vietnam Service Medal
- Combat Infantryman Badge
- "Vietnam Commendation Medal."

5. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his undesirable discharge. He contends he was experiencing a mental health condition 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, on 26 June 1969, was inducted into the Army for a 2-year term; 2) The applicant deployed to Vietnam in January 1970; 3) On 21 January 1974, court-martial charges against the applicant for two periods of AWOL: 20 July 1970 to 7 April 1971 (261 days) and 12 April 1971 to 8 January 1974 (1,002 days); 4) On 15 March 1974, the applicant's was provided an undesirable discharge under other than honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional civilian medical documentation was provided for review. The applicant asserts he was experiencing mental health conditions as a result of his combat deployment to Vietnam, which resulted in his misconduct. There is sufficient evidence the applicant was drafted as an infantryman, and he reported being exposed to direct combat and "friendly fire." There is also some evidence he was provided psychiatric treatment. Specifically, on 21 January 1974, the applicant disclosed he had received both long-term and short-term psychiatric treatment. The applicant reporting a history of psychiatric treatment was also noted on his Report of Medical History in January 1971. There is insufficient evidence he was ever formally diagnosed with a mental health condition while on active service.

c. A review of JLV was void of medical documentation, and the applicant receives no service-connected disability. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

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 a mental health condition related to his combat experiences while on active service. There is some limited supportive evidence the applicant reported experiencing mental health symptoms and was treated for mental health conditions related to his experiences in combat.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing a mental health condition related to his combat experiences while on active service. There is some limited supportive evidence the applicant reported experiencing mental health symptoms and was treated for mental health conditions related to his experiences in combat.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence the applicant was drafted and deployed to Vietnam. While the applicant has not provided a formal diagnosis of a mental health condition while on active service, he has reported experiencing mental distress and psychiatric treatment as a result. There is some limited consistent evidence of this report. In addition, avoidant behavior such as going AWOL is often a natural sequelae to mental health conditions associated with exposure to combat. Therefore, there is evidence to support an upgrade in his discharge status.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry and under other than honorable conditions discharge. He willingly and in writing requested to be discharged in lieu of trial by court-martial. The Board found no error or injustice in his separation processing or character of service.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding sufficient evidence of in-service mitigating factors that mitigate some of his misconduct, specifically his AWOL episodes. The Board determined his service clearly did not rise to the level required for an honorable discharge (given his lengthy AWOL); however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined no change

to the reason for separation and/or associated Separation/RE codes since the underlying reason for his separation remains the same.

BOARD VOTE:

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| █ | █ | █ | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | : | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

In addition to the correction addressed in Administrative Note(s) below, the Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 for the period ending 15 March 1974 showing:

- Character of Service: General, Under Honorable Conditions
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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.

ADMINISTRATIVE NOTE(S):

Based on the foregoing, amend the FSM's DD Form 214, ending 2 September 1966, as follows:

a. Item 3. Delete the current entry and replace it with the social security number listed on the applicant's social security card.

b. Item 26. Delete the Vietnam Service Medal and Vietnam Commendation Medal and add the following:

- National Defense Service Medal
- Vietnam Service Medal with three bronze service stars
- Republic of Vietnam Campaign Medal with Device (1960)
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

c. Item 27. Enter the following comment: "Service in Vietnam from 6 January to 23 August 1970."

REFERENCES:

1. Title 10, USC, 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. AR 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 1-9d (Honorable Discharge). An honorable discharge was a separation with honor; commanders issued an honorable discharge certificate based on the Soldier's proper military behavior and proficient duty performance. Separation authorities could characterize a Soldier's service as honorable if he/she received at least "Good" for conduct, and at least "Fair" for efficiency. In addition, the Soldier could not have one general court-martial or more than one special court-martial conviction.

b. Paragraph 1-9e (General Discharge). A general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 permitted a Soldier to request discharge for the good of the service when they had committed an offense or offenses which, under the UCMJ and MCM, included a punitive discharge as a punishment.

(1) The Soldier could submit such a request at any time after court-martial charges were preferred; commanders had to insure no one coerced the Soldier into submitting a request for discharge and that the Soldier had a reasonable amount of time to consult with counsel. If, after consulting with counsel, the Soldier chose to submit a separation request, he/she had to do so in writing, and the Soldier's counsel had to sign as a witness.

(2) Once the separation authority approved the Soldier's discharge request, an undesirable discharge was normally furnished, but the separation authority could direct either an honorable or a general discharge, if warranted.

3. The Manual for Courts-Martial in effect at the time stated the punishment for violations of Article 86 (AWOL for 30 or more days) included a punitive discharge.

4. AR 600-200 (Enlisted Personnel Management System), in effect at the time, stated in paragraph 7-26b (3) (Reduction Authority and Reasons – Approved for Discharge from Service with an Undesirable Discharge) that Soldiers approved for administrative separation with an undesirable discharge under other than honorable conditions were to be reduced to private/E-1 prior to discharge.

5. 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 UOTHC 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.

6. 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; 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.

7. 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.

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, 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.

//NOTHING FOLLOWS//