

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230009489

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

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

DD Form 149 (Application for Correction of Military Record)

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 AR2002076702 on 3 December 2002.
2. In the applicant's previous statement to the ABCMR, he states, in effect, his discharge was unjust. He served honorably in Vietnam. The recurrent memories of the war were more than he could handle. He was on strong pain medication for headaches which he believes were cause by bad memories of a lost war and seeing his friends die. He was exposed to Agent Orange. Because of the nature of his discharge, he cannot obtain help for these conditions. He continues to be punished for a mistake that happened over 30 years ago.
3. The applicant was inducted into the Army of the United States on 8 March 1967. Upon completion of his initial entry training, he was awarded military occupational specialty 11D (Infantry Indirect Fireman).
4. He accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 24 April 1967, for being absent from his unit without authority (AWOL), on or about 23 April 1967 until on or about 24 April 1967. The nature of his punishment is not included in his service record.
5. The applicant served in the Republic of Vietnam (RVN) from 8 August 1967 until 3 August 1968.

6. He was discharged on 23 October 1968, for the purpose of immediate reenlistment in the Regular Army. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his character of service was honorable. He was credited with 1 year, 7 months, and 16 days of net active service, with 11 months and 26 days of foreign service in the RVN. He was authorized or awarded:

- National Defense Service Medal
- Vietnam Service Medal
- Vietnam Campaign Medal
- Combat Infantryman Badge
- Overseas Service Bar (2)
- Marksman Marksmanship Qualification Badge with Rifle bar (M-14)

7. The applicant reenlisted in the Regular Army on 24 October 1968 for a 4-year period. The highest rank he attained was sergeant/E-5.

8. He accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on two occasions:

a. On 6 January 1969, for being AWOL, on or about 2 January 1969 until on or about 5 January 1969. His punishment consisted of reduction to corporal/E-4 and forfeiture of \$50.00 pay per month for two months.

b. On 8 July 1969, for being AWOL, on or about 7 July 1969. His punishment consisted of forfeiture of \$30.00 pay for one month.

9. A Military Police Report, dated 15 January 1970, shows the applicant was reported AWOL on 1 August 1969. He was apprehended by civil authorities on 12 January 1970 and returned to military control on 15 January 1970.

10. Before a special court-martial, at Fort Sill, OK, on 24 June 1969, the applicant pled guilty to and was found guilty of two specifications of being AWOL, on or about 10 February 1969 until on or about 2 April 1969, and on or about 5 April 1969 until on or about 21 May 1969. His sentence consisted of reduction to specialist/E-4 and forfeiture of \$15.00 pay per month for six months. The sentence was approved and ordered duly executed on 30 June 1969.

11. The applicant underwent a medical evaluation on 27 May 1970. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) show the applicant reported being in good health with a history of severe headaches and dizziness or fainting spells. He was deemed physically qualified for release from active duty.

12. He underwent a psychiatric evaluation on 5 June 1970. The evaluating provider determined the applicant was mentally responsible and able to determine right from wrong. He had the mental capacity to participate in board proceedings. The provider further recommended the applicant be separated from service and psychiatrically cleared him for administrative or disciplinary action.

13. Before a special court-martial, at Fort Sill, OK, on 3 June 1970, the applicant pled guilty to and was found guilty of two specifications of being AWOL, on or about 9 July 1969 until on or about 12 January 1970, and on or about 2 February 1970 until on or about 21 May 1970. He was sentenced to confinement at hard labor for five months and forfeiture of \$30.00 pay per month for six months. Only so much of the sentence that provided for confinement at hard labor for four months and forfeiture of \$30.00 pay per month for four months was approved and ordered duly executed on 8 June 1970.

14. The applicant was notified on 9 June 1970 of his commander's intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), by reason of unfitness. The commander noted the applicant's chronic history of AWOL, dislike of military service, lack of self-motivation, and negative attitude towards the military as reasons for the proposed action.

15. On 11 June 1970, the applicant was counseled on the basis for the contemplated separation action, its effects, and the rights available to him. He waived consideration and appearance before a board of officers. He acknowledged understanding he may expect to encounter substantial prejudice in civilian life in the event of a general discharge, additionally he may be ineligible for many or all benefits as a Veteran under both Federal and State laws as a result of a UOTHC discharge. He elected not to submit statements in his own behalf.

16. On that same date, the applicant's commander recommended the applicant be separated from service under the provisions of AR 635-212, by reason of unfitness.

17. On 22 June 1970, the separation authority approved the recommended separation action, waived the rehabilitation requirements, and directed the issuance of a DD Form 258a (Undesirable Discharge Certificate).

18. The applicant was discharged on 25 June 1970, under the provisions of AR 635-212, with separation program number 368 and reenlistment code RE-3B. His DD Form 214 confirms his service was characterized as UOTHC. He was credited with 5 months and 25 days of net active service this period, with 432 days of lost time.

19. AR 635-212, in effect at the time, stated that an individual was subject to separation when it was clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort was unlikely to succeed.

20. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his service characterization. The ADRB considered his request on 5 October 1973, determined he was properly discharged, and denied his request.

21. The ABCMR reviewed the applicant's request for an upgrade of his undesirable discharge on 3 December 2002. After careful consideration, the Board determined the applicant's contentions were not sufficiently mitigating to warrant an upgrade. His request for relief was denied.

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

23. 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.

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 was inducted into the Army of the United States on 8 March 1967 and applicant reenlisted in the Regular Army on 24 October 1968.
- Applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 24 April 1967, for being absent from his unit without authority (AWOL), on or about 23 April 1967 until on or about 24 April 1967.
- Applicant served in the Republic of Vietnam from 8 August 1967 until 3 August 1968.
- Before a special court-martial, at Fort Sill, OK, on 24 June 1969, the applicant pled guilty to and was found guilty of two specifications of being AWOL, on or about 10 February 1969 until on or about 2 April 1969, and on or about 5 April 1969 until on or about 21 May 1969. His sentence consisted of reduction to specialist/E-4 and forfeiture of \$15.00 pay per month for six months.
- Before a special court-martial, at Fort Sill, OK, on 3 June 1970, the applicant pled guilty to and was found guilty of two specifications of being AWOL, on or about 9 July 1969 until on or about 12 January 1970, and on or about 2 February 1970 until on or about 21 May 1970. He was sentenced to confinement at hard labor for five months and forfeiture of \$30.00 pay per month for six months.

- Court-martial charges were preferred against the applicant on 27 June 1973 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with being absent without authority (AWOL), from Fort Riley, KS, on or about 1 December 1972 until on or about 25 June 1973. The applicant had two prior instances of AWOL.
- Applicant was discharged on 25 June 1970, under the provisions of AR 635-212, with separation program number 368 and reenlistment code RE-3B. His DD Form 214 confirms his service was characterized as UOTHC.

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, 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. In a self-authored statement, the applicant states, his discharge was unjust. He served honorably in Vietnam and the war separated him from his wife for a year and this led to difficulties since they had a newborn. The recurrent memories of the war were more than he could handle. He was on strong pain medication for headaches which he believes were caused by bad memories of a lost war and seeing his friends die. He was exposed to Agent Orange but because of the nature of his discharge, he cannot obtain help for these conditions. He continues to be punished for a mistake that happened over 30 years ago.

e. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy documentation submitted by the applicant shows he underwent a medical examination on 27 May 1970. The applicant endorsed severe headaches, dizziness or fainting spells. The examining provider determined he was medically qualified for separation. On 5 June 1970 he underwent a mental status evaluation, the provider determined the applicant was mentally responsible and able to determine right from wrong, had the mental capacity to participate in board proceedings, and psychiatrically cleared him for administrative or disciplinary action.

f. The VA electronic medical records available for review indicate the applicant is not service connected, likely due to the characterization of his discharge. However, the applicant initiated behavioral health services with the VA on 12 November 2013, in an intake assessment he was diagnosed with PTSD and Major Depression. The applicant has been consistently treated by the VA since that time for his symptoms of Major Depression and PTSD. The applicant receives individual psychotherapy and participates in specialized group therapy for Vietnam veterans with PTSD. The applicant's most recent encounter, dated 21 March 2024, evidences ongoing participation in specialized group therapy and a diagnosis of PTSD.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant likely had a behavioral health diagnosis that mitigates his misconduct.

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 served in combat during military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is diagnosed with PTSD and Major Depression by the VA and his symptoms are attributed to his service in the Republic of Vietnam.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The VA electronic record indicates ongoing specialized treatment for combat related PTSD and Major Depression. Given the nexus between PTSD and Major Depression and avoidance, the applicant's incidents of AWOL are mitigated by his behavioral health condition.

BOARD DISCUSSION:

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 mental health claim and the review and conclusions of the ARBA BH Advisor. The Board found evidence of in-service mitigating factors, specifically his service in combat in Vietnam, and concurred with the conclusion of the medical advising official regarding his misconduct being mitigated by behavioral health conditions. Based on a preponderance of the evidence, the Board determined the applicant's character of service for the period ending 25 June 1970 should be changed to honorable.

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 that the evidence presented was sufficient to warrant amendment of the ABCMR's decision in Docket Number AR2002076702 on 3 December 2002. 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 for the period ending 25 June 1970 to show his character of service as honorable.

8/27/2024

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. Section 1556 of Title 10, U.S. Code, 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. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

2. AR 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

3. AR 635-212, 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.

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 (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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

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//