

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230006963

APPLICANT REQUESTS: widow of a deceased former service member (FSM), requests reconsideration of her late husband's previous request for an upgrade of his discharge.

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

- DD Form 293, Application for the Review of Discharge from the Armed Forces of the United States
- DD Form 214, Report of Separation and Record of Service, 9 May 1974
- FSM's Certificate of Death
- Applicant's and FSM's Marriage Certificate
- Intent to File Claim for VA Compensation and/or Pension

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 AR20120004301, on 20 September 2012.

2. The applicant states, in effect, her request is based on her late husband's post-traumatic stress disorder (PTSD).

3. Review of the FSM's service records shows:

a. The FSM enlisted in the Regular Army (RA) on 16 August 1967 and held military occupational specialty (MOS) 36K (Wireman). He served in Germany from 14 January 1968 to 19 April 1969.

b. While in Germany, he was honorably discharged on 21 April 1968, for the purpose of immediate reenlistment. His DD Form 214 for this period shows he completed 8 months and 6 days of active service.

c. The FSM reenlisted in the RA on 22 April 1968 in pay grade E-4; this was the highest pay grade that he achieved. He departed Germany to Fort Gordon, GA around

April 1969. While at Fort Gordon, the FSM accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on/for:

- 3 September 1969, for being absent without leave (AWOL) from 30 August to 3 September 1969; his punishment included forfeiture of pay, and extra duty and restriction
- 30 September 1969, without proper authority failing to go at the time prescribed to his appointed place of duty; his punishment included forfeiture of pay, and extra duty and restriction

d. On 5 September 1969, also at Fort Gordon, GA, the FSM was convicted by a special court-martial of wrongfully appropriating an automobile, the property of another Soldier. The Court sentenced him to a forfeiture of pay and an admonishment. The convening authority approved the sentence later.

e. The FSM completed three additional periods of foreign service as follows:

- Vietnam, 19 February 1970 to 18 February 1971, assigned to the 149th Light Maintenance Company and 62nd Maintenance Battalion
- Germany, 23 February 1971 to 19 May 1971, assigned to 708th Maintenance Battalion
- Vietnam, 10 July 1971 to 3 April 1972, assigned to 815th Engineer Battalion and 102nd Engineer Battalion

f. On 14 July 1970, in Vietnam, the FSM accepted NJP under the provisions of Article 15 of the UCMJ, for disobeying a lawful order, wrongfully appropriating a truck, and failing to go at the time prescribed to his appointed place of duty (he was reduced to private first class/E-3).

g. Around May 1972, he was reassigned to the U.S. Strategic Command (STRATCOM), New England Signal Team, with duty in Coventry, RI. While there, his record reveals an extensive history of acceptance of NJP under the provisions of Article 15 of the UCMJ on/for:

- 29 May 1973, being AWOL from 23 April to 1 May 1973
- 20 August 1973, AWOL from 23 July to 1 August 1973, disobeying a lawful order, and failing to go at the time prescribed to his appointed place of duty
- 5 December 1973, failing to go at the time prescribed to his appointed place of duty
- 25 January 1974, AWOL from 23 to 24 January 1974 (punishment included reduction to private/E-2)
- 3 February 1974, failing to go at the time prescribed to his appointed place of duty twice

h. On 24 January 1974, his immediate commander initiated a Bar to Reenlistment Certificate against him citing his extensive history of NJP, recurring financial difficulties, recurring misconduct, numerous letters of indebtedness and calls from creditors on outstanding debts, unsatisfactory conduct and efficiency, deliberately omitting material fact in an application for a security background investigation in that he omitted reference to a previous court-martial, and failure to respond to counseling. The FSM was provided a copy of this bar and he elected not to submit a statement on his own behalf. The bar was ultimately staffed through the chain of command and approved by the appropriate approving official.

i. The complete facts and circumstances surrounding his discharge action (notification, acknowledgment, and chain of command's recommendation) are not available for review with this case; however, his official record contain:

(1) An endorsement by a general officer (presumably the separation authority) approving the discharge action and ordering the applicant's discharge from the Army under the provisions of chapter 13 of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) due to unfitness, the issuance of an Undesirable Discharge Certificate, and reduction to the lowest enlisted grade.

(2) A duly constituted DD Form 214 (Report of Separation from Active Duty) that shows he was discharged on 9 May 1974 under the provisions of AR 635-200 with an undesirable discharge, in pay grade E-1. This form also shows he was assigned Separation Program Number/Code 264 and Reentry Code 4 (both shown in the Remarks Block). He completed 5 years, 11 months, and 14 days of creditable active military service during this period, and he had 30 days of time lost. He was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal
- 2 overseas service bars/service stripes

4. On 20 March 1975, the Army Discharge Review Board reviewed his discharge but found it proper and equitable. The SDRB denied his request for an upgrade of his discharge.

5. On 20 September 2012, the ABCMRT denied his request for an upgrade of his discharge. The Board stated:

a. The applicant's (now FSM) records reveal an extensive history of misconduct that included eight instances of NJP, multiple instances of AWOL, a court-martial, and a bar to reenlistment. It appears he was provided counseling and/or multiple opportunities for

rehabilitation by various members of his chain of command, but he failed to respond constructively.

b. The complete facts and circumstances surrounding his discharge are not available for review with this case. However, his service records contain an endorsement by the separation authority approving what appears to be a discharge action recommended by the chain of command. Additionally, his DD Form 214 shows he was discharged on 9 May 1974 under the provisions of Army Regulation 635-200 with an undesirable discharge.

c. In the absence of evidence to the contrary, it is presumed his administrative separation was accomplished in compliance with applicable regulations at the time, with no procedural errors which would have jeopardized his rights. It is also presumed the separation authority appropriately directed the issuance of an undesirable discharge based on his overall record during the period under review.

d. Based on the available record his service appears not to have met the standards of acceptable conduct and performance of duty for Army personnel. This misconduct also renders his service unsatisfactory. In view of the foregoing, there is an insufficient evidentiary basis for granting the requested relief.

6. On 5 August 2023, a member of the Case Management Division sent a letter to the applicant informing her that for the ABCMR to consider her application, she must provide a copy of the medical documents that support the issue of PTSD. Her case was placed on hold for 30 days pending receipt of the requested medical documents. The applicant did not respond.

7. MEDICAL REVIEW:

a. Background: As a result of the former service member's death, his widow is requesting that his Under Other Than Honorable Conditions discharge be upgraded 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.

- FSM enlisted in the Regular Army on 26 Apr 1968 and subsequently reenlisted 16 Aug 1967. He was deployed to Germany from 14 Jan 1968 - 19 Apr 1969. He subsequently was deployed to Vietnam from 19 February 1970 - 18 February 1971, Germany a second time from 23 February 1971 - 19 May 1971, and Vietnam a second time from 10 July 1971 - 03 April 1972.

- FSM's awards include the National Defense Service Medal, Vietnam Service Medal, Republic of Vietnam Campaign Medal w/60 device and 2 overseas service bars/service stripes.
- On 3 September 1969 (Fort Gordon) FSM was charged with going AWOL from 30 August - 3 Sep 1969, and subsequently cited for failure to report for duty (30 September 1969). On 5 September 1969, FSM was convicted by a special court-martial of misappropriating another soldier's vehicle.
- At U.S. Strategic Command (STRATCOM), FSM was charged with going AWOL (23 Apr-1 May 1973), AWOL (23 July-1 Aug 1973) and AWOL (23-24 Jan 1974), along with four FTR's and disobeying an order.
- On 24 January 1974, FSM's commander initiated a Bar to Reenlistment based on "recurring financial difficulties, recurring misconduct, numerous letters of indebtedness and calls from creditors on outstanding debts, unsatisfactory conduct and efficiency, deliberately omitting material fact in an application for a security background investigation."
- FSM's full separation packet is unavailable for review. However, his service record includes his DD Form 214 (Report of Separation from Active Duty), which shows that the Army discharged FSM Under Other Than Honorable Conditions on 09 May 1974.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the FSM's completed DD Form 149, his ABCMR Record of Proceedings (ROP), 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. FSM's spouse asserted that PTSD was a mitigating factor in his discharge. He referred to PTSD related symptoms during a treatment encounter with a VA provider. That said, his service record and supporting documents did not provide any service records of medical or behavioral health assessment or treatment. Based on this documentation in its entirety, there is an absence of documented evidence 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. A Mental Health Counseling Note (31 Oct 2014) indicated, "Veteran was referred by Dr. Jan to evaluate for nightmares. Veteran reported the following: He ran a relay station in Vietnam, which was communications. He states he was not actually involved in combat, but there was always danger that the enemy could overrun his location. He reports nightmares 3 times a week. He reports waking up in a cold sweat. He states he had never had any treatment because he does not like doctors. He states his symptoms were not as bad while he was working, but now that he

is retired they are more frequent.” The social worker diagnosed him with an “Adjustment Disorder with prolonged duration of more than 6 months without prolonged duration of stressor., Bereavement.” There were two other behavioral health related entries in the outpatient encounters section, both in 2014 as well.

f. In summary, although he is not service connected for any behavioral health conditions (likely due to the character of his discharge), there is FSM’s own assertion, as well as his spouse’s claim, he experienced PTSD or trauma related symptoms during his time in service. Under liberal consideration, applicant’s (i.e. spouse) assertion along with FSM’s claim of PTSD, or PTSD related symptoms (JLV), can be sufficient to establish occurrence of PTSD. 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 (trauma/stressor related symptoms) that significantly contributed to the specific misconduct of AWOL episodes, disobeying orders, FTR’s, mismanagement of personal finances and substandard performance. However, trauma and stressor related symptoms are not associated with misappropriating a soldier’s vehicle and omitting information for a security background investigation. In addition, the initial AWOL and FTR actions (1969) are not mitigated since these occurred prior to his first deployment to Vietnam.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge. Yes, he more likely than not experienced trauma and stressor related symptoms partially mitigating for his misconduct (i.e. AWOL, disobeying orders, FTR’s, mismanagement of personal finances and substandard performance) while still on active duty.

(2) Did the condition exist or experience(s) occur during military service? Yes, there is former service member’s assertion and spouse’s claim he initially encountered trauma and stressor related symptoms while on active duty as a result of his deployment to Vietnam. As per liberal consideration, former service member’s claim (JLV) and spouse’s assertion of PTSD (DD Form 149) alone merits consideration by the board.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, it partially mitigates for FSM’s misconduct, specifically with regard to going AWOL, disobeying orders, FTR’s, mismanagement of finances and substandard performance, as PTSD is associated with such misconduct. However, PTSD is not associated with misappropriating a soldier’s vehicle and omitting information for a security background investigation. Also, the initial AWOL and FTR misconduct (1969) cannot be mitigated since these preceded his first deployment to Vietnam.

REFERENCES:

1. Army Regulation 635-200 (Personnel Separations) sets forth the basic authority for the separation of enlisted personnel. Chapter 13, in effect at the time, contained the policy and outlined the procedures for separating individuals for unfitness. It provided 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 (e) 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 an honorable or a general discharge.

a. Paragraph 3-7a states that an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 provides that 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.

2. 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.

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 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.

4. 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.

5. 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//