

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20230006884

APPLICANT REQUESTS:

a. Correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- his rank and grade as private first class, E-3
- his date of birth as [REDACTED]
- the Separation Authority as "AR 635-200 vs "AR 635-212"
- Narrative Reason for Separation as Secretarial Authority
- A Separation Code to one appropriated for Secretarial Authority vs 264
- a Reentry Code of RE-1

b. Removal from his records of:

- all documents and mention of his Special Court Martial, 29 November 1966
- all record of his nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice, 5 December 1966
- all record of his NJP, 4 August 1967

c. Issuance of a new DD Form 214 showing the above corrections.

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's brief (20 pages)
- ABCMR letter dated 15 February 2023
- New DD Forms 214
- Private Medical records (67 pages - previously submitted)
- ABCMR Decision AR20210011395, dated 5 January 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); 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. On the applicant's DD Form 149, he indicates sexual assault/harassment as contributing and mitigating factors in the circumstances that resulted in his separation. However, the applicant has not provided any evidence to support the contentions.

3. The applicant states his prior counsel did not submit the complete request for correction of his records at the time of his prior review. He did not realize this until he received the upgrade determination. The applicant also indicates he was sexually harassed and assaulted in addition to being harassed due to his religion.

4. Counsel reiterates the applicant's contentions and the contentions set forth in a prior review, and requests a liberal application of in accordance with Hagel Memorandum and Kurta Memorandum.

5. The applicant's service records show:

a. On 21 June 1966, the applicant enlisted into the Regular Army for 3 years with parental consent at age 17, in the grade of private/E-1. His Enlistment Contract listed his date of birth as [REDACTED]

b. He initially trained for the military occupational specialty (MOS) 62D (Asphalt Equipment Operator); however, he did not complete this MOS training but appears to have been awarded the MOS 12A (Pioneer). The highest grade he held was E-3.

c. On 4 October 1966, the applicant's advanced individual training (AIT) unit reported him as absent without leave (AWOL). He returned to military control on 21 October 1966 and placed in pre-trial confinement.

d. On 25 October 1966, the applicant was released from pre-trial confinement and departed his AIT unit in an AWOL status; he returned at about 0250 hours, on 26 October 1966.

e. On 29 November 1966, consistent with the applicant's pleas, a special court-martial convened at Fort Leonard Wood, found the applicant guilty and convicted him of two specifications of AWOL from 4 to 21 October 1966 (17 days) and 25 to 26 October 1966 (1 day). The court sentenced the applicant to restriction for 1-month and the forfeiture of \$50 per month for 3 months. On 3 December 1966, the special court-martial convening authority approved the applicant's court-martial sentence and ordered its execution. The court-martial order is filed in his service record.

f. On 30 November 1966, the applicant's AIT commander completed a DA Form 1049 (Personnel Action) and requested the applicant's relief from his training unit; the commander stated the applicant had been AWOL, in pre-trial confinement, then convicted by a court-martial and released to his unit. The applicant would not be able to complete training while assigned to the commander's unit, because the applicant's course of instruction was closed until March of the next year. A handwritten note on the DA Form 1049 indicated the applicant's transfer to MOS 12A (Pioneer) AIT, effective 10 December 1966.

g. On 5 December 1966, the applicant accepted NJP under Article 15, UCMJ, for disobeying the lawful order of a sergeant to help unload cement; his punishment consisted of 14-days' restriction and a forfeiture of \$20 per month for 1 month. The applicant filed an appeal, arguing he was already paying a fine of \$50 per month, per his court-martial. He disclosed the reason he had gone AWOL was because his mother was in the hospital and his father had left her to live with another woman; he had saved \$190 and was going to send that money to his mother. He felt the additional forfeiture of \$20 would be too great a burden and proposed performing extra duty instead. On 8 December 1966, the appellate authority denied the applicant's appeal.

h. On 9 December 1966, a special court-martial order announced the suspension of the unexecuted portion of the court-martial that sentenced him to 30-day restriction.

i. On or about 9 February 1967, the applicant graduated from AIT, and orders reassigned him to Germany; he arrived at his unit, on 20 February 1967.

j. Effective 1 June 1967, the applicant's chain of command promoted him to PFC. On 10 June 1967, the applicant requested reassignment to Vietnam; his company commander recommended approval and stated the applicant's conduct and efficiency were "Excellent," and the applicant was MOS-qualified and physically fit for field service in Vietnam.

k. On 19 June 1966, the applicant's battalion forwarded the applicant's reassignment request to the 24th Infantry Division for approval/disapproval; (the applicant's service record does not show whether higher headquarters ever approved his reassignment request).

l. From 13 until 17 July 1967, and again from 17 until 18 July 1967, the supporting Neuropsychiatric (NP) Service hospitalized the applicant after he took an overdose of Valium. On 18 July 1967, a psychiatrist evaluated the applicant and wrote the following:

(1) "This young Soldier with a long history of diffusely immature orientations and adjustments has been transferred overseas in February 1967, finding himself in three different assignments because of maladjustment. He finally found himself 'fed up to play

Army all the time,' and allegedly took an overdose of Valium (12 to 15 tablets) prior to his first admission. Since during his first hospitalization no evidence of a psychiatric condition warranting disposition through medical channels was obtained, the Soldier was returned to full military duty with the understanding that administrative separation UP (under the provisions of) Army Regulation (AR) 635-212 would be recommended. At the time of discharge (from the hospital), he seemed to understand and be willing to stick it out. However soon upon his return to his organization, he found himself displeased with another set of minor things and decided again, in an impulsive and manipulative manner, to take an overdose of maybe 6 capsules of Librium and about 5 or 6 tablets of HydroDiuril. All medications ingested by the pt. (patient) in small quantities are of a fairly harmless chemical nature, two of them being mild tranquilizers."

(2) "PAST HISTORY: reveals a lifelong, emotional instability in the Soldier's family background and resulted in severe (illegible) tendencies in him and his sister, probably the result of his mother's nervous-(illegible). Approx. two years ago, his parents separated and divorced, and the Soldier took it reportedly very gravely."

(3) "MENTAL STATUS: Examination during both hospitalizations revealed a young Soldier of highest degree emotional immaturity, combined with fairly good intelligence, which results in a grouchy, pouting, rebellious streak, which, at times, may be interrupted by short-lived phases of passive-dependent and sentimental feelings. However, there is no evidence of thought disorder; the Soldier's thoughts are goal-directed, his associations are intact, and his affect is appropriate. No evidence of psychosis or major neurosis, no evidence of suicidal potential of clinical significance."

(4) "FINDINGS AND CONCLUSIONS: This Soldier has a chronic and severe character and behavior disorder (passive-aggressive personality), which will (illegible) attempts at counseling, administrative manipulations, or disciplinary actions and is not amenable to redhibitory efforts which can normally be provided by the military. If retained in the service, he will prove an increasing administrative and/or psychiatric liability."

(5) "RECOMMENDATION: NP clearance is given for administrative separation UP AR 635-212 for unsuitability. Prompt elimination from the service would seem to be in the best interests of the enlisted member and the Armed Forces."

m. On 18 July 1967, the applicant's company commander initiated a bar to reenlistment action against the applicant.

(1) The commander stated he had counseled the applicant on numerous occasions and advised the applicant of the adverse consequences that might result from this (the bar to reenlistment) and similar personnel actions; despite this, the commander's efforts had been to no avail and rehabilitation efforts had failed.

(2) The commander rated the applicant's conduct and efficiency as "Unsatisfactory," and he attached a "Synopsis of Conduct," which showed the applicant's 5 December 1966 NJP and 29 November 1966 special court-martial conviction. The commander also provided the following remark in the synopsis:

(a) The applicant is so immature that he cannot adjust to normal duties. He is lazy and when corrected for minor infractions, becomes sullen and despondent. He resents authority and only wants to do whatever pleases him.

(b) The applicant's character is such that, because of two incidents of taking an overdose of pills, the psychiatrist has recommended the applicant's elimination from the service.

n. On 18 July 1967, the applicant acknowledged that the commander had counseled him about the bar to reenlistment action and he did not desire to submit a statement in his own behalf.

o. On 20 July 1967, the applicant's company commander initiated separation processing for unsuitability of AR 635-212. The commander stated the reasons for his action were the applicant's past NJP action, special court-martial conviction, and two drug overdoses; in addition, the commander noted that previous counseling, punishments, and rehabilitation efforts had had no beneficial effect.

p. On 26 July 1967, the applicant underwent a separation physical.

(1) On his Standard Form (SF) 89 (Report of Medical History), the applicant reported his health was poor and checked, "YES" to the questions, "HAVE YOU EVER ATTEMPTED SUICIDE" and "HAVE YOU CONSULTED OR BEEN TREATED BY CLINICS, PHYSICIANS, HEALERS, OR OTHER PRACTITIONERS WITHIN THE PAST 5 YEARS." In the remarks section, the applicant wrote, "Was in hospital for pneumonia and attempted suicide." The examining physician wrote, "Attempted suicide 1 week ago; pneumonia in Sep 66, hospitalized and cured."

(2) The applicant's Standard Form 88 (Report of Medical Examination) listed the following note: "Statement about attempted suicide about one week ago (took supposedly a few Librium capsules)." The report otherwise stated the applicant was qualified for separation under AR 635-212, and his physical profile showed a numerical designator of "1" (medically fit for any assignment) for "S" (psychiatric).

q. On 3 August 1967, the applicant's first sergeant (1SG) and company commander executed statements pertaining to the applicant's separation action.

(1) The 1SG stated, since the applicant was assigned to the unit, he has displayed adjustment problems; the applicant was unable to accept the responsibility of any job for long. On his arrival, the applicant complained he could not stand outdoor work, so the leadership moved him to a cook position in the mess hall. He seemed to like that job, but only worked enough to get by. The other cooks and the mess sergeant did not like him because he did not carry his share of the load. The applicant applied for reassignment to Vietnam, and when they relieved him from his cook duties, the applicant undoubtedly let his persecution feelings get the best of him, because he took two overdoses of pills. The 1SG declared the applicant was an extremely immature individual who could not and had no desire to perform a job in the Army; rehabilitation was not possible and the 1SG was unwilling to accept the applicant for any capacity in his unit.

(2) The company commander stated the applicant came to the unit with a history of maladjustment, and all members of the company made a sincere effort to help the applicant acclimate to military life. Shortly after his arrival, the applicant asked to work indoors because, he claimed, he became sick when working outside; they assigned the applicant to work as a cook in the mess hall, but his duty performance was substandard. At times, the applicant refused to work, or, if he worked, the simplest tasks required constant supervision. After repeated disciplinary attempts, on the part of the applicant's mess hall supervisors, and following repeated counseling sessions by the commander, it became necessary to remove the applicant from the mess hall and reassign him to a platoon. However, in the platoon, the applicant's performance and attitude only worsened; the commander received daily complaints about the applicant's duty performance, and the applicant's attitude fluctuated from being lazy and unconcerned to completely refusing to work. On 13 July, and again on 17 July 1966, the applicant took an overdose of pills in an attempt to commit suicide. Those attempts, along with the applicant's past performance, all indicated that rehabilitation was beyond the means provided by the military; the applicant would never adjust to military life.

r. The applicant accepted NJP for having disobeyed the NCO on 4 August 1967, and his punishment consisted of a reduction from PFC/E-3 to private (PV2)/E-2.

s. On 4 August 1967, after consulting with counsel, the applicant acknowledged counsel had advised him of the basis for the contemplated separation action. The applicant waived his rights to appear personally before and have his case considered by a board of officer. In addition, the applicant elected not to submit statements in his own behalf, and he waived representation by counsel.

t. On 4 August 1967, the applicant's company commander formally recommendation that the applicant be separated. He noted, from 26 February to date the leadership had assigned the applicant to various duty positions and, in each instance, his duty performance was unsatisfactory. The applicant had a long history of immature actions

and emotional instability; he had a "non-conformist, rebellious attitude toward Army regimentation and does not respond to redhibitory efforts."

u. On 10 August 1967, the separation authority approved the company commander's separation recommendation and directed the applicant's general discharge under honorable conditions.

v. The applicant was discharged on 12 August 1967. The DD Form 214 issued at this time shows at:

- Block 2c (Net Active Service This Period), 1 year, 2 months, and 2 days.
- Block 4a (Rank), PVT
- Block 4b, (Grade), E- 2
- Block 5 (Date of Birth), 2 [REDACTED] (as shown on his enlistment contract).
- Block 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) states, "NA" (not applicable).
- Block 25 (Separation Authority), AR 635-212
- Block 26 (Separation Code), 264
- Block 27 (Reentry Code), 3, 3B
- Block 28 (Narrative Reason for Separation), Unsuitability
- Block 29 (Dates of Time Lost This Period), 19661004-19661020; 19661021-19661024 (21 days)

6. On 31 January 2022, the ABCMR granted the applicant an upgrade of his character of service to honorable and corrected his DD Form 214 to show award of the National Defense Service Medal.

a. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board determined that relief was warranted. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board concurred with the medical review finding sufficient evidence of in-service mitigating factors to overcome the misconduct. Based on the preponderance of evidence, the Board determined the evidence presented sufficient to warrant a recommendation of relief.

b. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the corrections are completed to more accurately depict the military service of the applicant (national Defense Service Medal).

7. The applicant was reissued a new DD Form 214, Certificate of Release or Discharge from Active Duty) that reflects:

- Block 4a (Rank), PVT
- Block 4b, (Grade), E- 2
- Block 5 (Date of Birth), [REDACTED]
- Block 13 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) National Defense Service Medal
- Block 24 (Character of Service) Honorable
- Block 25 (Separation Authority), AR 635-212
- Block 26 (Separation Code), 264
- Block 27 (Reentry Code) 3 and 3B
- Block 28 (Narrative Reason for Separation), Unsuitability
- Block 29 (Dates of Time Lost This Period), 19661004-19661020; 19661021-19661024 (21 days)

7. A review of the records at the Department of the Army Criminal Investigation, Division Crime Records Center failed to reveal any records pertaining to the applicant.

8. The record does not contain and the applicant and counsel failed to provide any documentation to support a finding of sexual assault or harassment.

9. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting a correction of his DD Form 214 to: update his rank, his date of birth, show the Separation Authority as AR 635-200 vs. AR 635-212, update his narrative reason for separation as Secretarial Authority, update his separation code to one appropriated for Secretarial Authority vs 264, and to update his reentry code of RE-1. The applicant also requests removal from his records of all mention of his Special Court Martial and all records of his nonjudicial punishment dated 05 December 1966 and 04 August 1967. Updating the applicant's rank and date of birth and removal of records is outside of the scope of this Advisory and will not be addressed. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), Other Mental Health Issues, and Sexual Assault/Harassment are related to his request. The applicant's previous petition to the ABCMR is summarized in Docket Number AR20210011395 dated 05 January 2023. 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 enlisted in the Regular Army (RA) on 21 June 1966 and was awarded the military occupational specialty (MOS) of 12A (Pioneer), 2) on 29 November 1966, a special court-martial found the applicant guilty of two specifications of being absent without leave (AWOL), 3) on 05 December 1966, the applicant received nonjudicial punishment (NJP) for disobeying the lawful order of a sergeant to help unload cement, 4) the applicant was hospitalized from 13-17 July 1967 and 17-18 July 1957 due to suicide attempt via overdose. The provider diagnosed the applicant with passive-aggressive personality and psychiatrically cleared the applicant for administrative separation under Army Regulation (AR) 635-212, 5) on 20 July 1967,

the applicant's commander initiated separation processing for unsuitability of AR 635-212 due to the applicant's previous NJP action, special court-martial conviction, and two drug overdoses [due to suicide attempt] noting that the applicant's previous counseling, punishments, and rehabilitation efforts had no beneficial effect, 6) on 26 July 1967, the applicant underwent a separation physical and it was documented that the applicant had attempted suicide approximately one week prior via overdose, 7) the applicant accepted NJP for having disobeyed an NCO on 04 August 1967, 8) on 04 August 1967, the applicant's company commander formally recommended the applicant for separation noting he held various duty positions and his performance had been unsatisfactory. Furthermore, it was noted that the applicant had a history of 'immature actions and emotional instability, had a non-conformist, rebellious attitude toward Army regimentation' and did not respond to rehabilitative efforts, 9) the applicant was discharged on 12 August 1967 under the provisions of AR 635-212 with a separation code of 264, a reentry code of 3, 3B, and the narrative reason for separation as Unsuitability, 10) on 31 January 2022, the ABCMR upgraded the applicant's characterization of service to honorable, 11) the record does not contain any documentation to support a finding of sexual assault or harassment.

2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. The applicant's in-service BH history is well-outlined in the ROP as well as in the previous ABCMR BH Advisory (Docket Number AR20210011395). As such, a brief summary of the records and findings will be provided below. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. The applicant's previous ABCMR case was reviewed. The BH Advisor opined that the applicant had a mitigating BH condition of Military Sexual Trauma (MST)/trauma and stressor-related symptoms. The Advisor concluded that the applicant's experience of MST/trauma and stressor-related symptoms mitigated his periods of going AWOL, disobeying orders, lackluster performance and disrespectful attitude. As such, the Advisor recommended a discharge upgrade.

4. As part of his application, the applicant's counsel submitted a statement on his behalf. It was noted that the applicant asserted he experienced harassment and abuse from fellow Soldiers and his leadership throughout his service, to include religious persecution. It was also noted that the applicant reported he was sexually harassed while in Germany (assigned to Germany on 20 February 1967). Counsel noted that, due to the verbal and physical harassment the applicant experienced in the military, he struggled with his mental health, which resulted in two suicide attempts in-service.

5. Per the ROP, during his military service, the applicant was hospitalized from 13-17 July 1967 and 17-18 July 1967 due to two suicide attempt(s) via overdose. The applicant was evaluated by a psychiatrist on 18 July 1967 and noted that since his first psychiatric hospitalization, there was no evidence of a psychiatric condition that warranted disposition through medical channels and that an administrative separation under AR 635-212 would be recommended. It was documented the applicant had a severe character and behavior disorder (passive-aggressive personality) which the provider opined would not be amenable to rehabilitative efforts, and, if he was retained in the service, he would 'prove an increasing administrative and/or psychiatric liability.' The applicant was psychiatrically cleared for administrative separation under AR 635-212 for Unsuitability. The applicant's separation physical dated 26 July 1967 showed his physical profile with a numerical designator of '1' for "S" (psychiatric).

6. A review of JLV was void of medical information.

The applicant provided civilian medical records as part of his application from Cooper University Hospital that were summarized as part of his previous petition to the ABCMR by the BH Advisor. A brief overview will be provided here. The applicant's problem list dated 15 November 2018 shows that he was diagnosed with Anxiety Disorder (onset unknown) and Generalized Anxiety Disorder (GAD) (09 February 2018-present). It showed the applicant had been previously prescribed Mirtazapine (antidepressant), Hydroxyzine (anxiety), Xanax (anxiolytic), and Klonopin (anxiolytic), all of which had been discontinued at the time the records were printed on 08 June 2020. A progress note dated 18 November 2018 documented the applicant reported there had been some improvement in his anxiety though he continued to have panic-like sensations, decreased sleep, and anxiety. It was noted that he had a history of depressive symptoms. His anxiety and panic symptoms were documented to have started approximately 12 years ago and symptoms of OCD began in childhood. The provider diagnosed the applicant with Anxiety Disorder, Unspecified Type with Rule Outs (R/O) of Bipolar Disorder, Psychotic Disorder, Thought Disorder due to Medical Condition, and Panic Disorder. A note dated 28 December 2018 documented the applicant was diagnosed with Bipolar Affective Disorder and OCD-Unspecified Type and he was prescribed Abilify (antipsychotic medication used to treat Bipolar Disorder) from 28 December 2018 through 25 January 2019 and Luvox to address suicidal ideation and impulsive behaviors. Records show the applicant followed up with his provider on three more occasions (22 January 2019, 25 January 2019, and 08 March 2019) continuing treatment of Bipolar Disorder and OCD and a diagnosis of Acute Stress Disorder was added on 22 January 2019.

7. The applicant is applying to the ABCMR requesting a correction of his DD Form 214 to show the Separation Authority as AR 635-200, update his narrative reason for separation as Secretarial Authority, update his separation code to one appropriate for Secretarial Authority, and to update his reentry code to RE-1. He contends PTSD, Other Mental Health Issues, and Sexual Assault/Harassment are related to his request. In-

service records indicate the applicant was diagnosed with passive-aggressive personality and was psychiatrically hospitalized twice due to attempting suicide via overdose. While there was no evidence provided that the applicant has been diagnosed with PTSD, available post-military treatment records show that he was diagnosed with Anxiety, GAD, OCD, Acute Stress Disorder, and Bipolar Disorder by a civilian/non-VA provider. However, the available records do not indicate if the onset of his condition(s) was during service or if the BH conditions were associated with his service. The previous BH Advisor opined that the applicant's misconduct was mitigated by his experience of MST/trauma and stressor-related symptoms and recommended an upgrade of his discharge. The applicant's characterization of service was previously upgraded by the ABCMR to honorable. Consistent with the previous Advisory, under Liberal Guidance, the applicant's experience of MST/trauma and stressor-related symptoms mitigate his misconduct.

8. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced PTSD, Other Mental Health Issues, and MST.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. In-service records show the applicant was diagnosed with passive-aggressive personality and had two suicide attempts. Post-discharge, the applicant has been diagnosed and treated for Anxiety, GAD, OCD, Acute Stress Disorder, and Bipolar Disorder; however, the onset of these condition(s) were not associated with his service per review of the available records. There is no evidence that the applicant was diagnosed with PTSD. The applicant asserted that he experienced MST, and, per Liberal Guidance, his assertion alone is sufficient to establish that he was a victim of MST. Consistent with the previous advisor's findings, there is a nexus between MST/trauma and stressor-related symptoms and his misconduct of AWOL, disobeying an order, lackluster performance, and disrespectful attitude. As such, BH mitigation is supported.

9. Of note, as it pertains to the applicant's request to update the separation authority associated with his discharge, under today's standards, the applicant's discharge would fall under AR 635-200, Chapter 5-14 for Other Designated Physical or Mental Conditions. Regarding his request to update his reentry code to RE-1, it is of note that the applicant's in-service history of two suicide attempts requiring psychiatric hospitalization and his post-discharge diagnosis of Bipolar Disorder would render the applicant not eligible for reentry. Per DODI 6130.03, he would not meet the standard for

enlistment or induction into the military services with a diagnosis of Bipolar Disorder nor a history of suicide attempt. Additionally, per AR 40-501, if he held the diagnosis of Bipolar Disorder while in service, he would likely not be found fit for duty.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Date of Birth: Grant. The applicant's parental consent form, enlistment record, and all service records reflect the applicant disclosed and used the date of birth, [REDACTED] 19XX. The Board did not find contemporaneous evidence he used date of birth [REDACTED] 19XX. However, the day is off by one digit. Historically, the Board granted relief in cases where a date of birth or name is off by one digit or one letter.

b. Grade: Deny. The applicant was promoted to PFC/E-3 on 1 June 1967. However, he received NJP on 4 August 1967 that resulted in his reduction to private (PV2)/E-2. He held the rank/grade of PV2/E-2 at the time of separation. Accordingly, his DD Form 214, which reflects the rank/grade held by the Soldier at the time of separation, correctly reflects his rank/grade as PV2/E-2. The Board found insufficient evidence that supports a change to his rank/grade.

c. Narrative Reason for Separation: Partial Grant. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of AR 635-212 for unsuitability due to character and behavior disorder, known today as a personality disorder. Although the reason for discharge was correct at the time, this reason for separation has since changed to "personality disorder" which falls under the provision of chapter 5 of AR 635-200. The Board reviewed and agreed with the medical official's review that his reason for separation should change to AR 635-200, but not Secretarial Authority.

d. Separation Code: Partial Grant. Although the Army used Separation Program Numbers (SPN) at the time of the applicant's service and although SPN 246 is the correct SPN Code associated with an enlisted Soldier separated due to unsuitability, the Board determined since the reason for discharge is changed to "personality disorder"

consistent with what is used today, his SPN Code should also change to Separation Program Designator (SPD) Code JFX.

e. RE Code: Deny. SPN Code 246 had a corresponding RE Code of 3. Similarly, SPD Code JFX has a corresponding RE Code of 3. The Board found no reason or justification to change his RE Code. Additionally, at the time of separation, RE Code 3B indicated the enlisted Soldier has lost time. That is why his re-issued DD Form 214 contains RE 3 and 3B.

f. Removal from his records of court-martial order and record of NJP. Deny. The Board noted that the applicant was convicted by a court-martial and received multiple NJPs. These documents are correctly filed in his service record in accordance with the governing regulation(s) at the time. The Board noted that the Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created, unless there is sufficient evidence that shows a material error or injustice. The Board found no such material error or injustice in the filing of these documents. Therefore, the Board determined 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:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's re-issued DD Form 214 as follows:

- Block 3 , Date of Birth, the 2nd day vice the 3rd of the month
- Block 24, Separation Authority: AR 635-200
- Block 25, Separation Code: JFX

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 any relief in excess of that described above.

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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. Title 10, U.S. Code, 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 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). Paragraph 2-9 states 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.
3. AR 601–210 (Active and Reserve Components Enlistment Program) states an RE code is not upgraded unless it was administratively incorrect when originally issued.
 - a. RE–1 applies to personnel who have completed their obligated term of active service and are considered qualified to reenter the U.S. Army if all other criteria are met.
 - b. RE–3 applies to personnel who are not considered fully qualified for reentry or continuous service at time of separation, but whose disqualification is waivable. They are ineligible unless a waiver is granted.
4. AR 635-212 (Personnel Separations-Unfitness and Unsuitability), then in effect, set forth the policy for administrative separation for unfitness and unsuitability. It provided, in pertinent part, that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: a) frequent incidents of a discreditable nature with civil or military authorities; b) sexual perversion; c) drug addiction; d) an established pattern of shirking; and/or an established pattern showing dishonorable failure to pay just debts. This regulation prescribed that an undesirable discharge was normally issued unless the particular circumstances warranted a general or an honorable discharge. Paragraph 6 (Applicability) stated individual was subject to separation under the provisions of this regulation for unsuitability when they had a character and behavior disorder.
5. Technical Bulletin, Medical, Number 15, in effect at the time, defined character and behavior disorders; included was "passive-aggressive" behavior.
6. AR 635-200 (Personnel Separations - Enlisted Personnel) superseded AR 635-212 on November 1972 . On 1 December 1976, the Army published additional guidance, following settlement of a civil suit.

a. This revision required a Soldier's service, during the specific period addressed in the report, to form the sole basis for the Soldier's type of discharge and the character of service. In addition, a physician trained in psychiatry had to have evaluated and diagnosed any Soldier separated for unsuitability due to personality disorder.

b. In connection with the foregoing changes, a DA memorandum, dated 14 January 1977, and better known as the "Brotzman Memorandum," required retroactive application of the revised policies, attitudes, and changes in reviewing applications for discharge upgrades based on personality disorders.

c. A second memorandum dated 8 February 1978, and better known as the "Nelson Memorandum; expanded the review policy and specified that the presence of a personality disorder diagnosis would justify an upgrade of a discharge to fully honorable, except in cases where there were "clear and demonstrable reasons" why a fully honorable discharge should not be given. Conviction by a general court-martial or by more than one special court-martial was determined to be a "clear and demonstrable reason" sufficient to warrant a less than fully honorable discharge.

d. Chapter 5 (Separation for Convenience of the Government) states unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions, or an uncharacterized description of service if in entry-level status.

e. Paragraph 5-3 (Secretarial plenary authority) provides that a separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

7. Army Regulation 600-8-104 (Army Military Human Resource Records Management (AMHRR)) prescribes Army policy for the creation, utilization, administration, maintenance, and disposition of the AMHRR. The AMHRR includes, but is not limited to the OMPF, finance related documents, and non-service documents. The AMHRR is the historical and authoritative sources for authentication of veteran or service-related benefits.

a. The AMHRR required documents list provides that:

(1) The ABCMR decision memorandum/letter, record of proceedings, and application (with continuation pages when provided) are to be filed in the restricted file within the OMPF unless otherwise directed by ABCMR.

(2) Orders announcing the award of badges, bars, tabs, etcetera are to be filed in the performance and personnel review file of the OMPF.

(3) File copy #2 [Service-2] of the DD Form 214 and DD Form 215 are the preferred copy to be filed in either the service, mobilization/deployment, personnel review, or finance review file within the OMPF. File form issued by orders of the Army Discharge Review Board.

(4) The DA Form 638 will be filed in the service file within the OMPF whether it is approved, downgraded, disapproved, or upgraded (and will not be joined with any other document).

(5) ABCMR Records of Proceedings with application and decision memoranda will be filed in the Soldier's or veteran's restricted folder within the OMPF. It further provides that, once filed, such documents become a permanent part of the AMHRR. They may be removed by several agencies, one of which is the ABCMR.

b. Permanent (OMPF) documents are a collection of information that document a Soldier's career in the military. Currently the documents are retained in iPERMS for 62 years after separating, retiring from military service, or dying. After the 62-year period, OMPF documents are archived at the National Archives and Records Administration.

8. Army Regulation 600-37 (Unfavorable Information) policies regarding unfavorable information considered for inclusion in official personnel files. It provides for:

- placement of unfavorable information about Army members in individual official personnel files
- ensures that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files
- ensures that the best interests of both the Army and the Soldiers are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files

This regulation also states:

a. Once an official document has been properly filed in the OMPF, it is presumed to be administratively correct and to have been filed pursuant to an objective decision by competent authority. Thereafter, the burden of proof rests with the individual concerned

to provide evidence of a clear and convincing nature that the document is untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the OMPF. Appeals that merely allege an injustice or error without supporting evidence are not acceptable and will not be considered.

b. Only letters of reprimand, admonition, or censure may be the subject of an appeal for transfer to the restricted section of the OMPF. Such documents may be appealed on the basis of proof that their intended purpose has been served and that their transfer would be in the best interest of the Army. The burden of proof rests with the recipient to provide substantial evidence that these conditions have been met.

9. Pursuant to Federal law, boards for correction of military/naval records (BCM/NRs) are empowered to change any military record” to “correct an error or remove an injustice. However, with respect to records of courts-martial and related administrative records, the board’s power is limited to: (1) correction of a record to reflect actions taken by reviewing authorities under the UCMJ, or (2) action on the sentence of a court-martial for purposes of clemency.

a. Thus, for court-martial convictions, military review boards lack the power to render relief because of a perceived error in the underlying criminal conviction and do not have authority to expunge (“undo”) a criminal court conviction. That power resides in the service Courts of Criminal Appeal, then the Court of Appeals for the Armed Forces, and potentially the United States Supreme Court. At conclusion of that appellate process, the underlying conviction is “final and conclusive.

b. Legislative changes from the Military Justice Act of 1983 were designed to make it clear that with respect to cases tried after May 4, 1950, the BCMRs and DRBs have no authority to modify, as a matter of law, findings, or sentences of courts-martial. Additionally, to the extent that other military records, such as personnel files, are based on the results of trial by court-martial, existing procedures would be available to ensure that records are corrected to reflect any change in the court-martial record that results from review under the UCMJ.

10. 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 (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 a 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.

The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records 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//