

IN THE CASE OF: ██████████

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230010171

APPLICANT REQUESTS: Reconsideration of his previous requests for upgrade of his characterization of service. Additionally, he requests a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Medical Documents

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:

- AR2002074704 on 12 September 2002
- AR20170013434 on 2 September 2020

2. The applicant states although the previous decision by the board was said to be final, he did not at that time have his post-traumatic stress disorder (PTSD) diagnosis. AR20140002658 and AR20130010679 were denied because he did not apply for reconsideration within the one-year time frame. He was homeless at the time and did not receive the decision in time. Additionally, he feels it was his PTSD that caused his poor decisions resulting in his misconduct and subsequent disciplinary actions while in the Army. His PTSD was not brought up during the previous applications and he did not have a hearing and he requests a hearing before the board. He has continually requested this upgrade and he is now realizing that PTSD could be a mitigating factor.

3. The applicant enlisted in the Regular Army on 19 June 1966 for four years. His military occupational specialty was 05C (radio teletype operator).

4. The applicant served in Germany from 2 February 1967 through 15 September 1967 and in Vietnam from 2 November 1967 through 1 November 1968.

5. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:

- 26 October 1966, for willfully disobeying a lawful order on or about 25 October 1966; his punishment consisted of forfeiture of \$20.00, restriction and extra duty
- 18 January 1967, for without proper authority, absenting himself from his unit on or about 7 January 1967 until on or about 16 January 1967; his punishment consisted of reduction to private 2/E-2, extra duty, and restriction
- 28 March 1967, for failing to obey a lawful order on or about 27 March 1967; his punishment consisted of forfeiture of \$50.00, reduction to E-2, extra duty, and restriction

6. Before a summary court-martial on 19 February 1968, the applicant was found guilty of carelessly discharging a machine gun while on guard duty. The court sentenced him to reduction to E-2 and forfeiture of \$25.00 pay for one month. The sentence was approved and ordered executed on 19 February 1968.

7. Before a special court-martial on 13 June 1968, the applicant was found guilty of being found asleep while on duty. The court sentenced him to confinement at hard labor for 2 months, forfeiture of \$68.00 pay for 2 months, and reduction to private/E-1. The sentence was approved on 13 June 1968.

8. The applicant accepted NJP under Article 15 of the UCMJ on 20 October 1968 for sleeping while performing duties as a sentinel on or about 19 October 1968. His punishment consisted of reduction to E-2 and \$30.00 forfeiture for one month.

9. On 11 April 1969, the summarized Article 15 shows the applicant, without authority, failed to go at the time prescribed to his appointed place of duty on or about 11 April 1969. His punishment consisted of restriction.

10. A Transmittal of Charges form, dated 29 April 1969, shows on or about 16 April 1969 while posted as a sentinel the applicant failed to walk his post, broke restriction on or about 24 April 1969, and without authority failed to go at the time prescribed to his appointed place of duty on or about 25 April 1969. He was recommended for elimination from service and trial by special court martial.

11. The applicant was absent without leave (AWOL) from 2 June 1969 to 3 June 1969, 4 June 1969 to 27 August 1969. On 29 August 1969 the applicant was at the post stockade and pending trial. He was dropped from the rolls and was AWOL from on or about 4 October 1969 to 30 April 1970.

12. He escaped from detention on 4 October 1969. The Incident Report, dated 1 May 1970 shows he was apprehended by civil police, he was released without civil charges. He was subsequently confined by military authorities on 4 May 1970.

13. Court-martial charges were preferred against the applicant on 19 June 1970. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL on or about 2 June 1969 until on or about 4 June 1969, on or about 4 June until on or about 29 August 1969, and on or about 4 October 1969 to an illegible date in 1970, and escaping confinement on or about 4 October 1969.

14. The applicant consulted with legal counsel on 29 June 1970 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an undesirable discharge and the procedures and rights that were available to him.

a. After consulting with legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, in for the good of the service, lieu of trial by court-martial. He further acknowledged he understood that if his discharge request was 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 and he may expect to encounter substantial prejudice in civilian life because of an undesirable discharge.

b. He elected not to submit statements in his own behalf.

15. The applicant's commander recommended approval of his request for discharge for the good of the service-in lieu of trial by court-martial on 30 June 1970. He further recommended the issuance of an Undesirable Discharge Certificate.

16. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 30 June 1970. He directed the applicant's reduction to the lowest enlisted grade with the issuance of an Undesirable Discharge Certificate.

17. A Voided DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows the applicant was discharged on 8 July 1970. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, for the good of the service. His service was characterized as under other than honorable conditions. He completed 3 years, 1 month, and 16 days of net active service. He had 334 days of lost time. He was awarded the National Defense Service Medal, Republic of Vietnam Campaign Medal, and the Vietnam Service Medal.

18. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

19. The applicant provides medical documents that show diagnostic impressions of PTSD, major depression, and poly substance dependence.

20. On 30 April 1975, the Army Discharge Review Board (ADRB) determined the applicant was properly discharged and denied his request for a change in the type and nature of his discharge.

21. On 16 May 1978, the ADRB notified the applicant that a preliminary review of his discharged had been completed. As a result of this review, the board made a preliminary determination that he would not qualify for upgrade under the new uniform standards for discharge review. The notice letter shows if the applicant did not respond by the suspense date his case would be finalized as non-affirmed.

22. On 19 July 1978, the ADRB granted the applicant an upgrade from "Under Other Than Honorable Conditions" to "Under Honorable Conditions" (General) under the Department of Defense (DOD) Discharge Review Program (Special). The new DD Form 214 (Report of Separation from Active Duty) shows the applicant was discharged under the provisions DOD Discharge Review Program (Special) with Special Program Designator code KCR. His service was characterized as under honorable conditions (general).

23. On 27 July 1978, a DD Form 215 (Correction to DD Form 214) for period ending 8 July 1970 shows the discharge was reviewed under the provisions of Public Law 95-126 and a determination was made that the original characterization of service was warranted.

24. On 19 September 2002, the ABCMR denied his request for an upgrade of his characterization of service.

25. On 3 July 2013 and 28 March 2014, the applicant was notified that his petitions had been considered and the requests would be allowed if the requests were received within one year of the ABCMR's original decision and had not previously been reconsidered.

26. On 31 May 2016, the Army Review Boards Agency (ARBA) letter shows the applicant withdrew his application for correction of his military records.

27. On 2 September 2020, the ABCMR determined the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, his request was denied.

28. On 5 February 2021, the ABCMR denied the applicant's application and the decision in his case was final. The Board would not again consider this same matter unless his request was supported by relevant materials not previously presented to or considered by the Board.

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

30. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous requests for an upgrade of his characterization of service. He contends he experienced PTSD that mitigates 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 19 June 1966; 2) The applicant served in Vietnam from 2 November 1967-1 November 1968; 3) The applicant accepted nonjudicial punishment (NJP) three times between October 1966-March 1967 for disobeying an order (x2) and absenting himself from his unit (x1); 4) Before a summary court-martial on 19 February 1968, the applicant was found guilty of carelessly discharging a machine gun while on guard duty; 5) Before a special court-martial on 13 June 1968, the applicant was found guilty of being asleep while on duty, and he accepted NJP on 20 October 1968 for sleeping while performing as a sentinel; 6) On 11 April 1969, the applicant, without authority, failed to go at the time prescribed to his appointed place of duty; 7) On 16 April 1969, while posted as a sentinel the applicant failed to walk his post and broke restriction on 24 April 1969 and failed to go at the time prescribed to his appointed place of duty on 25 April 1969. He was recommended for elimination from service and trial by special court martial; 8) Court-martial charges were preferred against the applicant on 19 June 1970. He was charged with being AWOL on 2 June 1969 until 4 June 1969, on 4 June until 29 August 1969, and on 4 October 1969 to an illegible date in 1970, and escaping confinement on 4 October 1969; 9) The applicant was discharged on 8 July 1970, Chapter 10, for the good of the service with Separation Program Number 246 and Reenlistment Code 3B. His service was characterized as under other than honorable conditions; 10) The applicant applied to the ADRB three times between 1975-1978 for an upgrade. He was granted an upgrade from "Under Other Than Honorable Conditions" to "Under Honorable Conditions" (General) under the Department of Defense (DOD) Discharge Review Program (Special) on 19 July 1978; 11) The ABCMR reviewed and denied the applicant's request for a discharge upgrade five times between 2002-2021.

c. The Army Review Board Agency (ARBA) Behavioral Health (BH) Advisor reviewed the supporting documents and the applicant's military service records. The VA's Joint

Legacy Viewer (JLV) and hardcopy VA medical records provided by the applicant were also examined.

d. On his application, the applicant noted PTSD was related to his request, as a contributing and mitigating factor in the circumstances that resulted in his separation. There was insufficient evidence the applicant reported or was diagnosed with a mental health condition, including PTSD while on active service. He began to engage with the VA system of care in 1998 for assistance with homelessness and poly-substance dependence. The applicant most consistently attended substance abuse therapy associated with his housing program. He did demonstrate and report symptoms of depression, anger problems, and disorganized and paranoid thinking. He was most consistently diagnosed with poly-substance dependence, PTSD, and depression. The applicant did not consistently attend group or individual therapy for his diagnosed psychiatric conditions. He was often reported to be angry and confrontational with staff. He did have a psychological assessment completed in 2000 as part of Trauma program. The applicant reported experiencing PTSD symptoms related to his experiencing in Vietnam, and he was diagnosed PTSD, Depression, and Antisocial Behaviors. He did not complete the program. The applicant again was seen intermittently for psychiatric medication management till 2002. There is insufficient evidence the applicant continued in psychiatric care at the VA, and he does not receive service-connected disability for any condition.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence to support the applicant had condition or experience that partially 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. He has been diagnosed and treated for PTSD attributed to his experiences in Vietnam by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing PTSD that contributed to his misconduct. He has been diagnosed by the VA with PTSD related to his reported experiences in Vietnam.

(3) Does the condition experience actually excuse or mitigate the discharge? Partial, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. However, the applicant had an extensive history of misconduct during his military service. The misconduct, which occurred prior to his deployment, is not mitigatable. While the applicant was deployed, he was found to repeatedly

experience difficulty during his guard duty. There is no nexus between the applicant’s diagnosis of PTSD and his misconduct of falling asleep and wrongfully discharging his weapon during his guard duty. The applicant did repeatedly go AWOL and fail to be at his appointed place of duty, which is avoidant behavior that can be a sequela to PTSD. However, there is again no nexus between the applicant’s misconduct of escaping confinement and PTSD. Therefore, per Liberal Consideration, only some of the applicant’s misconduct is mitigatable as a result of his diagnosed PTSD.

BOARD DISCUSSION:

1. 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 PTSD claim and the review and conclusions of the ARBA BH Advisor.
  
2. The Board noted that the applicant’s character of service was upgraded to under honorable conditions (general) under the provisions of the DOD SDRP, but following a subsequent review required by law, this upgrade was not affirmed. The Board concurred with the conclusion of the ARBA BH advisor that the applicant’s misconduct was partially mitigated by PTSD, and per guidance for liberal consideration of discharge upgrade requests, relief is warranted. Based on a preponderance of the evidence, the Board determined the applicant’s record should be corrected to show the upgrade he received as a result of review under the provisions of the DOD SDRP was affirmed.

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 Numbers AR2002074704 on 12 September 2002 and AR20170013434 on 2 September 2020. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing the upgraded character of service he received under the provisions of the DOD SDRP was affirmed.

8/27/2024

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CHAIRPERSON  


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, 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.

2. AR 635-200, Personnel Separations, in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. When a Soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply. Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

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 10 of that regulation provides that a Soldier who has committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier or where required, after referral, until final action by the court-martial convening authority.

3. 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 Service 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; 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.

4. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and BCM/NRs on 25 July 2018, 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 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.

//NOTHING FOLLOWS//