

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230008555

APPLICANT REQUESTS:

- reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable
- as a new request for correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), item 3 (Social Security Number (SSN)), to show his SSN as [REDACTED]” instead of “[REDACTED]”.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, for the period ending 8 June 1970
- SSN card, undated
- Medicare health insurance card, dated 1 February 2014

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 AC94-08923 on 29 March 1995.
2. The applicant states his SSN is wrong and believes he was not awarded benefits because of this error. His DD Form 214 clearly states he has the benefits of an honorable discharge. He is 74 years old, has served his country, and only wants his just compensation. The applicant notes post-traumatic stress disorder (PTSD) as a condition related to his request.
3. The applicant enlisted in the Regular Army on 21 February 1967 for a 3-year period. The highest rank/grade he attained was private first class/E-3.
4. The applicant accepted non-judicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on four occasions:

a. On 22 November 1967, for failure to go at the time prescribed to his appointed place of duty, on or about 22 November 1967. His punishment consisted of reduction to private/E-2, 14 days of restriction, and 14 days of extra duty.

b. On 15 December 1967, for breaking restriction, on or about 30 November 1967. His punishment consisted of 14 days of restriction and 14 days of extra duty.

c. On 12 February 1968, for willfully disobeying a lawful order from his superior noncommissioned officer, on or about 9 February 1968. His punishment consisted of forfeiture of \$20.00 pay, 14 days of restriction, and 14 days of extra duty.

d. On 18 March 1968, for missing formation and being in possession of a knife with a blade in excess of three inches, on or about 4 March 1968, for being absent from Inspector General (IG) detail, on or about 5 March 1968, and for being absent without pass, on or about 6 March 1968. His punishment consisted of forfeiture of \$40.00 pay per month for two months, reduction to private/E-1, 45 days of restriction, and 45 days of extra duty.

5. Summary Court-Martial Order Number 3, issued by Headquarters, 4th Battalion, 62D Artillery, Fort Bliss, TX, on 11 April 1968, shows he pled guilty to and was found guilty of two specifications of failing to go at the time prescribed to his appointed place of duty, on or about 28 March 1970 and 29 March 1970.

a. He was sentenced to confinement at hard labor for 30 days and forfeiture of \$35.00 pay.

b. The convening authority approved and ordered the sentence duly executed. The portion of the sentence that provided for confinement at hard labor was suspended for 60 days, at which time the unexecuted portion of the sentence would be remitted without further action. The sentence was adjudged on 11 April 1968.

6. Summary Court-Martial Order Number 4, issued by Headquarters, 4th Battalion, 62D Artillery, Fort Bliss, TX, on 20 April 1968, shows the unexecuted portion of the sentence to confinement at hard labor for 30 days was vacated and ordered duly executed.

7. Special Court-Martial Order Number 32, issued by Headquarters, 4th Battalion, 62D Artillery, Fort Bliss, TX, on 27 August 1968, shows the applicant pled guilty to and was found guilty of absenting himself from his unit without authority (AWOL), from on or about 21 June 1968 until on or about 11 August 1968.

a. He was sentenced to confinement at hard labor for six months and forfeiture of \$70.00 pay per month for six months.

b. The convening authority approved and ordered the sentence duly executed. The sentence was adjudged on 23 August 1968.

8. Special Court-Martial Order Number 42, issued by Headquarters, 4th Battalion, 62D Artillery, Fort Bliss, TX, on 13 December 1968, shows the unexecuted portion of the sentence to forfeiture of \$70.00 pay per month for six months and confinement at hard labor for six months was remitted.

9. The applicant accepted NJP, under the provisions of Article 15 of the UCMJ, on 1 May 1969, for leaving his appointed place of duty without authority and failing to return, on or about 1 May 1969. His punishment consisted of 14 days of restriction. The relevant DA Form 2627-1 (Record of Proceedings Under Article 15, UCMJ) shows his SSN as "██████████".

10. On 30 March 1970, the applicant appeared before the District Court, County of Pueblo, State of Colorado. He was found guilty of the use of a narcotic drug. His sentence consisted of confinement at hard labor for six months. He was given credit for time spent in Pueblo County jail since 27 October 1969, and the balance of his sentence was suspended.

11. On 17 April 1970, the applicant underwent a pre-separation medical examination. The examining provider noted the applicant was medically qualified for discharge.

12. The applicant underwent a neuropsychiatric evaluation on 19 May 1970. He was diagnosed with personality, antisocial and was given psychiatric clearance for administrative disposition.

13. On that same date, the applicant's commander notified the applicant of his intent to initiate action to separate him from service under the provisions of Army Regulation (AR) 635-206 (Personnel Separations-Discharge-Misconduct [Fraudulent Entry, Conviction by Civil Court, AWOL, Desertion]), by reason of conviction by a civil court.

14. The applicant acknowledged receipt of his commander's notification, consulted with counsel, and was advised of the basis for his contemplated separation, its effect, and the rights available to him. He understood he may be deprived of many rights and benefits as a Veteran under both Federal and State laws, and he may encounter substantial prejudice in civilian life if he were issued a UOTHC discharge. He waived consideration of his case by a board-officers and elected not to submit a statement in his own behalf. He endorsed this document which shows his SSN as "██████████".

15. On 25 May 1970, the applicant's immediate and intermediate commanders recommended his separation from the service, under the provisions of AR 635-206 and further recommended the issuance of an Undesirable Discharge Certificate.

16. On 1 June 1970, the separation authority approved the recommended discharge and directed the issuance of an Undesirable Discharge Certificate and reduction to the grade of private/E-1.

17. The applicant was discharged on 8 June 1970, in the rank/grade of private/E-1, under the provisions of AR 635-206, by reason of conviction by a civil court. His characterization of service was UOTHC, with separation program number "284" and reenlistment code "RE-3." He was credited with 2 years, 2 months, and 19 days of net active service. His DD Form 214 contains the following additional entries:

- Item 3 (SSN) - [REDACTED]"
- Item 25 (Education and Training) - includes "Benefits of Honorable Discharge"
- Item 26a (Non-Pay Periods Time Lost) - 21 June 1968 to 10 August 68, 21 February 1969 to 14 March 1969, 8 October 1969 to 29 March 1970, and 18 April 1970 to 29 April 1970
- Item 30 (Remarks) - Time lost not shown in Item 26a: 124 days under 10 U.S.C. 972 from 11 August 1968 to 12 December 1968

18. A DA Form 20 (Enlisted Qualification Record), Item 28 (Specialized Training) shows the applicant completed the training "Benefits of Honorable Discharge" on 11 June 1969.

19. The ABCMR considered the applicant's request for an upgrade of his UOTHC discharge on 29 March 1995. After reviewing the application and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

20. The applicant provides his social security and Medicare health insurance cards showing his SSN as "[REDACTED]".

21. The documents in the applicant's service record consistently show his SSN as "[REDACTED]". Regulatory guidance states, for historical purposes, the Army has an interest in maintaining the integrity of its records. The data and information contained in those records should reflect the conditions and circumstances that existed at the time the records were created. In the absence of a material error or injustice, this Board is reluctant to recommend these records be changed.

22. Regulatory guidance, in effect at the time, provided that an undesirable discharge was normally considered appropriate for members separated by reason of conviction by a civil court.

### 23. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable. He contends he was experiencing PTSD that mitigate his misconduct.

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 in the Regular Army on 21 February 1967; 2) The applicant accepted non-judicial punishment (NJP) on four occasions for: A) On 22 November 1967, for failure to go at the time prescribed to his appointed place of duty; B) On 15 December 1967, for breaking restriction; C) On 12 February 1968, for willfully disobeying an order from an NCO; and D) On 18 March 1968, for missing formation, being in possession of a knife with a blade in excess of three inches, for being absent from Inspector General (IG) detail, and for being absent without pass; 3) Summary Court-Martial, on 11 April 1968, shows the applicant was found guilty of two specifications of failing to go to his place of duty; 4) Special Court-Martial Order, on 27 August 1968, shows the applicant was found guilty of being AWOL from 21 June-11 August 1968; 5) The applicant accepted NJP, on 1 May 1969, for leaving his appointed place of duty without authority and failing to return; 6) On 30 March 1970, the applicant appeared before a civilian court. He was found guilty of the use of a narcotic drug; 7) The applicant was discharged on 8 June 1970, by reason of conviction by a civil court. His characterization of service was UOTHC; 8) The ABCMR reviewed and denied the applicant's request for an upgrade of his UOTHC discharge on 29 March 1995.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

d. The applicant noted PTSD as a contributing and mitigating factor in the circumstances that resulted in his separation. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. The applicant underwent a neuropsychiatric evaluation on 19 May 1970. He was diagnosed with antisocial personality, but he was not diagnosed with a disqualifying mental health condition. The applicant was provided psychiatric clearance for administrative disposition. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition or has been awarded any service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

## Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he was experiencing PTSD that contributed to his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing PTSD while on active service.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did go AWOL, used illegal substances, and erratic behavior, which can be a sequela PTSD, but this is not sufficient to establish a history of a condition during active service. However, the applicant contends he was experiencing PTSD that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

**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.

a. The applicant was discharged from active duty due to Misconduct following his conviction by civil court with an under other than honorable conditions characterization of service. 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 reviewer's finding insufficient evidence of in-service mitigating factors to overcome the misconduct. 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.

b. The evidence of record shows he used the contested SSN during his service. The Board found no evidence he used the requested SSN during his service. 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. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the

conditions and circumstances that existed at the time the records were created, unless there is sufficient evidence that shows a material error or injustice.

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:

1. As for the issue being reconsidered (discharge upgrade), 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 AC94-08923 on 29 March 1995.

2. As for the new issue (SSN), 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 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.

2. AR 635-5 (Personnel Separations - Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214.

a. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.

b. Item 25 included entries for service schools, installation training courses, military correspondence courses, and off-duty courses completed successfully during the period covered by the DD Form 214.

3. AR 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. This regulation provides that:

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.

4. Army Regulation 635-206, in effect at the time, set forth the basic authority for the separation of enlisted personnel for misconduct. Section VI, paragraph 33 (Conviction by Civil Court) of this regulation prescribes the standards and procedures for processing cases of individuals who, during their current term of active military service, have been initially convicted or adjudged juvenile offenders by a domestic court of the United States or its territorial possessions, or convicted by a foreign tribunal. If discharge is desired and the individual is not physically in the custody of the civil authorities, a recommendation for discharge may be submitted to Headquarters, Department of the



Army. It provided that an undesirable discharge was normally considered appropriate for members separated under this regulation.

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 PTSD; 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.

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 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, 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.

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//