

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230010022

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service, and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Driver License, Michigan State, expiration date 12 July 2025

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 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 he served in Vietnam guarding the Cambodian River. They were not allowed to get mail. A lieutenant went to his mother's house and told her he was missing in action (MIA). He ran into the lieutenant at Fort Carson, CO. He had a lot of reactive anger and aggression from the war. He confronted the lieutenant and hit him. He was arrested, locked up, and given a dishonorable discharge. He suffers from Parkinson's, spinal stenosis, and post-traumatic stress disorder (PTSD). He would like to apply for benefits and assistance.

3. The applicant enlisted in the Regular Army on 22 August 1969 for a 3-year period. Upon the completion of initial entry training, he was awarded military occupational specialty 13A (Field Artillery Basic). The highest rank he attained was private/E-2.

4. A formal line of duty investigation was initiated on 4 February 1970 to determine if the injuries sustained by the applicant from an overdose of drugs, at Fort Sill, OK, on 7 January 1970, were in the line of duty.

5. A DD Form 261 (Report of Investigation – Line of Duty and Misconduct Status), dated 10 February 1970, and associated documents, show:

- a. On 7 January 1970, the applicant contacted the Chaplain, after taking an overdose of drugs of his own free will, which caused him to hallucinate.
 - b. He was taken to the emergency room, where he was treated for drug ingestion and diagnosed with “emotionally unstable personality, chronic, severe.” On 8 January 1970, he was released and returned to duty.
 - c. The commander was notified of the incident and was later informed by the Criminal Investigation Division (CID) that [the applicant] should be released for shipment to his next duty station.
 - d. [The applicant] was not available for questioning by the investigating officer (IO), as he received orders for Vietnam and departed Fort Sill, OK, on authorized leave prior to reporting to his port of embarkation. The IO determined the incident was not in the line of duty – due to own misconduct.
6. Court-martial charges were preferred against the applicant on 22 November 1971 for a violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with being absent without leave (AWOL), from the U.S. Army Overseas Replacement Station, Oakland, CA, from on or about 19 January 1970, until he was apprehended, on or about 17 November 1971.
7. The applicant consulted with legal counsel on 2 December 1971.
- a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.
 - b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.
 - c. He was advised he could submit any statements he desired in his own behalf. In an attached statement, the applicant stated, in effect, he was in the Army for four months before he went AWOL. He had an 8th grade education and a drug problem. He did not like the Army. The Army did not treat him right. He required medication for

hepatitis and was not supposed to work, but the Army kept him busy. He was AWOL for two and a half years and had no desire to return to duty.

8. The applicant's immediate and intermediate commanders recommended approval of his request for a discharge for the good of the service and further recommended the issuance of an Undesirable Discharge Certificate.

9. The separation authority approved the applicant's request for discharge on 20 December 1971 and further directed the applicant be reduced to the lowest enlisted grade and the issuance of a DD Form 258A (Undesirable Discharge Certificate).

10. Accordingly, the applicant was discharged on 23 December 1971, under the provisions of AR 635-200, Chapter 10, for the good of the service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his service was characterized as UOTHC, with separation program number 246 and reenlistment code RE-3B. He was credited with 5 months and 25 days of net active service, with lost time from 19 January 1970 to 16 November 1971.

11. The applicant's service record is void of any documentation showing he served in the Republic of Vietnam.

12. The applicant provides a copy of his Michigan State Driver License.

13. In the processing of this case, the Army Review Boards Agency (ARBA), sent the applicant a letter on 22 September 2023, requesting a copy of medical documentation to support his contentions of PTSD and other medical conditions. To date, no response has been received.

14. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate.

15. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

16. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records

Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 23 December 1971 discharge characterized as under other than honorable conditions. He states: "I served in country Vietnam. Part of my unit was asked to guard the Cambodian river. Our unit was not allowed to get mail. A lieutenant went to my mother's house and told her I was MIA [missing in action]. She asked why I had not gotten any letter from me. I was not MIA. When I was back in Fort Carson, Colorado, I ran into the lieutenant who had told my mother that I was MIA. I had a lot of reactive anger and aggression from the war. We were at a bar and he had been drinking. What he was saying angered me so I confronted him and hit him. I was arrested and locked up, then given a dishonorable discharge. I suffer from Parkinson's, spinal stenosis, and PTSD. It affects my quality of life. I can hardly get my body to move enough to get out of bed, dress, bathe. I am seeking this upgrade so that I can apply for benefits and assistance, as I am also of poverty level for income."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of Service under consideration shows he entered the regular Army on 22 August 1969 and was discharged on 23 December 1971 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (12 April 1971): Discharge for the Good of the Service. There is no indication of Service in the Republic of Vietnam on this DD 214 or Enlisted Qualification Record (DA Form 20)

d. A 10 February 1970 Report of Investigation Line of Duty and Misconduct Status shows that on 7 January 1970 the applicant was determined to have voluntarily overdosed on drugs, sought out the chaplain after he began experiencing bad hallucinations, and was subsequently admitted to Reynolds Army Hospital located on Ft. Sill, OK. The approving authority determined this incident was not in line of duty (LOD) – due to own misconduct. The Clinical Record Cover Sheet shows the applicant's diagnosis – "Emotionally unstable personality, chronic, severe, LOD NO, EPTS [Existed prior to service]."

e. Associated witness statements from the chaplain and his company commander show he had recently received orders for deployment to Vietnam and may have been planning on taking leave prior to this deployment.

f. A Charge Sheet (DA Form 458) shows he was charged with absence without leave (AWOL) from the U.S. Army Overseas Replacement Station, Oakland Army Base, Oakland, CA, from 19 January 1970 until he was apprehended on 17 November 1971.

g. In an undated memorandum, the applicant voluntarily requested discharge for the good of the service under chapter 10 of AR 635-200 and submitted a statement: "I am 20 years old, single, from Vancouver, British Columbia. I enlisted on 12 August 1969. I have an 8th grade education. I have a drug problem. I was in the Army for four months before I went AWOL. I wanted to quit because I do not like the Army at all. The Army has caused me nothing but trouble. The Army does not treat me right. I'm supposed to have medicine for treating hepatitis, and I'm not supposed to work, but the Army keeps my busy or in maximum security. I have been AWOL for nearly two and a half years, and I have no desire to go back to duty. I turned myself in to get out to the Army.

h. His discharge request was approved by the Commanding General of the 4th Infantry Division (Mechanized) on 20 December 1971 with the directives he be reduced to the lowest enlisted grade and an "undesirable discharge certificate."

i. No medical documentation was submitted with the application, there are no entries in the EMR, and he has no record in JLV.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant self-asserts PTSD

(2) Did the condition exist or experience occur during military service? Applicant self-asserts PTSD

(3) Does the condition or experience actually excuse or mitigate the discharge? NO: There was no probative evidence submitted, found in the EMR or other electronic records, or in JLV (to include VA endorsement), of the applicant having PTSD or behavioral health disorder of any kind. However, as per Liberal Consideration guidance, the applicant's self-assertion alone merits consideration by the board.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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 applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge (AWOL). After being charged, he consulted with

counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. 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 medical reviewer. The Board concurred with the medical reviewer's finding insufficient evidence to support the applicant had condition or experience that mitigated his misconduct. Also, 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

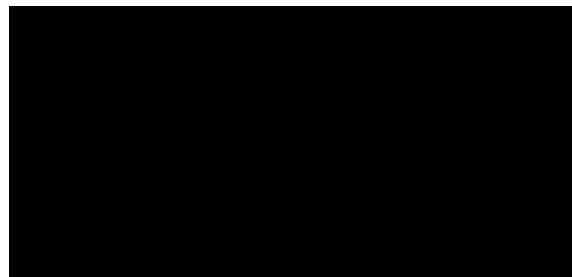
: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

■ ■ ■ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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.



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, 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, 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. AR 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 PTSD; 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//