

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2024

DOCKET NUMBER: AR20230007649

APPLICANT REQUESTS:

- reconsideration of his prior request for upgrade of his character of service from under other than honorable conditions
- a personal appearance hearing before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- personal statement to the Board
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 27 February 1968
- DD Form 214, 3 February 1970
- Court Order for Name Change

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 Numbers AR20110021587 on 1 May 2011 and AR20220005806 on 7 December 2022.

2. The applicant states the ABCMR said he had no evidence to back up what he said about his health conditions. Denial of his request made him understand the Board did not get everything he said. The event he witnessed in Vietnam haunts him.

He arrived at Cameron Bay, Vietnam and was assigned to the 149th Maintenance Company for approximately three to five months. He was asked if he would like to work for CID; he agreed so he would not have to go on night patrol anymore.

Two recruiters offered him the opportunity to go home for vacation with the requirement to return to Vietnam for an additional five to six months if he reenlisted. He was also promised he could pick his next duty station and job assignment. He reenlisted

and elected to be stationed at Walter Reed Hospital, Washington, DC. His service records do not contain this agreement, but this was his motivation for reenlisting. He never had any problems while in Vietnam during his first tour of duty.

In the days before leaving Vietnam, he witnessed his friend be shot by another soldier in the barracks. It was classified as an accident. He states it was not an accident but he was afraid to speak up because he had to return to Vietnam. He was not asked for a statement. This is one cause of his posttraumatic stress disorder (PTSD).

The second cause of his PTSD is when he arrived at Walter Reed he was treated like dirt. He had to get away to avoid getting into more trouble.

He does not have a paper medical trail for his PTSD because regular doctors treat with drugs he does not want to use. He uses herbal treatments, but they are very expensive. He is not given the right to choose his treatment. He has been going to the Department of Veterans Affairs (VA) in hopes of creating the medical paper trail.

3. The applicant enlisted in the Regular Army on 20 May 1966. He completed his required training and was assigned to Germany for duty effective 24 September 1966. He was transferred to Vietnam effective 4 April 1967.

4. The applicant accepted non-judicial punishment (NJP) on 24 October 1967 for failing to return to his assigned duties from sick call. He was released from sick call at 1500 hours, 23 October 1967 and did not return to his unit until 1900 hours, 23 October 1967.

5. The applicant was honorably discharged on 27 February 1968 for immediate reenlistment. He reenlisted in the Regular Army on 28 February 1968.

6. The applicant accepted NJP on 31 August 1968 for:

- disobeying an order on 29 July 1968, that all private homes in Pleiku are off limits and the curfew begins at 1800 hours
- violating a regulation on 29 July 1968, by having in his possession three ration cards without a letter of authorization for a group purchase

7. The applicant accepted NJP on 19 September 1968 for:

- disobeying an order on 18 September 1968, to report to the First Sergeant at 0700 hours every morning
- absenting himself without authority from his appointed place of duty on 18 September 1968
- appearing in improper uniform on 19 September 1968

8. The applicant accepted NJP on 27 September 1968 for absenting himself from his unit from 0700 hours, 24 September 1968 until 1200 hours, 26 September 1968.

9. The applicant departed Vietnam on 3 October 1968 and was reassigned to Fort Meade, MD.

10. The applicant accepted NJP on 31 December 1968 for failure to go, at the time prescribed, to his appointed place of duty on 23 December 1968.

11. The applicant accepted NJP on 8 February 1969 for

- failure to go, at the time prescribed, to his appointed place of duty on 7 February 1969
- disobeying an order to check in with the motor sergeant before going to 16th Finance on 7 February 1969

12. The applicant's DA Form 20 (Enlisted Qualification Record) shows his duty status as follows:

- absent without leave (AWOL) from 24 February 1969 - 23 March 1969 (28 days)
- in confinement from 24 March 1969 - 31 March 1969 (8 days)
- AWOL from 1 April 1969 - 30 June 1969 (91 days)
- in confinement from 9 July 1969 - 13 July 1969 (5 days)
- escapes confinement and AWOL from 14 July 1969 - 22 July 1969, (9 days)

13. A DA Form 553 (Absentee Wanted by the Armed Forces) the applicant dropped from the rolls (DFR) on 23 July 1969.

14. A DD Form 458 (Charge Sheet), dated 15 January 1970, shows the applicant returned to military control on 6 January 1970 and was placed in pre-trial confinement. He was charged with being AWOL on the following occasions:

- 1 March 1969 - 28 March 1969
- 2 April 1969 - 1 July 1969
- 14 July 1969 - 6 January 1970

15. On 20 January 1970, the applicant submitted a request for the good of the service in lieu of trial by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge. He had not been coerced and advised of the implication of his request. He indicated he was afforded the opportunity to meet with counsel and did so and elected not to submit statements on his own behalf.

16. On 28 January 1970, the applicant's Commanding Officer recommended approval of the applicant's request for discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 for the good of the service, in lieu of trial by court-martial.

17. The applicant's request for discharge was approved and he was subsequently discharged under conditions other than honorable on 3 February 1970.

18. The applicant applied to the Army Discharge Review Board (ADRB) for a change in the type and nature of his discharge. He was notified on 3 June 1974 the ADRB denied his request.

19. The applicant applied to the ABCMR on 21 October 2011 requesting upgrade of his character of service. His case was adjudicated on 1 May 2012 denying his request.

20. The applicant reapplied to the ABCMR on 31 January 2022 requesting upgrade of his character of service. His case was adjudicated on 7 December 2022 denying his request. However, during the review of his record, several administrative errors were noted and addressed as follows:

a. Permanent Orders 074-01 were issued authorizing award of the Army Good Conduct Medal (AGCM) for the period of service of 20 May 1966 to 27 February 1968.

b. A DD Form 215 (Correction to DD Form 214) was issued correcting his social security number and adding the AGCM to his DD Form 214 effective 27 February 1968.

c. A DD Form 215 was issued corrected his date entry, net service this period, other service, and adding the AGCM.

21. The applicant provided 105 pages of medical records not previously considered by the Board.

22. MEDICAL REVIEW:

a. The applicant is requesting reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) characterization of service 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 was honorably discharged on 27 February 1968 for immediate reenlistment. He reenlisted in the Regular Army on 28 February 1968; 2) As outlined in the ROP he accepted multiple Article 15s for various misconduct, including disobeying orders, breaking curfew, FTR, and AWOL between August 1968 to January 1970; 3) A DD

Form 458 (Charge Sheet), dated 15 January 1970, shows the applicant returned to military control on 6 January 1970 and was placed in pre-trial confinement. He was charged with being AWOL from 1 March – 28 March 1969, m2 April – 1 July 1969, and from 14 July 1969 – 6 January 1970); 4) On 20 January 1970, the applicant submitted a request for the good of the service in lieu of trial by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge; 4) On 28 January 1970, the applicant's Commanding Officer recommended approval of the applicant's request for discharge; 5) The applicant's request for discharge was approved and he was subsequently discharged under conditions other than honorable on 3 February 1970

c. The VA electronic medical record (JLV), ROP, and casefile 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 records were provided for review.

d. A review of JLV was void of any treatment history for the applicant and he does not have a SC disability listed in the EMR. However, an Initial PTSD DBQ dated 10 October 2022, available in the Veteran's Benefit Management System (VBMC), shows the applicant was diagnosed with PTSD secondary to reported traumatic experiences encountered during his service in Vietnam to include witnessing his friend shot in the chest as he sat next to him on the bed, on the day they were scheduled to leave Vietnam. He noted that it was deemed an accident, but he knows it was actually a murder. He reportedly kept quiet during the investigation for fear he would have to return to Vietnam and something bad happening to him. He also reported that one night the Vietcong infiltrated his unit area and cut the necks of all the Soldiers who slept two sections from where he slept, and that he witnessed multiple people shot as they left a church. The applicant reported his onset of PTSD symptoms began after his friend was killed and during a time when he was facing increased discrimination at the hospital where he was assigned. Symptoms included flashbacks, nightmares, agitation, anxiety, depression, suspiciousness, flatten affect, sleep disturbance, exaggerated startle response, occasional panic, and struggle with motivation. These symptoms reportedly persist to date. The applicant also provided records from the [REDACTED] VA that shows him diagnosed with Depression secondary to being diagnosed with Parkinson's Disease and related Mild Cognitive Impairment related to Lewy Body Disease. The same records show the applicant presented with "symptoms consistent with PTSD".

e. The applicant is requesting reconsideration of his prior request for upgrade of his UOTHC discharge to honorable. He contends his misconduct was related to PTSD. A review of the records shows the applicant was diagnosed by the VA with PTSD related to combat trauma he experienced in Vietnam, and the applicant provided an additional VA medical record supporting a diagnosis of Depression secondary to current medical issues and that he presented with symptoms consistent with PTSD. As there is an association between PTSD and avoidance, there is a nexus between the applicant's misconduct characterized by multiple instances of AWOL, and multiple instances of FTRs, such as the misconduct is mitigated by PTSD. Also, the applicant's misconduct characterized by disobeying orders related to reporting to specific locations at specific

times is also mitigated as it is subsumed under avoidance behavior that mitigates AWOL and FTR. The applicant's misconduct characterized by violating a regulation by having multiple rations cards is not mitigated, as the misconduct is not natural sequelae of PTSD.

f. 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 period of service that partially 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 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? Partially. related to combat trauma he experienced in Vietnam, and the applicant provided an additional VA medical record supporting a diagnosis of Depression secondary to current medical issues and that he presented with symptoms consistent with PTSD. As there is an association between PTSD and avoidance, there is a nexus between the applicant's misconduct characterized by multiple instances of AWOL, and multiple instances of FTRs, such as the misconduct is mitigated by PTSD. Also, the applicant's misconduct characterized by disobeying orders related to reporting to specific locations at specific times is also mitigated as it is subsumed under avoidance behavior that mitigates AWOL and FTR. The applicant's misconduct characterized by violating a regulation by having multiple rations cards is not mitigated, as the misconduct is not natural sequelae of PTSD.

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 the medical review, the Board considered the advising official finding sufficient evidence that the applicant had an experience or condition during his period of service that partially mitigated his misconduct. The opine noted there is an association between PTSD and avoidance, there is a nexus between the applicant's misconduct characterized by multiple instances

of AWOL, and multiple instances of FTRs, such as the misconduct is mitigated by PTSD.

2. However, the Board notwithstanding the advising official opine finding a nexus between the applicant's misconduct characterized by multiple instances of AWOL, and multiple instances of FTRs, such as the misconduct is mitigated by PTSD. Consideration was given the applicant's period of honorable service prior to his re-enlistment but determined there is insufficient evidence to overcome the pattern of misconduct of multiple AWOLs/ dropped from rolls and escaping confinement during his enlistment period. The Bord noted the applicant provided no post service achievements or character letters of support attesting to his honorable conduct for the Board to weigh a clemency determination. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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 Docket Number AR20110021587 on 1 May 2011 and AR20220005806 on 7 December 2022.

3/29/2024

X

CHAIRPERSON
Signed by: SCHINDLER.KERRY.JOHN.1099712119

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.

ADMINISTRATIVE NOTES:

A review of the applicant's records shows he is authorized additional awards not annotated on his DD Form 214 for the period ending 3 February 1970. As a result, amend his DD Form 214 by adding the Republic of Vietnam Gallantry Cross with Palm Unit Citation.

REFERENCES:

1. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. It provides:

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. A characterization of under

honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. Chapter 10 of that regulation provided, in pertinent part, that a member who had committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an undesirable discharge certificate.

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

3. 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs 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.

4. Section 1556 of Title 10, USC, 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//