

IN THE CASE OF: ██████████

BOARD DATE: 3 January 2024

DOCKET NUMBER: AR20230006797

APPLICANT REQUESTS RECONSIDERATION FOR: an upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Letter to the Board Chairman
- Veterans Affairs (VA) Progress Notes

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 AR2003087843 on 5 August 2003.

2. The applicant states, in effect:

a. He sincerely apologizes for failing to report on 20 June 1974 to the 21st Replacement Detachment. At the time he returned from Vietnam, the military knew nothing about post-traumatic stress disorder (PTSD). He believes that is why he went absent without leave (AWOL).

b. He started the process of trying to turn himself in to the U.S. Army in November 1974 by first calling the Federal Bureau of Investigations (FBI) only to be told that no soldier by the name of ████████ had been reported AWOL. He then called the Fort Ord Provost Marshall and, once again, was told there was no one by the name of ████████ reported as AWOL.

c. The FBI may have dropped the ball on this matter because they knew on 12 July 1974 that he was in custody in ████████ County Jail for six months for writing a check on a closed checking account. The dates that show he was in constant contact, via written correspondence, with the military was 1 December 1974 then four years later on 26 June 1978, 28 April 1979, 16 July 1979, 28 September 1979, 10 May 1982, 7 October 1982, 10 April 1999, 12 September 1999, and 24 February 2003.

d. He understands that what he did was very wrong at the time. He hopes and prays that after 48 years and his acknowledgment of these events, his country and the military will have a change of heart and forgive a Soldier that made a dumb mistake.

3. The applicant provides four pages of VA Progress Notes, dated 14 January 2015. The progress notes state, "patient has history of PTSD symptoms with associated poor sleep quality. He has never been formally evaluated or treated." The Assessment notes, "PTSD with sleep disturbance – with SI/HI or crisis at this time," while the Plan states "Behavioral Health consult for PTSD."

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 30 March 1971 for three (3) years.

b. DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was honorably discharged on 23 August 1972 under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Separation Program Number (SPN) 313, to immediately enlist or reenlist. He served 1 year, 4 months, and 24 days. It also shows:

- Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal (NDSM), Vietnam Service Medal (VSM), Republic of Vietnam Commendation (RVNCOM) with 60 device, and one overseas (O/S) bar
- Item 30 (Remarks): Dates of Vietnam Service 23 September 1971 to 27 March 1972

c. On 24 August 1972, the applicant reenlisted for four (4) years, with the reenlistment option for assignment within or near [REDACTED]

d. The applicant accepted nonjudicial punishment (NJP) as follows:

(1) On 3 December 1973, for stealing another Soldier's tires and hubcaps. His punishment consisted of forfeiture of \$30.00, reduction to pay grade E-3, suspended for 180 days. On 3 January 1974 the reduction was vacated for unknown misconduct.

(2) On 27 March 1974, for being absent without leave (AWOL) from 18 March 1974 to 25 March 1974. His punishment consisted of reduction to pay grade E-2.

e. Subsequent events are based on letters between the applicant and U.S. Army Enlisted Records and Evaluation Center. The applicant was to depart Headquarters, 13th Air Defense Artillery, Presidio of San Francisco, California, on 31 May 1974 for

further assignment to Germany and the 21st Replacement Detachment, with a reporting date of 20 June 1974. There is no record of the applicant reporting to the 21st Replacement Detachment or that he was ever officially reported AWOL.

f. On 16 July 1979 the applicant wrote a letter to the Secretary of the Army explaining the fact that he was AWOL and he believed there was no record of him being in the Army.

g. Memorandum for Record, dated 24 September 1979, serves as a reply to the applicant's letter to the Secretary of the Army requesting a copy of his discharge papers. Paragraph 3 (Discussion/Status) states:

(1) Morning Report Search shows that Soldier was RFA, departed HQ, 13th Air Defense Artillery, Presidio of San Francisco, California 94129 on 31 May 1974 for further assignment to the 21st AG Replacement Detachment, APO New York 09752 with a reporting date of 20 June 1974.

(2) There is no record of Soldier having reported to the 21st AG Replacement Detachment and he has never been officially reported AWOL.

(3) Action will be taken to separate Soldier since he meets all the statutory requirements (AWOL date 20 June 1974, 3 years or more, no charge sheet and no significant awards). Letter to Soldier stating that he is being considered for discharge in absentia.

h. Letter addressed to applicant, dated 24 September 1979, Subject: Discharge by Reason of Desertion, serves as an additional response to the applicant's letter to the Secretary of the Army, informs the applicant that he is charged with desertion from the U.S. Army effective 20 June 1974 from the 21st Replacement Detachment, APO New York 09757. Further stating, a recent review of his records shows that he is eligible for a discharge in absentia, with an anticipated discharge being under other than honorable conditions.

i. On 28 September 1979, the applicant responded to the above letter stating, in effect, that he was originally on orders to Greece, and these were changed to Germany. Instead of going to Germany, he went to [REDACTED] where he stayed to take care of his brother because his father was killed in a truck accident. Six months later he tried to turn himself in by calling Fort Ord and later the FBI.

j. On 6 November 1979 the applicant was notified that his statement did not contain sufficient evidence to warrant the issuance of a higher discharge. The applicant was further informed that he was discharged in absentia effective 6 November 1979.

k. U.S. Army Enlisted Records and Evaluation Center orders 28-1, dated 6 November 1979, reflects the applicant was discharged from the Regular Army effective 6 November 1979 and not entitled to pay and allowances from 20 June 1974 through 6 November 1979.

l. His DD Form 214 reflects he was discharged on 6 November 1979 under the provisions of AR 635-200, chapter 14, misconduct – desertion, with a character of service of under other than honorable conditions discharge (Separation Code JKF and Reenlistment Code RE-4). Item 18 (Remarks) reflects “Time lost before normal expiration of term of service: 794 days and Time lost after normal expiration of term of service 23 August 1976: 1,168 days.”

5. On 26 October 1981 the Army Discharge Review Board heard the applicant's appeal. The Board determined that he was properly and equitably discharged with an under other than honorable conditions discharge.

6. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) states, action will be taken to separate a member for misconduct - desertion. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter.

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

8. MEDICAL REVIEW:

a. Background: The applicant is requesting that his Under Other Than Honorable discharge be upgraded to Honorable due to experiencing PTSD during his time in service. His request is also based on his reported attempts to rectify his extensive AWOL episode which was not recorded prior to his contact with authorities.

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 30 Mar 1971 and was honorably discharged on 23 Aug 1972. He reenlisted for four years on 24 Aug 1972.
- Applicant was deployed to Vietnam from 23 Sep 1971 - 27 Mar 1972. He was awarded the National Defense Service Medal (NDSM), Vietnam Service Medal (VSM), Republic of Vietnam Commendation (RVNCOM) with 60 devices, and one overseas (O/S) bar

- On 3 December 1973, he was charged and received NJP for stealing another soldier's tires and hubcaps.
- On 27 March 1974, he received NJP for being AWOL from 18 March 1974 to 25 March 1974.
- Applicant failed to report for his next assignment to Germany at the 21st Replacement Detachment (20 June 1974) but he was never identified as being AWOL until he brought it to the attention of the Secretary of the Army on 16 Jul 1979. He claimed he had made several prior attempts to alert authorities, including the FBI, but that he was not found in their records as an active AWOL case.
- The applicant's separation packet is unavailable for review. However, the applicant's service record includes his DD Form 214 (Report of Separation from Active Duty), which shows that the Army discharged the applicant in absentia Under Other Than Honorable Conditions on 09 Nov 1979.

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), Personal Statement, 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. This applicant asserted that PTSD was a mitigating factor in his discharge. He also contends his AWOL episodes were due to the impact of his behavioral health condition. His service record and supporting documents did provide a VA record. A VA Primary Care Physician Note (14 Jan 2015) indicated, "patient has history of PTSD symptoms with associated poor sleep quality. He has never been formally evaluated or treated. Denies SI and HI and is not in crisis at this time. Very motivated to participate in a PTSD program." He was diagnosed as having PTSD with sleep disturbance and Obstructive Sleep Apnea. Based on this documentation, there is preliminary evidence the applicant was diagnosed by a VA medical provider for a mitigating condition (PTSD) that likely 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. A Psychology Note (12 Apr 2016) indicated, "Veteran disclosed that he has noticed symptoms related to PTSD and depression since returning from Vietnam in 1972, but has noticed an increase in depressive symptoms since his wife passed in August 2009...When anxious, he notices sweating, racing heart, and hypervigilance, especially in movie theatres or when reminded of Vietnam. Veteran describes his symptoms as ongoing. At times, he notices the

symptoms becoming more difficult to manage, especially surrounding nightmares, difficulty sleeping, intrusive thoughts about himself and service, and irritability that can cause arguments with others.” The psychologist further noted, “he is also reporting symptoms commonly associated with PTSD.” In this session, he reported a traumatic event as well when as a young child his house burned down, and his sister died as a result. A Social Work Note (10 Apr 2018) indicated, “Veteran arrived for an unscheduled walk-in appointment to the BHC. He relayed that he has a previous dx of PTSD and MDD, recurrent and manages his sx's w/out medication. He reports a recent summons to appear for jury duty, through ██████████ County, and described how this would be triggering to his PTSD sx's. He described increased anger, and 'I'll blow up.’” The VA records indicate he continued to have behavioral health sessions up to 29 Sep 2021, having gone through a period of homelessness earlier that year. In addition to PTSD and Obstructive Sleep Apnea, the Problem List also noted Major Depressive Disorder, Recurrent, Unspecified.

f. In summary, although he is not service connected for any behavioral health conditions (likely due to the character of his discharge), there is considerable documentation he has been treated for PTSD by VA which was initially experienced during applicant's deployment to Vietnam. Consequently, after reviewing the application and all supporting documents, it is the opinion of this Agency Medical Advisor that there is sufficient evidence of a partially mitigating condition (PTSD) that significantly contributed to the specific misconduct of AWOL episodes. Adequate documentation was provided in the VA encounter notes (JLV) to support the contention that the applicant had experienced PTSD during his time in service. However, PTSD is not associated with theft of tires and hubcaps, and therefore does not mitigate for this kind of misconduct.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge. Yes, his PTSD is partially mitigating for his misconduct of going AWOL while on active duty, and subsequently identified by VA behavioral health providers (JLV notes)

(2) Did the condition exist or experienced occur during military service? Yes, there is considerable 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 AWOL episodes as PTSD is often associated with going AWOL. However, PTSD does not mitigate for theft of tires and hubcaps.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board considered the advising official finding there is sufficient evidence of a partially mitigating condition (PTSD) that significantly contributed to the specific misconduct of AWOL episodes. The opine noted there is considerable documentation he has been treated for PTSD by VA which was initially experienced during applicant's deployment to Vietnam.

2. The applicant provided no post service achievements or character letters for the Board to weigh a clemency determination. The Board noted the applicant was accepts responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers. However, the Board found no evidence indicating the applicant could not distinguish between right and wrong. The Board notwithstanding the advising official opine for partial mitigation determined there is insufficient evidence of in-service mitigation to overcome the misconduct of stealing from another Soldier and the excessive periods of AWOL. The Board found no evidence of an error or injustice which would warrant an upgrade of the applicant's discharge and denied relief.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:


Mbr 1 Mbr 2 Mbr 3


:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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 ABCMR set forth in Docket Number AR2003087843 on 5 August 2003.

4/4/2024

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.

ADMINISTRATIVE NOTES:

A review of the applicant's records shows he is authorized additional awards not annotated on his DD Form 214 for the period ending 6 November 1979. As a result, amend his DD Form 214 by adding in:

- item 24 ((Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized):
 - delete Vietnam Service Medal
 - add:
 - Vietnam Service Medal w/ 2 bronze service stars
 - Consolidation I
 - Consolidation II
 - Republic of Vietnam Gallantry Cross with Palm Unit Citation.

REFERENCES:

1. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states 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. Paragraph 3-7b states 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.

c. Chapter 14, of the version in effect at the time, established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. It provided that action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally appropriate for a Soldier discharged under this chapter. However, the separation authority could direct an honorable discharge if merited by the Soldier's overall record.

2. AR 600-8-22 states the Vietnam Service Medal is awarded to all members of the Armed Forces of the United States based on their qualifying service in Vietnam after 3 July 1965 through 28 March 1973; a bronze service star will be awarded for wear on the Vietnam Service Medal for the Soldier's participation in each recognized campaign, including:

- Vietnam Counteroffensive, Phase VII (1 July 1970 to 30 June 1971)
- Consolidation I (1 July 1971 to 30 November 1971)
- Consolidation II (1 December 1971 to 29 March 1972)

3. Department of the Army Pamphlet (DA PAM) 672-3 (Unit Citation and Campaign Participation Credit Register) shows, per Department of the Army General Order (DAGO) Number 8, dated 1974, all units that served in Vietnam received the Republic of Vietnam Gallantry Cross with Palm Unit Citation.

4. Hagel Memorandum, dated 3 September 2014, states liberal consideration will be given in petitions for changes in characterization of service to service treatment records entries which document one or more symptoms which meet the diagnostic criteria of PTSD or related conditions. Special consideration will be given to VA determinations which documents PTSD or PTSD related conditions connected to military service. In cases in which PTSD or PTSD related conditions may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential

mitigating factors in the misconduct that caused the under other than honorable conditions characterization of service.

5. Army Directive 2014-28 (Request to Upgrade Discharge by Veterans claiming PTSD, dated 3 November 2014, , states the office of the Surgeon General will provide expert guidance to ARBA on clinical manifestations of PTSD and behavioral indicators to help ARBA assess the presence of PTSD and its potentially mitigating effects. When requested, the office will provide consultation to supplement ARBA's effort on complex cases that exceed ARBA's capabilities.

6. 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 under other than honorable conditions, 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.

7. 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.

8. 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 (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. 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 based on 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. 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.

9. 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.

//NOTHING FOLLOWS//