

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230008543

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable and a personal appearance before the Board in person.

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

- DD Form 149 (Application for Correction of Military Record), 29 April 2023
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 27 December 1965

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, in effect, he served in combat and after his three and a half combat tours, he became a different person. It has taken 18 years to overcome his troubles. He indicates post-traumatic stress disorder (PTSD) is related to his request.
3. A review of the applicant's record and governing regulation show he meets the regulatory criteria for additional awards not currently listed on his DD Form 214 for the period ending 4 March 1971. See Administrative Notes.
4. The applicant enlisted in the Regular Army on 28 December 1964 for a 3-year period. He was awarded military occupational specialty (MOS) 11B (Infantryman). His DD Form 214 shows he was honorably discharged on 27 December 1965 for immediate reenlistment. He was credited with 1 year of net service with 7 months and 9 days of foreign service this period.
5. He reenlisted on 28 December 1965 for a 6-year period. The highest rank he attained was staff sergeant (SSG)/E-6 with a date of rank of 1 March 1968.

6. The applicant's DA Form 20 (Enlisted Qualification Record) shows:

a. Item 22 MOS – 11B (Infantryman), Dog Trainer, and 11F (Infantry and Operation Intelligence Specialist)

b. Item 31 Foreign Service –

- from 19 May 1965 to 14 June 1966 service in Korea
- from 7 May 1967 to 4 December 1968 service in Vietnam
- from 29 January 1969 to 28 February 1970 service in Korea

c. Item 39 Campaigns –

- Vietnam Counteroffensive Phase II
- Vietnam Counter Offensive Campaign Phase III
- Tet Counter Offensive
- an additional illegible entry

d. Item 41 Awards and Decorations –

- National Defense Service Medal
- Vietnam Service Medal with one bronze service star
- Vietnam Campaign Medal with Device (1960)
- Combat Infantryman Badge (1st Award)
- Armed Forces Expeditionary Medal - Korea

e. Item 40 Wounds – “Grenade Frag Wounds in left leg” on 24 February 1968, serving in Vietnam.

7. The Vietnam casualty roster shows the applicant was wounded as a result of hostile action on 24 February 1968 while serving in Vietnam.

8. Before a summary court-martial on 17 November 1969 at Fort Devens, MA, the applicant was arraigned and tried for violation of the Uniform Code of Military Justice (UCMJ), for absenting himself without authority on or about 11 June 1969 and remaining absent without leave (AWOL) until on or about 10 October 1969. He pled guilty and was found guilty. The sentence imposed was reduction to the grade of Sergeant/E-5. The sentence was approved on 24 November 1969, and ordered to be executed.

9. The applicant consulted with legal counsel on 18 September 1970, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service in Lieu of Trial by Court-Martial). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected submit a statement in his own behalf, this enclosure is absent from the applicant's record.

10. The commander recommended disapproval on 23 September 1970, stating the applicant was pending general court-martial charges for being AWOL and his offense warranted trial by court-martial.

11. The separation authority denied the applicant's request for discharge for the good of the service on 16 October 1970.

12. Before a special court-martial on 4 November 1970 at Fort Devens, MA, the applicant was arraigned and tried for violation of the UCMJ, for without authority going AWOL on or about 20 January 1970 through on or about 24 August 1970. He pled not guilty and was found guilty. The sentence imposed was reduction to the rank of private/E-1. The sentence was approved and ordered to be duly executed on 21 December 1970.

13. The applicant consulted with legal counsel on 3 February 1971. After consulting with counsel, the applicant executed a written request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an under other than honorable conditions character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf.

14. On 3 February 1971, the applicant's immediate commander recommended approval of the applicant's request for discharge for the good of the service. The commander recommended the applicant be issued an Undesirable Discharge Certificate.

15. On 8 February 1971, the applicant's intermediate commander recommended approval of his request for discharge for the good of the service.

16. The separation authority approved the applicant's request for discharge for the good of the service on 16 February 1971. He directed the applicant be issuance of a DD Form 258A (Undesirable Discharge Certificate).

17. The applicant was discharged accordingly on 4 March 1971, under the provisions of AR 635-200. His DD Form 214 confirms his service was characterized as UOTHC, with Separation Program Number 246 [for the good of the service] and reenlistment code RE-3B. He was credited with 4 years and 24 days of net active service this period, and 5 years and 24 days of total active service. He had 1 year and 7 months of foreign and/or sea service from 28 December to 14 June 1966 service in Korea and 29 January 1969 to 28 February 1970. He had 408 days of time lost as follows:

- 11 June 1969 to 9 October 1969
- 20 January 1970 to 23 August 1970
- 12 October 1970 to 14 October 1970
- 15 October 1970 to 14 October 1970
- 15 November 1970 to 7 January 1971

18. On 28 March 1980, the Army Discharge Review Board considered the applicant's military records and available evidence and determined that he was properly discharged.

19. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC characterization of service is normally considered appropriate.

20. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

21. MEDICAL REVIEW:

a. Background: The applicant is requesting a reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) discharge 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 RA on 28 December 1964. His DD Form 214 shows he was honorably discharged on 27 December 1965, for immediate reenlistment. He reenlisted on 28 December 1965.
- The Vietnam casualty roster shows the applicant was wounded on 24 February 1969 while serving in Vietnam. Stating he was hostile wounded in action caused by grenades.
- Before a summary court-martial on 17 November 1969 at Fort Devens, MA, the applicant was arraigned and tried for violation of the Uniform Code of Military Justice (UCMJ), for absenting himself without authority on or about 11 June 1969 and remaining absent without leave (AWOL) until on or about 10 October 1969. He pled guilty and was found guilty. The sentence imposed was reduction to the grade of Sergeant/E-5. The sentence was approved on 24 November 1969, and ordered to be executed.
- Before a special court-martial on 4 November 1970 at Fort Devens, MA, the applicant was arraigned and tried for violation of the UCMJ, for without authority going AWOL on or about 20 January 1970 through on or about 24 August 1970. He pled not guilty and was found guilty. The sentence imposed was reduction to the rank of private/E-1. The sentence was approved and ordered to be duly executed on 21 December 1970.
- Applicant was discharged accordingly on 4 March 1971, under the provisions of AR 635-200. His DD Form 214 confirms his service was characterized as UOTHC, with Separation Program Number 246 [for the good of the service] and reenlistment code RE-3B.
- On 28 March 1980, the Army Discharge Review Board considered the applicant's military records and available evidence and determined that he was properly discharged.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, 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 in combat and after his three and a half combat tours, he became a different person. It has taken 18 years to overcome his troubles. He indicates post-traumatic stress disorder (PTSD) is related to his request.

e. Due to the period of service, no active-duty electronic medical records were available for review. The applicant is not service-connected, likely due to the characterization of his discharge, and no VA electronic medical record were available for review. However, the applicant's service record indicates, he both served and was injured in combat, and per Liberal Consideration, his assertion of PTSD will be accepted.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is evidence the applicant had a behavioral health condition during military service that would mitigate his discharge.

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 and his service record evidences he served in combat and was wounded.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant's asserted PTSD is accepted, per Liberal Consideration and his service record. Given the nexus between PTSD and avoidance, his instances of AWOL are mitigated by his behavioral health condition.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, 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 ARBA BH Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.

2. A majority of the Board concurred with the conclusion of the medical advising official regarding his misconduct being mitigated by PTSD. Based on a preponderance of the

evidence, a majority of the Board determined the applicant's character of service should be changed to honorable.

3. The member in the minority partially concurred with the ARBA BH Advisor's conclusions but found the cumulative amount of lost time to great to be considered mitigated by PTSD. Based on a preponderance of the evidence, the member in the minority determined the character of service the applicant received was not in error or unjust.

4. The Board concurred with the correction described in Administrative Note(s) below.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as honorable and to incorporate the corrections described in Administrative Note(s) below.

6/27/2024

X

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record and Army regulations show he meets the regulatory criteria for awards not currently listed on his DD Form 214 for the period ending 4 March 1971. As a result, correct this DD Form 214 by adding the following:

- National Defense Service Medal
- Vietnam Service Medal with three bronze service stars
- Republic of Vietnam Campaign Medal with Device (1960)
- Combat Infantryman Badge
- Armed Forces Expeditionary Medal
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides the ABCMR may, in its discretion, hold a hearing. 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 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.

5. 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.

6. 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//