

IN THE CASE OF: ██████████

BOARD DATE: 7 March 2024

DOCKET NUMBER: AR20230008442

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general).

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

- DD Form 149 (Application for the Review of Discharge)
- Character Letter

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 AR2003087891 on 13 January 2004.

2. The applicant states:

a. He doesn't feel like he did anything to get a general discharge. He got along with all of the officers except the one that thought he should shine his boots and iron his uniform. He felt like the officer that required that of him was getting rid of him because he wouldn't obey. Honor regulations state that no higher-ranking officer can use a lower ranking officer to improve his appearance. The reason he was absent without leave (AWOL) was that he went home after advanced individual training and built a house for his mother. He never forged a pass at any time. He didn't even work in an office. He requests the upgrade to be eligible for Department of Veterans Affairs benefits and healthcare.

b. The applicant provides a character letter that states the author has lived with him since the end of 2005. She has had to learn how to deal with his bipolar and post-traumatic stress disorder (PTSD). He can flip at the touch of a button. She has had to talk him back from flashbacks. She tries her best to calm him down on road rage. She sometimes must talk really loudly, so he can hear what she says. The applicant deserves help. He needs medical attention that he can't get elsewhere, that is why he has been fighting to get what he deserves.

3. The applicant was inducted into the Army of the United States on 19 January 1970. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was honorably discharged on 22 January 1970 to enlist in the Regular Army. He completed 4 days net active service this period.
4. He enlisted in the Regular Army on 23 January 1970 for three years. His military occupational specialty was 71C (Stenographer).
5. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 22 September 1970 for AWOL on or about 2 September 1970 until on or about 17 September 1970. His punishment consisted of forfeiture of \$66.00 pay per month for two months and reduction to private/E-1.
6. He served in Vietnam from 10 November 1970 through 16 June 1971.
7. Special Orders Number 314, dated 10 November 1970, Headquarters U. S. Army Personnel Center, Fort Lewis, WA, show the applicant was returned to military control from an AWOL status effective 10 November 1970.
8. The applicant accepted NJP under Article 15 of the UCMJ on 19 March 1971 for using the signature of First Sergeant [REDACTED] on a certain paper, to forge travel authorization on or about 18 March 1971. His punishment consisted of forfeiture of \$25.00 per month for one month, restriction and extra duty.
9. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing.
10. The applicant was discharged on 16 June 1971. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation (AR) 635-212 (Personnel Separations-Discharge-Unfitness and Unsuitability), with Separation Program Number 28B (for unfitness). He was assigned Reenlistment Code 4. His service was characterized as UOTHC. He completed 1 year, 4 months, and 4 days of net active service this period. He had 20 days of lost time. His awards include the National Defense Service Medal and the Vietnam Service Medal.
11. Regulatory guidance provides that an individual is subject to separation when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier further effort is unlikely to succeed.
12. On 13 January 2004, the ABCMR determined the evidence presented, and the merits of the case were insufficient to warrant the relief requested, and therefore, it

would not be in the interest of justice to excuse the applicant's failure to timely file. His request for relief was denied.

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

14. MEDICAL REVIEW:

a. The applicant requests reconsideration of his previous request for upgrade of his under UOTHC discharge to under honorable conditions, general. He contends his misconduct is related to Other Mental Health Issues and 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 23 January 1970; 2) The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 22 September 1970 for AWOL on or about 2 September 1970 until on or about 17 September 1970; 3) Special Orders Number 314, dated 10 November 1970, Headquarters U. S. Army Personnel Center, Fort Lewis, WA, show the applicant was returned to military control from an AWOL status and having been dropped from the rolls of his unit; 4) He served in Vietnam from 10 November 1970 through 16 June 1971; 5) The applicant accepted NJP under Article 15 of the UCMJ on 19 March 1971 for using the signature of First Sergeant [REDACTED] on a certain paper, to forge travel authorization on or about 18 March 1971; 6) The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge processing, however, he was discharged on 16 June 1971 under provisions of Army Regulation (AR) 635-212 (Personnel Separations-Discharge-Unfitness and Unsuitability), with Separation Program Number 28B (for unfitness).

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not use during the applicant's time in 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 service-connected disability. No civilian BH records were provided for review.

d. The applicant requests reconsideration of his previous request to upgrade UOTHC discharge to under honorable conditions, general, and contends his misconduct was related to Other Mental Health Issues and PTSD. A review of the records was void of any BH diagnosis or treatment for the applicant during or after service and he provided no treatment documentation supporting his assertion of Other Mental Health Issues or PTSD. In absence of medical documentation supporting his assertion, there is insufficient evidence to establish that his misconduct was related to or mitigated by

Other Mental Health Issues or PTSD and insufficient evidence to support an upgrade of his discharge characterization 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 mitigated his misconduct. However, he contends his misconduct was related to Other Mental Health Issues and PTSD, and per liberal guidance his assertion 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 Other Mental Health Issues and 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 of any BH diagnosis or treatment for the applicant during or after service and he provided no treatment documentation supporting his assertion of Other Mental Health Issues or PTSD. In absence of medical documentation supporting his assertion, there is insufficient evidence to establish that his misconduct was related to or mitigated by Other Mental Health Issues or PTSD and insufficient evidence to support an upgrade of his discharge characterization based on medical mitigation.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the Army Review Boards Agency Behavioral Health Advisor. The applicant provided no evidence of post-service achievements and only one letter of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined 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.

7/15/2024

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CHAIRPERSON

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, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

2. AR 635-212 (Personnel Separations-Discharge Unfitness and Unsuitability), then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or

an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.

a. Paragraph 6a (1) of the regulation provided, in pertinent part, that members involved in frequent incidents of a discreditable nature with civil or military authorities were subject to separation for unfitness. An undesirable discharge was normally considered appropriate.

b. Paragraph 1-9f (Issuance of an undesirable discharge) states an undesirable discharge is an administrative separation from the service under conditions other than honorable.

c. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. The honorable characterization 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.

d. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions.

3. 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 Service 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.

4. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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.

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//