

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230007597

APPLICANT REQUESTS:

- reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) characterization of service
- personal appearance hearing before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statements, 18 April and 21 April 2023
- Application packet for Hardship separation, 14 September 1970 to 6 October 1970
- Special Orders (SO) Number 231, 19 August 1971
- Standard Form (SF) 600, 18 March 1971
- SF 513 (Consultation Sheet), 1 October 1971 and 13 October 1971
- buddy statements, three dated 26 June 2017 and one undated
- letter from three physicians, 27 December 2012, 13 September 2018, and 3 March 2023
- verification letter of applicant's mother's death, 23 December 2019
- Department of Veterans Affairs (VA) rating decision, 28 April 2022
- VA service-connected compensation decision letter, 2 May 2022

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 AR20160016155 on 3 January 2020.

2. The applicant states:

a. His discharge from the Army was the result of injustice as there was no consideration given to his having post-traumatic stress disorder (PTSD) or his exposure to Agent Orange due to his deployment to the Republic of Vietnam. PTSD was not recognized until 1980, so he feels he was wrongfully discharged with an UOTHC as a

result of misconduct attributable to undiagnosed PTSD. His misconduct was an isolated incident in 28 months of service with no other adverse actions.

b. He was diagnosed by the VA with PTSD and Parkinson's disease in April 2022, and more recently, he was diagnosed with stage four cancer. All diseases were presumptively linked to his agent orange exposure in Vietnam. Due to his current discharge status, the VA cannot assist him with treatment and health care.

c. He has lived with the thoughts of his deployment to Vietnam and of the day he was discharged from the Army with an UOHC. As an act of humanitarian assistance to him and his family, he asks the board to grant him relief so he can receive medical care, treatment, and benefits from the VA. It would not only help him but will be beneficial to his family as they are forced to live off their monthly social security checks and cannot afford proper medical and mental health care.

3. The applicant enlisted in the Regular Army on 17 April 1969, for 3 years. The highest rank/grade he held was specialist four/E-4.

4. On 6 June 1969, he accepted non-judicial punishment (NJP) under Article 15, of the Uniform Code of Military Justice (UCMJ), for on or about 5 June 1969, being disrespectful toward his superior noncommissioned officer. His punishment was forfeiture of \$23.00, extra duty for 7 days, and restriction for 14 days.

5. On 14 September 1970, he accepted NJP under Article 15, of the UCMJ, for on or about 21 August 1970, absenting himself from his organization, and did remain so absent until on or about 6 September 1970. His punishment was forfeiture of \$50.00 pay per month for two months, and restriction and extra duty for 15 days.

6. Special Court-Martial Order number 85, issued by Headquarters Command USATCI (United States Army Training Center Infantry), Fort Jackson, SC, on 29 March 1971, shows he was found guilty of one charge and specification for on or about 21 September 1970, absenting himself from his organization, and did remain so absent until on or about 16 February 1971.

a. He was sentenced to confinement at hard labor for 60 days, forfeiture of \$30.00 pay per month for five months, and reduction to private/E-1.

b. The convening authority approved only so much of the sentence as provides for confinement at hard labor for 60 days, forfeiture of \$25.00 pay per month for four months, and reduction to the grade of private/E-1. The execution of so much thereof as provided for confinement at hard labor, and reduction to the grade of private/E-1, was suspended until 28 June 1971. The accused will serve in the grade of E-2 unless the suspension of the confinement or reduction to the grade of E-1 is vacated, in which

event the accused at the time will be reduced to the grade of private/E-1. The sentence was adjudged on 16 March 1971.

7. A DA Form 268 (Report for Suspension of Favorable Personnel Actions), dated 5 December 1971, shows, the applicant was facing court-martial in Da Nang, Republic of Vietnam, for violation of Article 121, Larceny, in violation of the UCMJ.

8. On 1 February 1972, the applicant completed a medical examination as part of his consideration for discharge due to his misconduct. His medical exam noted, he was not qualified for retention.

9. The complete facts and circumstances surrounding his discharge processing is not available for review. However, his record contains a dully constituted DD Form 214 that shows the following:

a. On 11 February 1972, the applicant was discharged under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10 (for the good of the service - in lieu of trial by court-martial), with an UOTHC characterization of service in the grade of E-1. He was issued separation program number "246" and reenlistment code "RE-4 and 3B."

b. He completed 2 year, 3 months, and 15 days of net active service with 8 months, and 27 days of foreign service during the period covered.

c. Block 24 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows:

- National Defense Service Medal
- Vietnam Service Medal
- Overseas Service Bar

d. Block 30 (Remarks) shows the entries:

- "VN [Vietnam] Service: 15 May 71 – 11 Feb 72"
- "191 DAYS LOST"

10. The applicant provides:

a. An application packet for a hardship discharge, which shows he requested and was denied a hardship discharge to take care of his bedridden, invalid mother.

b. SO Number 231, shows he was promoted to specialist/E-4 effective 8 August 1971.

c. Various medical documents, including a consultation sheet showing the applicant was seen by psychiatry on 13 October 1971 and received a provisional diagnosis of sociopathic personality. The Doctor noted that the applicant was under prosecution for dealing on the black market. The applicant related a life of messing things up when things got comfortable and doing wrong for no apparent reason.

d. Three letters from doctors show the applicant was diagnosed with Parkinson's disease and stage four prostate cancer. One doctor noted that he believed it was more likely than not, the applicant's Parkinson's disease, which began at a relatively young age, was related to toxic exposure related to his military service.

e. A buddy statement from his wife states that the applicant has Parkinson's disease and other health challenges. His physicians have attributed his health issues to exposure to Agent Orange while serving in Vietnam. Her husband's health is declining, and her family needs help with medical bills and other expenses. A change in his discharge status will assist with their current hardship.

f. Three buddy statements from his pastor and friends state that the applicant is a good friend and an honorable man who serves his fellow man and is dependable, trustworthy, responsible, caring, honest, courteous, ambitious, has outstanding character, and an excellent work ethic.

g. A VA rating decision and letter to the applicant show the evidence used and reasons for the VA's decision to deny the applicant's claim for service-connected compensation.

11. The applicant petitioned the Army Discharge Review Board for upgrade of his service characterization. On 18 April 1978, after careful consideration the Board determined he was properly and equitably discharged.

12. The ABCMR considered the applicant's request for upgrade of his UOTHC discharge on 3 January 2020. After reviewing the application and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

13. The issuance of a discharge under the provisions of Army Regulation 635-200, Chapter 10, required the applicant to have requested from the Army – voluntarily, willingly, and in writing – discharge in lieu of trial by court-martial. It is presumed that all requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the separation process. He provides no evidence that would indicate the contrary.

14. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

MEDICAL REVIEW:

1. The applicant requests reconsideration of his previous request to upgrade his UOTHC discharge to honorable. He contends his misconduct was related to PTSD.

2. 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 into the Regular Army on 17 April 1969; 2) On 6 June 1969, he accepted non-judicial punishment (NJP) under Article 15, of the Uniform Code of Military Justice (UCMJ), for on or about 5 June 1969, being disrespectful toward his superior noncommissioned officer; 3) On 14 September 1970, he accepted NJP under Article 15, of the UCMJ, for on or about 21 August 1970, absenting himself from his organization, and did remain so absent until on or about 6 September 1970; 4) Special Court-Martial Order number 85, issued by Headquarters Command USATCI (United States Army Training Center Infantry), Fort Jackson, SC, on 29 March 1971, shows he was found guilty of one charge and specification for on or about 21 September 1970, absenting himself from his organization, and did remain so absent until on or about 16 February 1971; 5) A DA Form 268 (Report for Suspension of Favorable Personnel Actions), dated 5 December 1971, shows, the applicant was facing court-martial in Da Nang, Republic of Vietnam, for violation of Article 121, Larceny, in violation of the UCMJ; 6) The complete facts and circumstances surrounding his discharge processing is not available for review. However, his record contains a dully constituted DD Form 214 that shows on 11 February 1972, the applicant was discharged under the provisions of Army Regulation 635-200, Chapter 10 - in lieu of trial by court-martial.

3. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The military electronic medical record, AHLTA, was not reviewed as it was not in use during the applicant's period of service. Included in the applicant's casefile was a Psychiatric Consultation note dated 13 October 1971 that shows the applicant was provisionally diagnosed with Sociopathic Personality Disorder. The provider noted that the applicant was under prosecution for dealing on the black market and that the applicant related a life of messing things up when things got comfortable and doing wrong for no apparent reason. Also included in the applicant's casefile was a note from the VA outlining why his request for SC for PTSD was initially denied. That decision was later changed, as will be outlined below. No additional military BH records were provided for review.

4. A review of JLV shows the applicant 0 percent SC for PTSD with an effective date of 16 October 2023. Initial PTSD DBQ dated 8 April 2022 shows the applicant reported combat-related traumatic experiencing characterized by experiencing multiple rocket attacks and witnessing people killed and wounded while deployed to Vietnam. The provider deemed the applicant endorsed sufficient symptoms to meet criteria for PTSD and that the condition was more likely than not related to combat experienced during Vietnam. A review of the records shows the applicant's initial BH encounter with the VA occurred on 26 October 2023, whereby he reported significant depressive symptoms with onset two years ago secondary to being diagnose with Parkinson's Disease and with metastatic prostate cancer. It was noted the applicant was now in hospice. His wife reported the applicant was also experiencing increased anxiousness, irritability, and agitation. She further endorsed that he experiences hallucinations and nightmares related to his time in service but is being managed with medication prescribed by his PCP. The applicant was diagnosed with Depressive Disorder, Unspecified and referred for outpatient BH care with the Oncology Psychologist. Records show the applicant has engaged in once monthly outpatient BH treatment, with fair results, through February 2024.

5. The applicant is requesting reconsideration of his previous request to upgrade his UOTHC discharge to honorable. He contends his misconduct was related to PTSD. A review of the records shows the applicant is 0 percent SC for combat-related PTSD, secondary to traumatic exposure in Vietnam. As there is an association between PTSD and avoidance, and PTSD and problems with authority figures, there is a nexus between the applicant SC diagnosis of PTSD and his misconduct characterized by AWOL and disrespect of an NCO. The applicant misconduct characterized by Larceny is not mitigated by the disorder as larceny is not natural sequela of PTSD.

6. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had an experience or condition during his time in service that partially mitigated his misconduct.

7. Kurta Questions:

a. Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant is 0 percent SC for PTSD and additionally diagnosed with Depressive Disorder Unspecified.

b. Did the condition exist, or experience occur during military service? Yes.

c. Does the condition or experience actually excuse or mitigate the discharge? Partially. A review of the records shows the applicant is 0 percent SC for combat-related

PTSD, secondary to traumatic exposure in Vietnam. As there is an association between PTSD and avoidance, and PTSD and problems with authority figures, there is a nexus between the applicant SC diagnosis of PTSD and his misconduct characterized by AWOL and disrespect of an NCO. The applicant misconduct characterized by Larceny is not mitigated by the disorder as larceny is not natural sequela of PTSD.

BOARD DISCUSSION:

1. 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.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.
3. Discharges under the provisions of Army Regulation 635-200, chapter 10, are voluntary requests for discharge in lieu of trial by court-martial. The evidence shows that having been advised by legal counsel he voluntarily requested discharge for the good of the service in lieu of trial by court-martial. All requirements of law and regulation were met, and his rights were fully protected throughout the separation process. Further, his discharge accurately reflects his overall record of service.
4. The Board thoroughly considered the opinion of the ARBA Medical Advisor, which states, as there is an association between PTSD and avoidance, and PTSD and problems with authority figures, there is a nexus between the applicant service connected diagnosis of PTSD and his misconduct characterized by AWOL and disrespect of an NCO. The applicant misconduct characterized by Larceny is not mitigated by the disorder as larceny is not natural sequela of PTSD, and determined the Applicant's character of service should be upgraded to under honorable conditions (general), based on his diagnosis of PTSD.

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 amendment of the ABCMR's decision in Docket Number AR20160016155, dated 3 January 2020. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- voiding the applicant's DD Form 214 for the period ending 11 February 1972
- reissuing him a DD Form 214 for the period ending 11 February 1972 to show the following entries:
 - block 13a (Character of Service) - under honorable conditions (general)
 - 13b (Type of Certificate Issued) - DD Form 257A

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 a personal appearance hearing before the Board.

█

█ █

█

█

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 1556, 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.

2. Army Regulation 15-185 (ABCMR) states applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200, in effect at the time, set forth the primary authority for separating enlisted personnel.

a. Chapter 10 states in part, a member who has committed an offense or offenses, the punishment for any of which, under the Uniform Code of Military Justice (UCMJ) and the Manual for Court-Martial, include bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. In addition, the request for discharge may be submitted at any stage in the processing of the charges until the court-martial convening authority's final action on the case. Commanders will also ensure that a member will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The member will be given a reasonable time (not less than 72 hours) to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

4. 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.

5. 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//