

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2024

DOCKET NUMBER: AR20230007997

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

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

- DD Form 149 (Application for Correction of Military Record) with self-authored statement
- Service Records (221 pages), dated 30 September 1969 to 15 February 2022

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 stationed in Vietnam in 1971. He signed up for full-time guard duty. One night, coming off of guard duty, he witnessed lightning strike their claymores, resulting in the traumatic death of a group of mountain guard people walking by. For several months, he assisted in unloading the med evacuation choppers of guys who had been shot and blown to pieces. He witnessed men with their limbs blown off, and on one occasion a man was missing his jaw and drowning in his own blood and teeth. At one point, a nurse came to him and told to him to only assist the ambulatory guys. He could see she was losing it. She had seen too much. They were assisting a man on a gurney, when the gurney lurched, spilling the man's guts on the ground. He picked up the guts and put them back in as best he could.

b. On one occasion, he was assisting a new guy and showing him the ropes when they overheard screaming and shells exploding over the radio. Their artillery unit had the wrong coordinates, and they were blowing their guys to pieces. There was a lot of whiskey drank that night. He will never forget the hopelessness in the screams of those

guys who were 12,000 miles from home, getting blown to pieces by their own artillery. 160 men were killed that day by our own guns.

c. He was sprayed with Agent Orange at a firebase near Kon Tum. He walked through puddles of it at Bien Hoa. Barrels that were not empty were dumped, and it ran down the hill into the roadway in front of their hooch.

c. Fifty years later, he still has the memories. He has had prostate cancer, hepatitis C, and cannot stand to be around crowds or fireworks. He served honorably for two years and did "double duty" in Vietnam. He cannot prove these things. Nor can he remember exact dates, but these are the things which led him to using drugs and needing to get away.

d. He did not stay with his parents when he went absent without leave (AWOL), as he did not want to disrespect their home. He lived in a shack in the hills and worked at a sawmill. He tried to turn himself in six times. He saw a "head shrinker" from the Department of Veterans Affairs (VA). He thought he was being seen for post-traumatic stress disorder (PTSD), but he was told they were trying to find out if he was crazy when he asked for a discharge. He was not crazy. He was just trying to get away from the screams in his head. The only cure was brutally hard work. Four times a year, he builds a campfire and has a glass of wine with all the guys who died screaming. He wants them to know he still remembers them.

e. He did not use drugs in Korea. He started using drugs in Vietnam after he suffered a head injury. He had severe headaches, for which he was told to take aspirin. A friend gave him pills from a Vietnamese pharmacy. Once they ran out, he started using pot, which led to opium, which led to heroin. A couple weeks after the artillery incident, he realized he was strung out, and he was put in detox. In spite of two months of drug use in Vietnam, his conduct was good to excellent everywhere he served. His lawyer told him his discharge was the same as a general discharge, and if he wanted out of the Army, he had to take it. He was and still is ignorant of legal issues. The applicant notes PTSD as a condition related to his request.

3. The applicant enlisted in the Regular Army on 6 October 1969 for a 3-year period. Upon completion of training, he was awarded military occupational specialty 31B (Radio Relay and Carrier Attendant). The highest rank he attained was private first class/E-3.

4. The applicant served in the Republic of Korea from 13 June 1970 to 5 January 1971.

5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 10 January 1971, for violating a command directive, on or about 10 January 1971. His punishment consisted of forfeiture of \$15.00 pay for one month.

6. The applicant served in the Republic of Vietnam from 11 March 1971 to 19 August 1971.

7. A DA Form 188 (Extract Copy of the Morning Report) shows the applicant was reported AWOL on 20 September 1971.

8. Military Police Report (MPR) Number 8424-71, dated 19 October 1971, shows the applicant surrendered to military authorities on or about 17 October 1971.

9. An additional DA Form 188 shows the applicant's duty status changed from dropped from rolls to assigned and apprehended by civil authorities on or about 20 December 1971.

10. MPR Number 0756-73, dated 4 April 1973, shows the applicant was AWOL and dropped from the rolls on or about 10 January 1972. He was apprehended by civil authorities on 30 March 1973. He appeared in Chesterfield County Court on 9 April 1973, at which time he was found guilty and sentenced to 90 days civil confinement. Upon release, he was transferred to military authorities at Fort Meade, MD.

11. Court-martial charges were preferred against the applicant on 1 June 1973 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with two specifications of desertion on or about 20 September 1971 until on or about 20 December 1971 and on or about 10 January 1972 to on or about 30 May 1973.

12. The applicant underwent a medical examination on 1 June 1973. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) shows the applicant reported being in fair health. The examining provider determined he was medically qualified for separation.

13. The applicant consulted with legal counsel on 7 June 1973.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He

further acknowledged understanding that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration (VA), and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his own behalf. He elected not to submit a statement.

14. The applicant's immediate commander recommended approval of the request for discharge for the good of the service and further recommended the issuance of an Undesirable Discharge Certificate.

15. The separation authority approved the applicant's request for discharge on 19 June 1973, in lieu of trial by court-martial. He directed the applicant be reduced to the lowest enlisted grade and the issuance of a DD Form 258A (Undesirable Discharge Certificate).

16. Accordingly, the applicant was discharged on 26 June 1973, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his service was characterized as UOTHC, with separation program number 246 and reenlistment code RE-3. He was credited with 2 years and 14 days of net active service, with 378 days of lost time under the provisions of Title 10 USC 972 and 235 days of lost time subsequent to normal expiration term of service. He was awarded or authorized the:

- National Defense Service Medal
- Vietnam Service Medal
- Vietnam Campaign Medal with device (1960)
- Armed Forces Expeditionary Medal
- Overseas Service Bar
- Sharpshooter Marksmanship Qualification Badge with Rifle bar (M14)

17. The Army Discharge Review Board reviewed the applicant's request for an upgrade of his characterization of service on 31 December 1986. After careful consideration, the Board determined the applicant was properly and equitably discharged. The Board denied his request.

18. The applicant provides 221 pages of military service records, dated 30 September 1969 to 15 February 2022, which are outlined above, in pertinent part.

19. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of

trial by court-martial. An UOTHC character of service is normally considered appropriate.

20. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

21. MEDICAL REVIEW:

a. The applicant requests an upgrade his UOTHC discharge to under honorable conditions, general. 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 enlisted into the Regular Army on 6 October 1969; 2) He served in South Korea from 13 June 1970 to 5 January 1971; 3) The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 10 January 1971, for violating a command directive, on or about 10 January 1971; 4) The applicant served in the Republic of Vietnam from 11 March 1971 to 19 August 1971; 5) Court-martial charges were preferred against the applicant on 1 June 1973 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with two specifications of desertion on or about 20 September 1971 until on or about 20 December 1971 and on or about 10 January 1972 to on or about 30 May 1973; 6) The applicant consulted with legal counsel on 7 June 1973. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10; 7) The separation authority approved the applicant's request for discharge on 19 June 1973, in lieu of trial by court-martial. Accordingly, the applicant was discharged on 26 June 1973, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service.

c. 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 Report of Medical Examination, dated 1 June 1973, that shows the applicant reported being in fair condition and was found medically qualified for administrative separation. No other military BH-related records were provided for review. A review of JLV shows the applicant underwent a Sanity Evaluation and C&P Examination on 24 June 2021 and was found to have not had a condition during service that would have qualified for insanity, that he had a history of polysubstance abuse during service with onset in South Korea that was not exacerbated by service in Vietnam, and that he currently does not meet criteria for a BH condition, and with the exception of Polysubstance Abuse, did not have a BH condition during service. The examiner noted "there appears to be a number of events that contributed to the [applicant's] two AWOL episodes. The

[applicant] indicated he was displeased with how Soldiers were treated during basic training and when stationed in Korea. He reported these events led him to make a conscious decision to leave the Army as soon as possible and motivated him to volunteer for service in Vietnam in exchange for an ETS date four months earlier. In a statement on submitted 01/30/1986 the [applicant] stated he went AWOL because he was lied to by a doctor who told him that he would get out of the Army due to a heart murmur and was later frustrated when finding this was not so. In interview on 06/24/2021, Veteran stated that the immediate cause of his first AWOL episode was boredom at Ft. Gordon, no longer needing hospitalization and having no duty assignment, leaving him to find something to do with his time, and the start of him going off base for increasingly longer periods of time until he eventually left the area. JVL was void of any other treatment encounters for the applicant. No civilian BH records were provided for review.

d. The applicant is requesting an upgrade his UOTHC discharge to honorable. He contends his misconduct was related to PTSD. A review of the records shows applicant was diagnosed with Poly-Substance Abuse during service with onset during his assignment to South Korea that was reportedly not exacerbated by deployment to Vietnam. Post-service records show the applicant underwent a Sanity Evaluation and C&P Examination at the VA and was found that he was sane during his time in service, only met criteria for Polysubstance Abuse during service, and does not currently meet criteria for a BH condition. It was determined that the applicant made a conscious decision to go AWOL on both occasions due to disappointment with a medical provider and boredom, respectively. There is no medical evidence in the records that applicant met criteria for PTSD during or after service and he provided no documentation to support his assertion. In absence of documentation supporting his assertion of PTSD, there is insufficient evidence that his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on medical mitigation.

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 contends 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 shows applicant was diagnosed with Poly-Substance Abuse during service with onset during his assignment to South Korea that was reportedly not exacerbated by deployment to Vietnam. Post-service records show the applicant underwent a Sanity Evaluation and C&P Examination at the VA and was found that he was sane during his time in service, only met criteria for Polysubstance Abuse during service, and does not currently meet criteria for a BH condition. It was determined that the applicant made a conscious decision to go AWOL on both occasions due to disappointment with a medical provider and boredom, respectively. There is no medical evidence in the records that applicant met criteria for PTSD during or after service and he provided no documentation to support his assertion. In absence of documentation supporting his assertion of PTSD, there is insufficient evidence that his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on medical mitigation.

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 and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. 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 advising official. The Board concurred with the medical advisory opinion 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:

Mbr 1 Mbr 2 Mbr 3

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

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

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.

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. 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.

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//