

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 April 2024

DOCKET NUMBER: AR20230009768

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- letter from Army Board for Correction of Military Records (ABCMR) Case Management Division (CMD), 25 September 2023
- letter from Department of Veterans Affairs (VA) psychiatric/mental health practitioner, 3 October 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the 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 he enlisted in the Army on his own accord in 1969 and was able to excel to the rank of specialist five/E-5 in less than 12 months, demonstrating his commitment to higher degrees of experience and technical knowledge. His inability to recall specifics related to his reported offense, as well as the progression of the punitive process, is consistent with an individual suffering from post-traumatic stress disorder (PTSD). Despite being denied the appeal of his non-judicial punishment (NJP), reduction in rank, and forfeiture of pay in 1971, he continued to serve in a patriotic fashion until his discharged in 1972. He was not allotted any mental health support or services after serving in combat for over two years and was forced to seek alternative self-medication options, including alcohol consumption. A congressional-mandated National Vietnam Veterans Readjustment Study shows this was a common occurrence in Vietnam veterans due to a lack of treatment options/support.
3. The applicant enlisted in the Regular Army on 12 May 1969. He was honorably discharged on 14 January 1970 for immediate reenlistment on 15 January 1970. He

reenlisted again on 16 July 1970 for the purpose of deploying to the Republic of Vietnam. The highest rank/grade he held was specialist five/E-5.

4. On 2 November 1971, he accepted NJP under Article 15, of the Uniform Code of Military Justice, for wrongfully having in his possession two vials of heroin and one plastic bag containing marijuana, and wrongfully introducing two vials of heroin and one plastic bag containing marijuana into a military base for the purpose of use. His punishment was forfeiture of \$146.00 pay per month for two months and reduction to E-4. His appeal of his punishment was denied on 17 November 1971.

5. The complete facts and circumstances surrounding his discharge are not available for review. However, his record contains a dully constituted DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) that shows the following:

a. On 21 February 1972, the applicant was discharged under the provisions of Army Regulation 635-212 (Personnel Separations-Discharge-Unfitness and Unsuitability), with separation program number (SPN) of 386 by reason of unfitness, with an UOTHC characterization of service in the grade of E-1. He received a reenlistment code of RE-4.

b. He completed 2 years, 1 month, and 7 days of active service with 1 year, 5 months, and 8 days of foreign service during the period covered.

c. Block 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized), shows the entries:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal
- Overseas Service Bar
- Marksmanship Qualification Badge with Rifle Bar (M-14)

d. Block 30 (Remarks): indicates he served in Vietnam from 21 September 1970 thru 20 February 1972.

6. The applicant provides the following documents which are available in their entirety for the Board's review within the supporting documents:

a. A letter requesting additional documentation related to the applicant's contention of PTSD.

b. A letter from a VA psychiatric/mental health practitioner stating they completed the nexus letter to demonstrate that the applicant is one of thousands of Vietnam Veterans who, more likely than not, was given a UOTHC discharge secondary to

misconduct stemming from his PTSD with was not recognized at the time of his service. Given the applicant's lack of VA benefits secondary to the absence of an honorable discharge, his symptoms and subsequent alcohol abuse from his PTSD were never addressed until recently. Based on examinations and assessments, the applicant suffers from the following psychological infirmities and medical diagnosis:

- PTSD
- Dementia
- Recurrent urinary tract infections
- Urinary incontinence
- Benign prostate hyperplasia
- Gastritis
- Dysphagia
- Lipoma of head and neck
- Thyromegaly
- Chronic obstructive pulmonary disease
- Lung nodule
- Coronary artery disease
- Degenerative joint disease of shoulder

7. Regulatory guidance in effect at the time provided an undesirable discharge was normally considered appropriate for Soldier's discharged under the provisions of Army Regulation 635-212, by reason of unfitness.

8. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable.

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 12 May 1969. He was honorably discharged on 14 January 1970 for immediate reenlistment. He reenlisted again on 16 July 1970 for the purpose of deploying to the Republic of Vietnam.
- On 2 November 1971, he accepted NJP under Article 15, of the Uniform Code of Military Justice, for wrongfully having in his possession two vials of heroin and one plastic bag containing marijuana, and wrongfully introducing two vials of

heroin and one plastic bag containing marijuana into a military base for the purpose of use.

- The complete facts and circumstances surrounding his discharge are not available for review. However, his record contains a duly constituted DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) that shows on 21 February 1972, the applicant was discharged under the provisions of Army Regulation 635-212 (Personnel Separations-Discharge-Unfitness and Unsuitability), with separation program number (SPN) of 386 by reason of unfitness, with an UOTHC characterization of service in the grade of E-1. He received a reenlistment code of RE-4.

c. Review of Available Records Including Medical:

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), VA medical letter, 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.

The applicant states he enlisted in the Army on his own accord in 1969 and was able to excel to the rank of specialist five/E-5 in less than 12 months, demonstrating his commitment to higher degrees of experience and technical knowledge. His inability to recall specifics related to his reported offense, as well as the progression of the punitive process, is consistent with an individual suffering from post-traumatic stress disorder (PTSD). Despite being denied the appeal of his non-judicial punishment (NJP), reduction in rank, and forfeiture of pay in 1971, he continued to serve in a patriotic fashion until his discharged in 1972. He was not allotted any mental health support or services after serving in combat for over two years and was forced to seek alternative self-medication options, including alcohol consumption. A congressional-mandated National Vietnam Veterans Readjustment Study shows this was a common occurrence in Vietnam veterans due to a lack of treatment options/support.

d. Due to the period of service, no active-duty electronic medical records were available for review. The VA electronic medical records available for review indicate the applicant is not service connected. However, the applicant participated in an intake assessment on 9 October 2018 after relocating. During this intake, he shared a prior history of excessive alcohol intake for much of his life but denied any prior mental health treatment and had only had one episode of care for his alcohol use disorder. At the time, the applicant denied any mental health concerns and declined alcohol abuse treatment since he reported feeling in control of his alcohol use and had a good support system. The record shows the applicant's sister contacted the VA on 22 April 2019 and reported he was evidencing recent tremors in both hands, was becoming confused, and she worried about his rapid physical deterioration. The applicant participated in an assessment on 1 May 2019, he once again shared his history of extensive alcohol

abuse and reported experiencing tremors/shakes periodically but declined treatment. A note dated 19 May 2022 has him diagnosed with Unspecified Dementia, without behavioral disturbance, and Alcohol Dependence with other alcohol-induced disorder. The applicant participated in a geriatric consult for dementia on 6 June 2022 and, with his sister as the reporter, indicated an extensive history of alcohol use starting in his teenage years as well as illicit drug use while in Vietnam. The clinical impression was of Wernicke's dementia secondary to his history of alcohol abuse and a follow-up MRI of his brain demonstrated chronic microvascular ischemic changes. The applicant continued to be followed by the VA's geriatric clinic related to his neurodegenerative chronic condition of dementia. However, a note dated 13 December 2023 indicates the applicant was admitted to a nursing home due to a decline in his condition.

e. A letter dated 3 October 2023 from a VA practitioner states they completed the nexus letter to demonstrate the applicant is one of thousands of Vietnam veterans who, more likely than not, was given a UOHC discharge secondary to misconduct stemming from his PTSD which was not recognized at the time of his service. However, the letter provided indicates the applicant was not able to describe the traumatic event that would have led to a diagnosis of PTSD since the applicant "struggled with recalling specific behaviors and interactions" likely due to his dementia. This provider further documents in the applicant's VA record on 6 June 2022 the clinical impression that the applicant presents with Wernicke's dementia secondary to his history of alcohol abuse.

f. Based on the information available, this Agency Behavioral Health Advisor is unable to opine regarding mitigation based on a BH condition without the specific facts and circumstances that led to the applicant's discharge. However, per Liberal Consideration guidelines, the applicant's self-assertion of PTSD merits consideration by the Board

#### 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 asserts PTSD and the service record indicates he served in Vietnam.

(3) Does the condition or experience actually excuse or mitigate the discharge? This advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge. However, the applicant's VA record indicates he is diagnosed with Unspecified Dementia, without behavioral disturbance, and Alcohol Dependence with other alcohol-induced disorder. Dementia is a neurodegenerative disease characterized by a general decline in cognitive abilities that impacts a person's

ability to perform everyday activities. This typically involves problems with memory, thinking, behavior, and motor control. Aside from memory impairment and a disruption in thought patterns, the most common symptoms include emotional problems, difficulties with language, and decreased motivation. Alcohol abuse can contribute to dementia since alcohol-related dementia or alcohol-induced major neurocognitive disorder can result from long-term alcohol abuse. The applicant's diagnosis of Unspecified Dementia would not mitigate his misconduct of wrongfully having in his possession two vials of heroin and one plastic bag containing marijuana, and wrongfully introducing two vials of heroin and one plastic bag containing marijuana into a military base for the purpose of use. Dementia is a neurodegenerative disease and it is unlikely it was present at the time of the applicant's misconduct. However, per Liberal Consideration guidelines, the applicant's self-assertion of PTSD merits consideration by the Board.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 applicant was discharged for unfitness. 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 noted the medical reviewer's finding that his record lacks the pertinent facts and circumstances surrounding his discharge and therefore the medical advising official could not opine on the mitigation of the offense in connection with his contention of PTSD. The Board majority determined that in view of the nature of his separation and the applicant's contention that his inability to recall specifics led to his discharge, an under honorable conditions (General) characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board minority determined that an honorable characterization of service was appropriate. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

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. In addition to the corrections annotated in Administrative Notes below, 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 amending the applicant's DD Form 214, for the period ending 21 February 1972, to show in:

- item 11c (Reason and Authority): No Change
- item 13a (Character of Service): under honorable conditions (General)
- item 13b (Type of Certificate Issued): DD Form 257A
- item 15 (Reenlistment Code): No Change

2. The Board further determined that 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 an upgrade to fully honorable.



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 NOTES:

A review of the applicant's record and Army Regulations show he meets the regulatory criteria for additional awards not currently listed on his DD Form 214; for the period ending 21 February 1972.

- Remove the following in Item 24 – Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized:
  - Vietnam Service Medal
  - Republic of Vietnam Campaign Medal
  
- Add the following in Item 24 – Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized:
  - Vietnam Service Medal with 3 bronze service stars
  - Republic of Vietnam Campaign Medal with Device (1960)
  - Republic of Vietnam Gallantry Cross with Palm Unit Citation



REFERENCES:

1. Title 10, USC, 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. Title 10, USC, 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.
3. AR 600-8-22 (Military Awards) states a bronze service star is authorized with the Vietnam Service Medal award for each Vietnam campaign a member is credited with participating in. Appendix B shows that during his service in Vietnam, participation credit was awarded for the following three campaigns:
  - Vietnam Counteroffensive Phase VII (1 July 1970 to 30 June 1971)
  - Consolidation I (1 July 1971 to 30 November 1971)
  - Consolidation II (1 December 1971 to 29 March 1972)
4. Army Regulation 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.
5. Army Regulation 635-212, then in effect, provided the policy, procedures, and guidance for eliminating enlisted personnel for unfitness and unsuitability. Action would be taken to separate an individual for unfitness when it was clearly established that despite attempts to rehabilitate or develop them further efforts were unlikely to succeed, rehabilitation was impracticable, or they were not amenable to rehabilitation measures.

Individuals were subject to separation by reason of unfitness when one or more of the following conditions existed: 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. An undesirable discharge was normally considered appropriate. However, an honorable or general discharge may have been awarded if the individual being discharged had been awarded a personal decoration or if warranted by the particular circumstances in a given case.

6. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) lists the unit awards received by units serving in Vietnam. This pamphlet shows the Headquarters and Headquarters Company, 5th Transportation Command was awarded the Republic of Vietnam Gallantry Cross with Palm Unit Citation for the period of 1 March 1971 to 9 October 1971 by Department of the Army General Orders Number 6, 1974.

7. 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.

8. 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//