

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230007136

APPLICANT REQUESTS: Reconsideration of his request for an upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable discharge.

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

- Self-authored statement (10 pages)
- Psychological Summary, dated 24 February 1965
- Report of Psychological Examination, dated 10 March 1965

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 Dockets Number:

- AD-79-07583 on 30 November 1966
- AR20220007193 on 28 February 2023.

2. The applicant states that during the Civil Rights Movement, he was a young, black American patriot, activist, freedom rider, and fighter. He voluntarily enlisted in 1965 at the age of 17 to go to Vietnam because he felt it was his patriotic duty. Prior to his enlistment, a psychologist noted he had suffered a racial crisis and diagnosed him with post-traumatic stress disorder (PTSD) stemming from heightened racial consciousness of persecution and repressive oppression. While serving in the Army, he was subjected racism from cowardly white officers and sergeants with southern accents who racially bullied, tricked, and manipulated an unwise teenager into believing it was in his best interest to accept a discharge UOTHC. He was convinced that it was his only option at the time and there was no reason to seek a second opinion or to appeal the decision. History shows it is an undisputed fact that many black criminal defendants plead guilty to crimes they did not commit based on advice from a white lawyer. It makes no sense that a black patriot who volunteered to serve his country and risk his life by fighting in Vietnam would do anything to jeopardize his career in the Army. He admits that disobeying a direct order from a superior officer is a serious offense, but it should be noted that none of his offenses were violent in nature. The applicant shares his

accounts of several racist incidents he experienced while growing up and during his time in the Army.

3. The applicant enlisted in the Regular Army on 7 December 1965 for a period of 3 years.
4. The applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 7 January 1966, for being disrespectful to an authorized acting noncommissioned officer (NCO), on or about 5 January 1966. His punishment consisted of 7 days in correctional custody.
5. Before a special court-martial at Fort Lewis, WA on 11 February 1966, the applicant was found guilty of two specifications of violating Article 128, UCMJ by on or about 29 January 1966, unlawfully striking another Soldier on the arm and pushing him on the chest with his hands; and on or about 30 January 1966 unlawfully kicking another Soldier in the groin with his booted foot. The court sentenced him to forfeiture of \$58.00 pay per month for 6 months and to confinement at hard labor for 6 months. The confinement for 6 months and forfeiture in excess of \$58 per month for 4 months was suspended for 6 months. The sentence was approved on 21 February 1966.
6. The applicant accepted NJP under the provisions of Article 15, UCMJ on 23 April 1966, for failing to comply with the unit's Standing Operating Procedures by removing pages from a test booklet, on or about 21 April 1966. His punishment included forfeiture of \$10.00 pay for 2 months and detainment in correctional custody for 14 days.
7. the applicant accepted NJP under the provisions of Article 15, UCMJ on 15 June 1966, for failing to obey a lawful order from a superior commissioned officer on or about 8 June 1966. His punishment included forfeiture of \$43.00 pay for 2 months, 30 days of restriction, and 30 days of extra duty.
8. Before a special court-martial at Fort Lewis, WA, on 3 August 1966, the applicant was found guilty of one specification of going from his appointed place of duty without proper authority, on or about 6 July 1966. The court sentenced him to confinement at hard labor for one month, forfeiture of \$62.00 pay for one month, and reduction from private/E-2 to private/E-1. The sentence was approved on 16 August 1966.
9. The applicant accepted NJP under the provisions of Article 15, UCMJ on 16 February 1967, for being uncooperative and disrespectful to his squad leader, on or about 26 January 1967; reporting late for duty on or about 1 February 1967; and reporting late for duty on or about 2 February 1967. His punishment included forfeiture of \$23.00 pay for 1 month and reduction to E-1 for 2 months.
10. Before a special court-martial on or about 23 May 1967, at Fort Lewis, WA:

a. The applicant was found guilty of:

- one specification of, on or about 28 March 1967, being indebted to a taxicab company in the sum of \$5.00 for taxifare
- one specification of, on or about 29 March 1967, breaking restriction
- one specification of, on or about 3 April 1967, failing to obey a lawful order
- one specification of, on or about 2 April 1967, failing to go at the time prescribed to his appointed place of duty

b. The court sentenced him to confinement at hard labor for 6 months and forfeiture of \$60.00 pay for 6 months. The sentence was approved on 3 June 1967.

11. A DA Form 2800 (Criminal Investigation Division (CID) Report of Investigation), dated 5 July 1967, shows the applicant escaped from confinement from a Post Stockade work detail at about 0745 hours on 1 July 1967 and was apprehended by military police at about 0920 hours on 1 July 1967.

12. The applicant underwent a neuropsychiatric evaluation on 11 August 1967 and was diagnosed with Antisocial personality. It was determined that he was responsible for his own behavior, knew the difference between right and wrong, and could adhere to the right. He could understand and participate in any proceedings that required his cooperation. He did not suffer from any mental disease or derangement. The examining psychiatrist recommended the applicant be separated from service under the appropriate regulatory guidance before he brought further discredit upon himself and the Army.

13. On 28 August 1967, the applicant was interviewed by a chaplain who recommended that he be separated.

14. The applicant's commander notified him of his intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), by reason of unfitness for military service on 8 September 1967. The commander cited the applicant's frequent incidents of a discreditable nature with military authorities and an established pattern for shirking as the specific reasons for the action.

15. The applicant's commander formally recommended the applicant's discharge, under the provisions of AR 635-212, by reason of unfitness on 8 September 1967.

16. The applicant consulted with legal counsel and affirmed he had been advised of the basis for the contemplated separation action on 11 September 1967. Following his consultation, he waived his right to personally appear before, and to have his case

considered by a board of officers. He declined to submit a statement in his own behalf and waived his right to further representation by military counsel. He acknowledged he could expect to encounter substantial prejudice in civilian life, if given either a general discharge (under honorable conditions) or an undesirable discharge.

17. On 28 September 1967, the separation authority approved the recommended discharge and directed the issuance of a DD Form 258A (Undesirable Discharge Certificate).

18. The applicant's DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged on 5 October 1967 under the provisions of AR 635-212, by reason of unfitness. His service was characterized as UOTHC, and he was assigned Separation Code "28B" and Reentry Code "4." He was credited with completion of 1 year, 2 months, and 16 days of net active service. He had 223 days of lost time. He was awarded/authorized the National Defense Service Medal.

19. The applicant provides the following documents that are available in their entirety for the Board's consideration:

a. A Psychological Summary, dated 24 February 1965, shows the applicant was referred for a psychological evaluation as a result of deviant behavior that had resulted in five suspensions from school. He was in the 10th grade at the time of the evaluation. It was recommended that he be immediately referred to a clinical psychologist for a differential diagnosis and possible counseling prior to him being readmitted to school.

b. A Report of Psychological Examination, dated 10 March 1965, shows the examining psychologist considered his problem to be adolescent situational maladjustment. He did not believe that expelling the applicant from school was the best way to handle the situation and strongly recommend that he be permitted to return to school immediately.

20. The applicant petitioned the ABCMR for relief. On 2 December 1966, he was informed the ABCMR had considered his case and determined that insufficient evidence had been presented to indicate probable material error or injustice, and his request was denied.

21. The applicant petitioned the ABCMR for reconsideration of his case. On 9 March 2023, he was informed that the ABCMR had considered his application under procedures established by the Secretary of the Army and had denied his request for relief.

22. In reaching its determination, the Board can consider the applicant's petition, his service record, and his statements in light of the published guidance on equity, injustice, or clemency.

23. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his request for an upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable discharge. He contends he was experiencing PTSD that mitigates his misconduct. 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 on 7 December 1965; 2) The applicant accepted nonjudicial punishments (NJP) between January 1966-February 1967 for various incidents of misconduct to include being disrespectful to his NCOs, reporting late for duty, failing to follow orders, and failing to comply with SOPs; 3) Before two special court-martials in February 1966 and August 1966, the applicant was found guilty of violence directed toward other soldiers and going from his appointed place of duty without proper authority; 4) Again before a special court-martial on 23 May 1967, the applicant was found guilty of being indebted to a taxi company, breaking restriction, failing to follow an order, and failing to be at the time prescribed to his appointed place of duty. He was sentenced to confinement at hard labor for 6 months. The applicant left his area of confinement on 1 Jul 1967 for a few hours; 5) The applicant was discharged on 5 October 1967, by reason of unfitness. His service was characterized as UOTHC; 6) On 2 December 1966, the ABCMR reviewed and denied the applicant's request for an upgrade; 7) On 9 March 2023, the ABCMR reviewed and denied his request for an upgrade.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. In addition, the applicant provided hardcopy civilian medical documentation for review. On his application, the applicant contends PTSD was a contributing and mitigating factor in the circumstances that resulted in his separation. The applicant was provided a psychological evaluation during his active service on 11 August 1967. He was determined to not meet criteria for a mental disease, was recommended to be separated from military service, and psychiatrically cleared for administrative action. A review of JLV was void of any medical documentation, and the applicant does not receive any service-connected disability. The applicant provided three civilian psychological evaluations or summaries completed in 1965. The first two evaluations were conducted due to the applicant's "deviant" behavior in high school. The specific facts surrounding this behavior were not well defined, but there was evidence the applicant had a history of multiple suspensions from school. After the first two evaluations, the applicant was referred for further psychological testing to determine if he should be returned to school. The third

evaluation was completed by a consulting psychologist at Kent State University in March 1965. The applicant was not diagnosed with any mental health condition including PTSD. He was concluded to be experiencing adolescent situation maladjustment. He was not determined to be a threat to other students, but he was experiencing frustration with perceived and actual racially discriminative behavior demonstrated by authority figures. The applicant was recommended to return to school.

c. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends he was experiencing PTSD while on active service.

(2) Did the condition exist, or experience occur during military service? Yes. The applicant contends he was experiencing PTSD while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There was insufficient evidence beyond self-report the applicant has ever been diagnosed with PTSD prior to or during his active service. While there is a nexus between erratic/avoidant behavior and PTSD. The presence of the applicant's repeated pattern of misconduct is not sufficient to determine the presence of PTSD. In addition, there is no nexus between PTSD and the applicant's misconduct of not following SOPs, debt to a taxicab, and leaving his confinement area given that: 1) these type of behavior are not part of the natural history or sequelae of PTSD; 2) Also PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was discharged due to unfitness following an extensive history of misconduct, consisting of 4 NJPs and 3 convictions by a special court-martial. The Board found no

error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewer. The Board concurred with the medical official's finding insufficient evidence to support the applicant had condition or experience that mitigated his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 Dockets Number:

- AD-79-07583 on 30 November 1966
- AR20220007193 on 28 February 2023



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. Title 10, U.S. Code, Section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides 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. It is not an investigative body.

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. Army Regulation 635-200 (Enlisted Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel. It provided that because the type of separation could significantly influence the individual's civilian rights and eligibility for benefits provided by law, eligibility for reentry into the Service, and acceptability for employment in civilian industry, it was essential that all pertinent factors be considered so that the type of separation would accurately reflect the nature of service rendered.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.



c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

6. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

8. 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, 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.

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//