

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2024

DOCKET NUMBER: AR20230007981

APPLICANT REQUESTS: In effect, an upgrade of the service characterization associated with his U.S. Army Reserve (USAR) discharge, from under honorable conditions (general) to honorable. Additionally, he requests an appearance before the Board.

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

DD Form 149 (Application for Correction of Military Record)

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 he served over 11 months and had considerable stress from his friends who returned from Vietnam. Their stories greatly affected him and his mindset. He started reliving their experiences. Today he believes he has post-traumatic stress disorder (PTSD). He served honorably and did everything he was required to do and even was a squad leader during basic training.
3. The applicant enlisted in the USAR on 31 January 1966. He entered active duty for initial active duty for training on 30 January 1967. Upon completion of training, he was awarded military occupational specialty 71H (Personnel Specialist). He was released from active duty on 21 June 1967 and transferred to the control of the USAR. He was issued a DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) for this period of honorable service.
4. He was reported absent from his scheduled training assembly or multiple training assembly on 23 May 1968.
5. Medical Letter, issued by Dewitt State Hospital, Auburn, CA, dated 28 May 1968, states the applicant was hospitalized there as a voluntary patient on 2 May 1968 and

left on unauthorized absence on 4 May 1968. There was not a sufficient length of time to allow a suitable diagnostic work-up. However, the applicant returned 28 May 1968, saying that he was married the previous week, attended college full time, worked 48 hours a week and that the Army Reserve made him nervous. He was referred to Sacramento County Mental Hygiene Clinic for further evaluation and/or treatment.

6. The applicant was reported absent from his scheduled training assembly or multiple training assembly on 1 June 1968 and 6 June 1968.

7. On 2 July 1968, the applicant underwent a psychiatric evaluation. He was diagnosed with drug abuse, chronic and severe. Additionally, he was considered unfit for further military duty and recommended for administrative separation.

8. On 14 October 1968, the applicant's commander notified him that he was initiating actions to separate him under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), paragraph 3-18a(2), for unsuitability (character or behavior disorders).

9. On 24 October 1968, the applicant acknowledged that he had been advised of the basis for the contemplated elimination action, the possible effects of the discharge, and the rights available to him.

a. He waived consideration of his case by a board of officers and representation by military or civilian counsel.

b. He indicated he understood he could expect to encounter substantial prejudice in civilian life if a character of service that is less than honorable was issued to him.

c. He declined to submit a statement in his own behalf.

10. The available record is void of the applicant's complete separation packet and the separation authority's memorandum approving the recommended discharge.

11. Letter Orders Number 11-190, issued by Headquarters, Sixth U.S. Army, Presidio of San Francisco, CA on 8 November 1968, discharged the applicant from the USAR effective 8 November 1968, under the provisions of Army Regulation 135-178, paragraph 3-18a(2), for unsuitability for retention. His service was characterized as under honorable conditions (general).

12. 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.

13. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of the service characterization associated with his U.S. Army Reserve (USAR) discharge, from under honorable conditions (general) to honorable. He contends PTSD mitigates his discharge.

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 USAR on 31 January 1966.
- He entered active duty for initial active duty training on 30 January 1967. Upon completion of training, he was awarded military occupational specialty 71H (Personnel Specialist). He was released from active duty on 21 June 1967 and transferred to the control of the USAR. He was issued a DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) for this period of honorable service.
- The available record is void of the applicant's complete separation packet and the separation authority's memorandum approving the recommended discharge.
- Applicant was reported absent from his scheduled training assembly or multiple training assembly on 23 May 1968.
- Applicant was reported absent from his scheduled training assembly or multiple training assembly on 1 June 1968 and 6 June 1968.
- On 14 October 1968, the applicant's commander notified him that he was initiating actions to separate him under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), paragraph
- 3-18a(2), for unsuitability (character or behavior disorders).
- Letter Orders Number 11-190, issued by Headquarters, Sixth U.S. Army, Presidio of San Francisco, CA on 8 November 1968, discharged the applicant from the USAR effective 8 November 1968, under the provisions of Army Regulation 135-178, paragraph 3-18a(2), for unsuitability for retention. His service was characterized as under honorable conditions (general).

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), and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states he served over 11 months and had considerable stress from his friends who returned from Vietnam. Their stories greatly affected him and his mindset. He started reliving their experiences. Today he believes he has post-traumatic stress disorder (PTSD). He served honorably and did everything he was required to do and even was a squad leader during basic training.

e. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted the following hardcopy medical documentation from his time in service. A letter issued by Dewitt State Hospital, dated 28 May 1968, states the applicant sought a voluntary hospitalization on 2 May 1968 and left unauthorized on the morning of May 4, 1968. He was not evaluated since there was an insufficient length of time, but he reported having been married the week prior, attending college and working full time. He stated the Army Reserves made him nervous and appeared to be seeking services as a mechanism to avoid military service. He was referred to a county Mental Hygiene clinic for services since he did not appear to require hospital level of care. There is no evidence that he sought or required any further services. During a mental status evaluation for the purpose of separation, dated 11 July 1968, he was diagnosed with drug abuse since he reported use of lysergic acid diethylamide (LSD) and methedrine.

f. No VA electronic medical records were available for review. There is no evidence the applicant is service connected for any BH condition. The applicant has not provided any medical documentation indicating he engaged in any behavioral health care services or has been diagnosed with PTSD.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health diagnosis that could potentially mitigate misconduct. However, Per Liberal Consideration guidelines, the applicant's self-assertion of PTSD merits consideration by the Board.

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 a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant self-asserts PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. This advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge. However, the record does not evidence a

BH condition, other than substance use, and the applicant did not provide medical documentation, even post military service, to substantiate his assertion of PTSD. In addition, the reported stressor event, of hearing his friends share their stories of serving in Vietnam is not sufficient to meet criteria for 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 concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health diagnosis that could potentially mitigate misconduct. The opine noted the applicant's record is absent evidence het is service connected for any BH condition.
2. The Board agreed there is insufficient evidence regarding the facts and circumstances surrounding his USAR discharge. This board is not an investigative body. The Board determined despite the absence of the applicant's separation 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 contentions for an. upgrade of the service characterization associated with his U.S. Army Reserve. Therefore, the Board denied relief.
3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record 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.

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.

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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 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.

a. Paragraph 2-9 states 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.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

4. Army Regulation 135-178 (Army National Guard and Army Reserve – Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted Reserve Component personnel.

a. Paragraph 2-9a provides that an honorable characterization of service is appropriate when the quality of the Soldier'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. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

c. Paragraph 2-9c provides that service may be characterized as under other than honorable conditions (UOTHC) when discharge is for misconduct, fraudulent entry, unsatisfactory participation, or security reasons.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy 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 under other than honorable conditions 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.

6. 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, 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.

7. 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//