

IN THE CASE OF: ██████████

BOARD DATE: 18 April 2024

DOCKET NUMBER: AR20230009427

APPLICANT REQUESTS:

- correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show in item 3 (Social Security Number) the number listed on his social security card
- reconsideration of his previous request to upgrade his discharge from under conditions other than honorable to under honorable conditions (general)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- DD Form 214, for the period ending 19 July 1973
- Social Security Card
- Three Letters of Support

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 AR20180008900 on 31 July 2020.

2. The applicant states:

a. During his enlistment he did not know his social security number. His social security number is listed on his application. He is also seeking an upgrade to under honorable condition (general).

b. Prior to joining the military, he was poor, but his growing up had nothing to do with his mishaps. He was good in sports but after his stepfather left, he had to drop out of school and work. He got his general education diploma in the Army. His personal issues started while in service. During his deployment to Vietnam, he was exposed to

certain things and was sent to mental health after his tour. He had no disciplinary actions prior to his deployment.

c. While in Vietnam he started to use heroin and became addicted. The military intervened. He was sent to 3rd Field Hospital in Saigon and was cleaned up from heroin. Immediately after he returned home, he started drinking. He is not that person today. He is clean and sober.

d. He has fought and struggled with this situation his entire life and has overcome battles from the addiction that started while in Vietnam. He needs his discharge upgraded so he can function as a citizen that tried to serve his country.

3. On 30 September 1971, the applicant enlisted in the Regular Army. His DD Form 4 (Enlistment Record) reflects the contested SSN.

4. His DA Form 20 (Enlisted Qualification Record), created upon his enlistment, reflects the contested SSN.

5. The applicant provides his social security card, which reflects the requested SSN.

6. There is no evidence the applicant used the requested social security number during his military service.

7. On or about 3 December 1971, the applicant was assigned to Fort Jackson, S.C to complete advanced individual training (AIT).

8. On 27 January 1972, while in AIT, the applicant accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ) for on or about 26 January 1972 failing to be at the time prescribed at his appointed place of duty.

9. His DA Form 20 shows in item 31 (Foreign Service), the applicant arrived in Vietnam on or about 15 March 1972.

10. On 4 May 1972, the applicant accepted NJP under Article 15, UCMJ for on or about 21 April 1972 failing to be at the time prescribed at his appointed place of duty; and for on or about 22 April 1972 for sleeping upon his post at Long Binh Depot.

11. On 19 September 1972, the applicant accepted NJP under Article 15, UCMJ for on or about 15 September 1972 failing to go at the time prescribed to his appointed place of duty for three consecutive days; and for on or about 18 September 1972 failing to obey a lawful order from his commanding officer. His punishment consisted of reduction in grade to the rank of private first class/E-3; and forfeiture of \$90.00 a month for a period of one month.

12. On or about 20 November 1972, the applicant departed Vietnam.
13. The applicant's record contains a DA Form 3349 (Medical Record – Physical Profile Record), dated 27 November 1972, from the Department of Psychiatry, U.S. Army Hospital, Fort Campbell, Kentucky. He was issued a temporary physical profile for participation in the Drug Abuse Program with further physical profile evaluation scheduled for 27 January 1973.
14. On 16 January 1973, the applicant accepted NJP under Article 15, UCMJ for on or about 10 January 1973, for failing to go to his appointed place of duty at the time prescribed; and on or about 11 January 1973, for disobeying a lawful order from his superior noncommissioned officer. His punishment consisted of reduction in grade to the rank of private/E-1; forfeiture of \$150.00 per month for 2 months; 45 days restriction and 45 days extra duty.
15. On 31 January 1973, the applicant accepted NJP under Article 15, UCMJ for on or about 19 January 1973, for breaking restriction by leaving the area without proper authority; and on or about 29 January 1973 for absenting himself from his appointed place of duty.
16. On 14 February 1973, the applicant accepted NJP under Article 15, UCMJ for on or about 13 February 1973, without proper authority absenting himself from his assigned duty.
17. On 15 March 1973, the applicant accepted NJP under Article 15, UCMJ for on or about 4 March 1973, with proper authority absenting himself from his assigned duty.
18. The applicant's record is void of the complete facts and circumstances surrounding his discharge. However, his record contains a DD Form 214 that shows he was discharged under the provisions of paragraph 13-5a (1) 13-17e of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) with an under conditions other than honorable characterization of service. His DD Form 214 also shows he completed 1 year and 9 months of active service.
19. On 31 July 2020, in ABCMR Docket Number AR20180008900, the Board denied his request for an upgrade of his discharge.
20. The applicant provides three letters of support that show, in part:
  - a. His wife states he is active in community events such as recovery programs for individuals suffering from drug addiction and is an active member in his church.

b. [REDACTED] his friend of 22 years, has seen his transformation: he is a person of strong moral character, he is a committed usher and member of the male chorus.

c. [REDACTED] has worked with the applicant for several years and seen him grow as a person; he makes an impact on those he comes in contact with.

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

## 22. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request to upgrade his discharge from under conditions other than honorable to under honorable conditions (general). He contends he was experiencing mental health conditions 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 30 September 1971; 2) The applicant arrived in Vietnam on or about 15 March 1972-20 November 1972; 3) The applicant received multiple nonjudicial punishments available for review in the ROP; 4) The applicant's service record is void of the complete facts and circumstances surrounding his discharge. However, he was discharged under the 13-5a (1) 13-17e of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) with an under conditions other than honorable characterization of service; 5) The ABCMR reviewed and denied the applicant's request for an upgrade of his character of service in 2020.

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

d. The applicant noted mental health conditions as contributing and mitigating factors 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. He did report developing an addiction to heroin while deployed. There was evidence the applicant on 27 November 1972 was issued a temporary physical profile for participation in the Drug Abuse Program. A review of JLV provided insufficient evidence the applicant has been diagnosed with a 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

mitigates his misconduct. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of mental health condition or experience.

**Kurta Questions:**

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant reports experiencing a mental health condition while on active service, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing a mental health condition 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 a mental health condition while on active service. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation at this time as the result of mental health condition or experience. However, the applicant contends he was experiencing a mental health condition or experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found partial relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board noted the applicant was assigned a temporary identification number (i.e., a number beginning in "9" similar to a social security number) when he enlisted because his social security number was unavailable. The applicant has now provided confirmation of his social security number, and the Board determined it would be appropriate to add his social security number to the remarks block of his DD Form 214.

3. Regarding his character of service, 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 mental health claim and the review

and conclusions of the ARBA BH Advisor. Without knowing the full basis for his separation, the Board found the letters of support provided by the applicant insufficient 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 there being insufficient evidence beyond the applicant's own statement to determine if his misconduct was mitigated by a mental health condition. 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:

<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. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by adding the social security number shown on his social security card to item 30 (Remarks) of his DD Form 214.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to character of service.

9/3/2024

X █

CHAIRPERSON

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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. Army Regulation 635-8 (Separation Processing and Documents) prescribes policy and procedural guidance relating to transition management. It consolidates the policies, principles of support, and standards of service regarding processing personnel for transition. Paragraph 5-6 (Rules for completing the DD Form 214) provides detailed instructions for data required in each block of the DD Form 214. For item 3, Social Security Number, verify accuracy by reviewing initial enlistment contract and/or application for appointment. If the Soldier has had more than one social security number, list the other social security number of record in block 18 (Remarks).

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

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude.

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.

c. Chapter 13 established policy and prescribed procedures for separating Soldiers for unfitness or unsuitability. Paragraph 13-5a (Unfitness) provided, in pertinent part, that an individual would be subject to separation 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 chapter further provided that:

(1) An individual separated by reason of unfitness would be furnished an Undesirable Discharge Certificate, except that an Honorable or General Discharge Certificate may be issued if the individual was awarded a personal decoration or if warranted by the particular circumstances in his case.

(2) When an individual was to be discharged as unfit and issued an undesirable discharge, the convening authority would direct his immediate reduction to the lowest enlisted grade.

4. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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.

5. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

6. Army Regulation 15-185 (Army Board for Correction of Military Records), paragraph 2-11, shows applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//