

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 January 2024

DOCKET NUMBER: AR20230007016

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

- DD Form 149 (Application for Correction of Military Record), 17 March 2023
- DD Form 149 (Application for Correction of Military Record), 20 September 2023
- self-authored statement
- Department of Veterans Affairs (VA) Rating, 28 October 2021
- character reference, C.B., date unknown
- character reference, L.A.A., date unknown
- character reference, Pastor, S.J., date unknown

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. The applicant states, in effect, he went to Vietnam and received an honorable discharge. He extensively fought in Vietnam. When he returned, he was sent to Fort Sill. He was surrounded by young lieutenants "barking orders," who would not listen to the "war stories" of the enlisted troops. The stress level was exponentially worse than Vietnam. It was more than he could stand. To escape the stressful environment, he went absent without leave (AWOL). He could not take the unbearable situation and was "facing the demons" of his Vietnam experiences. The military police came to his home, and he went peacefully with them. He was sentenced to time in the stockade, reduction to E-1, and forfeiture of pay. Once his time in the stockade was complete, he was discharged under conditions other than honorable.

a. He believes post-traumatic stress disorder (PTSD) from service in Vietnam is what caused him to rebel and disobey common orders. He was abused by Junior

Officers who were appointed above him. They had no firsthand knowledge of the stress and horrors he survived.

b. He struggled with severe PTSD, which was not even remotely understood nor cared about within the Army at that time. He experienced hardships with his comrades and difficulties in his relationships with his wife and friends. He turned to drinking and isolated himself.

c. He struggles with staying focused and has nightmares; he fears crowds and family get together. He regrets his actions but believes he would not have gone AWOL if not for his PTSD and his experience in Vietnam. He now suffers from skin and prostate cancer, resulting from exposure to the sun and Agent Orange in Vietnam.

3. He enlisted in the Regular Army on 31 January 1969 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman). The highest rank he attained was private first class/E-3.

4. A DA Form 20 (Enlisted Qualification Record) shows he served in Vietnam from 28 August 1969 to 27 August 1970.

5. A DA Form 3072 (Request for Waiver of Disqualification for Enlistment/Reenlistment in the Regular Army for In-Service Personnel) dated 23 October 1969, shows the following:

- Item 23 (Conduct and Efficiency Ratings) - Excellent
- Item 25 (Awards and Decorations) - National Defense Service Medal and Vietnam Service Medal
- Item 26 (Articles 15 During Current Service) - 21 April 1969, AWOL, forfeiture of \$51.00 for one month, seven days confinement, and reduction to private/E-1
- Item 32 (Evaluation and Recommendation of Commanding Officer with Reason and Justifications) - assigned to unit 5 September 1969, performed well, waiver recommended for five days of AWOL

6. He reenlisted on 24 October 1969 for a 3-year period.

7. On 17 April 1970, the applicant was reported as AWOL and remained absent until he surrendered to military authorities on 3 March 1970.

8. Special Court-Martial Order Number 367, issued by Department of the Army, Headquarters, U.S. Army Field Artillery Center, Fort Sill, OK, dated 26 March 1970 shows he was arraigned and tried for going AWOL, from on or about 16 December 1969 until on or about 3 March 1970. His sentence imposed was confinement to hard labor for two months, forfeiture of \$20.00 per month for four months, and reduction to

the rank/grade of Private (E-1). The sentence was adjudged on 23 March 1970. The sentence was approved on 26 March 1970, and the record of trial was forwarded for appellate review.

9. Special Court-Martial Order Number 405, issued by Department of the Army, Headquarters, U.S. Army Field Artillery Center, Fort Sill, OK, dated 31 March 1970, shows on 26 March 1970 the unexecuted portion of the applicant's sentence to confinement at hard labor was ordered duly executed. The applicant was credited for confinement commencing on 30 March 1970.

10. Special Court-Martial Order Number 476, issued by Department of the Army, Headquarters, U.S. Army Field Artillery Center, Fort Sill, OK, dated 13 April 1970, suspended the unexecuted portion of the sentence to confinement at hard labor for two months.

11. Special Court-Martial Order Number 1223, issued by Department of the Army, Headquarters, U.S. Army Field Artillery Center, Fort Sill, OK, dated 28 August 1970, shows the applicant was arraigned and tried for going AWOL on or about 14 April 1970 and did remain absent until on or about 11 August 1970. He plead not guilty and was found guilty. The sentence imposed was confinement at hard labor for four months, forfeiture of \$60.00 per month for six months. The sentence was adjudged on 27 August 1970, approved and ordered duly executed on 28 August 1970.

12. Special Court-Martial Order Number 1348, issued by Department of the Army, Headquarters, U.S. Army Field Artillery Center, Fort Sill, OK, dated 21 September 1970, suspended the sentence of confinement at hard labor for four months.

13. The applicant's record is void of a separation packet; however, his official military personnel file contains a duly constituted DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge).

14. He was discharged on 22 September 1970 under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), in the rank/grade of private/E-1. His DD Form 214 confirms his characterization of service was under conditions other than honorable with Separation Program Number 386 and Reenlistment Code "3B." He was credited with 10 months, and 17 days of net active service this period with 275 days of lost time from the following dates:

- 12 April 1969 to 18 April 1969
- 24 November 1969 to 10 December 1969
- 22 December 1969 to 22 March 1970
- 14 April 1970 to 21 September 1970

15. The applicant provides VA documentation that shows he is service connected for treatment purposes only for bilateral hearing loss, bilateral tinnitus, prostate cancer, skin cancer, and PTSD.

16. Additionally, he provides character references from his sister, brother, and Pastor.

a. His sister states, in effect, the applicant changed when he got home from Vietnam. He lost a lot of ability to hear, was jumpy at loud noises, people appearing, and sudden movements, and he lost his patience. With all his issues, his previous employers bragged about his worth ethic.

b. His brother states, in effect, before his time in the service his brother was a happy, fun, and loving person. He enjoyed his family and all their get togethers. Since his discharge he became a different person by closing himself off to his family. He cannot stand to be in a crowded room, has nightmares, is depressed and combative. He is quick to anger, has flash backs from battle, and has not been able to hear well since his discharge.

c. His Pastor states, in effect, he is a productive citizen; a man who works hard to supply for his family and someone who holds faith in Jesus.

17. There is no indication the applicant applied to the Army Discharge Review Board for request of discharge upgrade within that Board's 15-year statute of limitations.

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

19. MEDICAL REVIEW:

a. Background: The applicant is requesting that his Under Other Than Honorable 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.

- Applicant enlisted in the Regular Army on 31 Jan 1969 and subsequently reenlisted on 24 Oct 1969. He was deployed to Vietnam from 28 Aug 1969 - 27 Aug 1970. His awards include the National Defense Service Medal and Vietnam Service Medal

- On 26 Mar 1970, a Special Court Martial, Fort Sill, Oklahoma found applicant guilty due to going AWOL from 16 Dec 1969 - 03 Mar 1970.
- A second Special Court Martial at Fort Sill (28 Aug 1970) found him guilty regarding another AWOL episode from 14 Apr 1970 - 11 Aug 1970.
- 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 Under Other Than Honorable Conditions on 22 Sep 1970.

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, "my PTSD at the time is what caused me to rebel and disobey common orders for good conduct. I was continually being abused by the junior officers appointed above me, men with no firsthand knowledge of horrors and stresses I and so many others survived." His service record and supporting documents did provide some supportive letters from family members and a pastor, both siblings asserting applicant's pronounced personality changes and PTSD symptoms following his Vietnam experience. A VA Rating Decision (28 Oct 2021) indicated a combined evaluation for compensation as of 12/29/2020. Several medical conditions including PTSD were cited for treatment purposes only. In particular, PTSD was highlighted, "(claimed as Acquired Psych Disorder), Vietnam Era Entitled to Chapter 17 Static Disability." Based on this documentation in its entirety, there are some personalized indicators and a VA rating decision indicating the applicant exhibited PTSD related symptoms which implied a mitigating condition (PTSD) that developed during his time in service.

e. Per the applicant's VA EHR, he is not service connected for any medical or behavioral health concerns. There were two outpatient entries in JLV. A Primary Care w/vitals & indicated he had a positive score on the PTSD screening instrument with a 3 out of 4 possible.

f. In summary, although he is not service connected for any behavioral health conditions (likely due to the character of his discharge), there is some documentation supportive of PTSD related symptoms which had been initially experienced during applicant's time in service. 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 mitigating condition (PTSD) which significantly contributed to the specific misconduct of AWOL episodes. 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 more likely than not experienced PTSD symptoms contributing to his AWOL episodes while still on active duty that was subsequently identified on a VA rating decision (28 Oct 2021), as well as a positive screening for PTSD (VA note). PTSD was also self-reported and corroborated by the observations of two siblings as indicated in their letters included in the ABCMR supporting documents.

(2) Did the condition exist or experience(s) occur during military service? Yes, there is sufficient evidence he initially encountered PTSD related symptoms while on active duty, due to traumatic events during 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 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, all supporting documents and the evidence found within the military record, the Board determined that relief was warranted. The Board carefully considered the applicant's request, supporting documents and evidence in the records. The Board considered the frequency and nature of the misconduct, the reason for separation and published DoD guidance for consideration of discharge upgrade requests. The Board noted the applicant's period of service and found sufficient evidence that the misconduct that lead to the applicant's discharge had a direct relationship to his experiences during his period of service and are mitigating factors toward his misconduct. After due consideration of the applicant's request, the Board determined the evidence presented sufficient to warrant a recommendation for relief.

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 a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 for the period ending 22 September 1970 showing:

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

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates. Paragraph 1-9d provided that an honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

4. Army Regulation 635-212, then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.

5. 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. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.



6. 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//