

IN THE CASE OF: ██████████

BOARD DATE: 7 February 2024

DOCKET NUMBER: AR20230007572

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

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) with self-authored statement
- Certificates and Letters of Commendation (19 pages), dated 6 November 1986 to 14 October 2022
- Statements of support (5 pages), undated

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. He was drafted into the Army in December of 1966. He completed basic training and advanced individual training, and was sent to Vietnam. He returned home from Vietnam in 1968 and had a hard time readjusting.

b. He suffered the loss of his great grandfather while home on leave. One day, while in his uniform, he was approached by a group of white men who beat him and kicked him. They threatened to harm his family if he did not "take off that uniform and go to the sawmill and get a job." They spit on him and called him a "baby killer." He was terrified and suffering from battle fatigue. He thought he was doing the right thing by protecting his family, not returning to the Army, and going to work. He saved his money and relocated his family to Michigan. Once he knew his family was safe, he turned himself in at Fort Benjamin Harrison, IN.

c. He suffers from post-traumatic stress disorder (PTSD). It has been hard to live a normal life. He has come to the realization that he needs medical help. The only way he can do that is with a discharge upgrade. He is proud to say he served his country.

3. In the processing of this case, an Army Review Boards Agency (ARBA) staff member requested the applicant's official military personnel file (OMPF) from the National Archives and Records Administration (NARA) in St. Louis, Missouri. According to the response received from NARA, his record is currently signed out and is unavailable for review at this time. Despite the lack of his OMPF, a DD Form 214 (Report of Separation from Active Duty) is available for the Board to conduct a fair and impartial review of the applicant's petition.

4. The applicant's DD Form 214 shows he entered active duty on 2 December 1966. He served in the Republic of Vietnam. He was discharged on 28 September 1977, in the rank/grade of private/E-1. His service was characterized as UOTHC. He was credited with 1 year, 6 months, and 13 days of net active service, with 169 days of lost time from 15 June 1968 to 1 December 1968 and 3,221 days of lost time after his expiration term of service.

5. The applicant provides the following:

a. 19 letters and certificates of recognition, dated 6 November 1986 to 14 October 2022, which highlight his post-service accomplishments to include:

- selection as a [REDACTED] contestant
- letter of appreciation for a job well done at [REDACTED]
- two certificates of appreciation for supporting Club Esteem
- employee of the quarter, [REDACTED] Public Works, 15 October 1997
- certificate of commendation, [REDACTED], newspaper article, and letter for rescuing a lost child during his duties as a refuse truck driver on 1 August 2001
- email commending him for a job well done in his duties as a refuse truck driver, 5 August 2001
- employee of the month, Servicemaster, 21 April 2004
- certificate of excellence, Servicemaster, 18 November 2006
- certificate of recognition, [REDACTED] Police Department, 2008
- certificate of commendation, First Place, Sanitation Division, City Employee [REDACTED], 3 September 2008
- award, Commitment to Safety, [REDACTED], 2008
- letter of commendation, [REDACTED], 7 January 2009
- certificate of completion, "A Safe Haven for Newborns," 18 January 2019
- recognition, Orlando Health, 14 October 2022

b. In five statements of support, the authors attest to the applicant's good moral character. He is an honest, hard-working, public service oriented man who is a role model for others. He is a good husband and father who is kind and respectful to others. He touches the lives of everyone he meets. He struggled after coming home from Vietnam. He still has trouble sleeping and dealing with his emotions. He was forced to decide to protect his family, but he turned himself in once they were safe. He served his country honorably prior to that. A discharge upgrade will allow him to receive medical attention and the benefits he needs.

6. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

#### 7. MEDICAL REVIEW:

a. The applicant requests an upgrade of his UOTHC discharge to Honorable. He contends his misconduct was related to PTSD.

b. 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 entered active duty on 2 December 1966; 2) He service in Vietnam; 3) He was discharged on 28 September 1977, credited with 1 year 6 month and 13 days net active service with 169 days of lost time from 15 June 1968 to 1 December 1968 and 3221 days of lost time after his expiration of service.

c. The VA electronic medical record (JLV), and ROP were reviewed. The military electronic medical record, AHLTA, was not reviewed as it was not in use during the applicant's period of service. No military BH-related records were provided for review. A review of JLV was void of any treatment history for the applicant and he does not have a SC disability. No civilian BH records were provided for review.

d. The applicant is requesting an upgrade of his UOTHC discharge to Honorable and contends his misconduct was related to PTSD. A review of the records was void of any history of BH diagnosis or treatment for the applicant during or after service and he provided no documentation supporting his assertion of PTSD. In absence of evidence supporting his assertion, there is insufficient evidence that his misconduct, presumably characterized by AWOL, was related to, or mitigated by PTSD and therefore insufficient evidence to support an upgrade based on medical mitigation. The applicant does have significant post-service accomplishments that could be considered by the Board during their deliberation.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had an experience or condition during his time in service that would mitigate his misconduct. However, the applicant contends his misconduct was related to PTSD, and per liberal guidance, his contention is sufficient to warrant the Board's consideration.

## 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 asserts his misconduct was related to PTSD

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void and of any history of BH diagnosis or treatment for the applicant during or after service and he provided no documentation supporting his assertion of PTSD. In absence of evidence supporting his assertion, there is insufficient evidence that his misconduct, presumably characterized by AWOL, was related to, or mitigated by PTSD and therefore insufficient evidence to support an upgrade based on medical mitigation. The applicant does have significant post-service accomplishments that could be considered by the Board during their deliberation.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence that the applicant had an experience or condition during his time in service that would mitigate his misconduct. In addition, the opine noted there is insufficient evidence that his misconduct, presumably characterized by AWOL, was related to, or mitigated by PTSD and therefore insufficient evidence to support an upgrade based on medical mitigation.

2. The Board carefully considered the applicant's post service accomplishments and his numerous character letters of support that attested to his integrity, extensive community service and always going above and beyond to help others. The Board commends the applicant on his success since his discharge, however, the Board found no error or injustice based on the misconduct that warrants an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable. This board is not an investigative body. The Board determined despite the absence of the applicant's medical records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has

insufficient evidence to support the applicant request of a discharge upgrade. Therefore, the Board denied relief.

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 for correction of the records of the individual concerned.

2/22/2024

X █

CHAIRPERSON

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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, USC, 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, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

4. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

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

b. 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.

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 (PTSD); traumatic brain injury; 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 sexual assault or sexual harassment was unreported, or 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.

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//