

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 January 2024

DOCKET NUMBER: AR20230006462

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under conditions other than honorable characterization of service.

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

- DD Form 149 (Application for Correction of Military Record), 15 November 2022
- two self-authored statements
- combat photographer documentation
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 24 March 1969
- DD Form 214, 16 June 1970
- DD Form 214, 15 February 1973

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 AR20140013854 on 9 April 2015.

2. The applicant states, in effect, that his previous case to the Board referenced him being in a photo lab in Vietnam; however, it did not state he was a combat photographer. He experienced the jungles of the North and the gunboats in the Delta, and everything in between, as a combat photographer he witnessed things very traumatizing which continue to haunt him to this day. He carried these images with him, and they influenced him to make poor decisions.

a. Today he believes he would have been diagnosed with post-traumatic stress disorder (PTSD); however, in 1972 there were few options for supporting this type of trauma.

b. Since his previous submission, he has four grandchildren, and it would mean the world to him to be able to leave them a legacy that could inspire them to someday serve our Country.

3. The applicant enlisted in the Regular Army on 14 June 1968 for a 3-year period. He was discharged honorably on 24 March 1969 and subsequently reenlisted on 25 March 1969 for an additional 3-year period. He was honorably discharged on 16 June 1970 and reenlisted on 17 June 1970 for a 4-year period. The highest rank he attained was specialist five (SP5)/E-5.
4. A DA Form 20 (Personnel Qualification Record) shows he served in the Republic of Vietnam from 5 September 1970 to 6 September 1971. He provides his combat photographer credentials, which state while moving about the Country he was to keep in touch and phone his division or brigade signal officer.
5. On 18 June 1972, the applicant was reported as absent without leave (AWOL) and he was dropped from the rolls (DFR) on 18 July 1972. He remained a deserter until he surrendered to military authorities on 21 January 1973.
6. Court-martial charges were preferred against the applicant on 24 January 1973, for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL, from on or about 18 June 1972 until on or about 21 January 1973.
7. On 24 January 1973, after consulting with counsel, the applicant executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:
 - a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.
 - b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an under other than honorable conditions character of service, and of the procedures and rights available to him.
 - c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement on his own behalf.
8. The applicant's immediate commander recommended approval of the request for discharge for the good of the service, further recommending an undesirable discharge.

9. The separation authority approved the applicant's request for discharge for the good of the service and further directed the issuance of a DD Form 258A (Undesirable Discharge Certificate) and reduction to the lowest enlisted grade.

10. The applicant was discharged on 15 February 1973 under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his character of service was under conditions other than honorable with separation program number 246 and reenlistment code RE-3. He was credited with 2 years and 22 days of net active service this period, 4 years and 25 days of total active service, with 1 year, 1 month, and 6 days of foreign service in Vietnam. He additionally had 217 days of lost time and earned the following decorations, medals, badges, commendation, citations, and campaign ribbons:

- National Defense Service Medal
- Vietnam Service Medal
- Vietnam Campaign Medal w/60 Device
- Overseas Service Bar (2)

11. The ABCMR reviewed the applicant's petition for an upgrade of his discharge on 9 April 2015. After careful consideration, the Board determined that the overall merits of the case were insufficient as a basis for correction of his records.

12. Discharges under the provisions of Army Regulation 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An under other than honorable conditions characterization of service is normally considered appropriate.

13. The applicant provided argument or evidence the Board should consider, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

14. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his Under Other Than Honorable Conditions discharge being upgraded to honorable or general due to experiencing PTSD during his time in service.

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 Regular Army on 14 Jun 1968 and was honorably discharged on 24 Mar 1969. He reenlisted on 25 Mar 1969 and was honorably discharged on 16 Jun 1970. He reenlisted a third time on 17 Jun 1970.
- Applicant was deployed to Vietnam from 05 Sep 1970 - 06 Sep 1971. His awards included the National Defense Service Medal, Vietnam Service Medal, Vietnam Campaign Medal w/60 device and Overseas Bar (2).
- Applicant was charged with going AWOL from 18 Jul 1972 - 21 Jan 1973. He submitted a request for discharge (24 Jan 1973) "for the good of the service," which was subsequently approved by separation authority.
- The applicant's separation documents are available for review. Additionally, the applicant's service record includes his DD Form 214 (Report of Separation from Active Duty), which shows that the Army discharged the applicant "Under Other Than Honorable Conditions" on 15 Feb 1973.

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), his personal letter, his DD Form 214, as well as documents from his service record. The VA electronic medical record and DOD health record were reviewed through Joint Longitudinal View (JLV).

d. Applicant asserted that PTSD was a mitigating factor in his discharge. His service record and supporting documents did not provide any evidence of any behavioral health issues. Applicant noted in a letter to the ABCMR, "As a combat photographer, I experienced the jungles of the North to the gunboats in the Delta and almost everything in between. My experience of things that I witnessed as a combat photographer was very traumatizing and continue to haunt me to this day. I carried these images back to Ft. Dix, N.J. with me, and in retrospect, they influenced my poor decision-making choices." Based on this documentation in its entirety, there is a lack of documentation the applicant was diagnosed or treated for mitigating conditions that occurred during his time in service.

e. Per the applicant's VA EHR, he is not service connected for any medical or behavioral health concerns. The combination of applicant's name and SSN was not recognized in the JLV system.

f. In summary, although he is not service connected for any behavioral health conditions (likely due to the character of his discharge), and also due to a complete absence of VA behavioral health encounter notes (JLV), there is still the applicant's own assertion he experienced PTSD during his time in service. Consequently, after reviewing the application and all supporting documents, it is the opinion of this Agency Medical Advisor that there is adequate evidence of a mitigating condition (PTSD) that significantly contributed to the specific misconduct of a lengthy AWOL episode. Under

liberal consideration, applicant's self-assertion of PTSD can be considered as sufficient to establish occurrence of PTSD.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge. Yes, he experienced, per his self-report, that PTSD contributed to his AWOL episode while still on active duty.

(2) Did the condition exist or experience(s) occur during military service? Yes, there is self-reported evidence he initially encountered PTSD related symptoms while on active duty as a result of his deployment to Vietnam.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, it mitigates for his misconduct of an AWOL episode as PTSD is often associated with avoidant behavior such as going AWOL. As per liberal consideration, applicant's self-assertion of PTSD alone merits consideration by the board.

BOARD DISCUSSION:

After reviewing the application, supporting documents, evidence found within the military record, the Board found relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, applicable regulatory guidance, and whether to apply clemency. The Board considered the applicant's period of service and multiple reenlistments. The Board noted MOS's held and awards received. One possible outcome was to deny relief. However, the majority of the Board found it more likely than not, that the applicant had an undiagnosed mitigating condition that lead to his misconduct. After due consideration of the request, the Board determined the evidence presented met the burden of proof in determining an error or injustice and a recommendation for relief is 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 is sufficient to warrant amendment of the decision by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20140013854 on 9 April 2015. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD214 dated 15 Feb 1973 showing

- Character of Service: Under Honorable Conditions
- Separation Authority: *No change*
- Reentry (RE) 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.

REFERENCES:

1. Section 1556 of Title 10, U.S. Code (USC), 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.
2. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.
 - 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.
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 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. Standards for review should rightly consider the unique nature of these cases and afford each veteran

a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

4. 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, 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//