

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230010394

APPLICANT REQUESTS: The applicant, the spouse of the deceased former service member (FSM), requests his under other than honorable conditions (UOTHC) discharge be upgraded.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- FSM's in-service personnel documents
- FSM's Certification of Death
- FSM's Veterans Affairs (VA) documents

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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, in effect, her husband's performance deteriorated. He suffered from post-traumatic stress disorder (PTSD), which the VA now recognizes. Her husband drank to forget all the destruction he witnessed. The FSM suffered for three years to which, his spouse was his caregiver. She grieved for him after his death and had to seek counseling. She wants to honor her husband one last time and rectify his discharge. Additionally, the applicant was told the FSM should have the "Vietnam Campaign Medal" for his service in 1971.

3. The FSM enlisted in the Regular Army on 20 May 1969, for 3 years. Upon completion of initial entry training, he was awarded military occupational specialty 95B (Intelligence Analyst). The highest grade he attained was E-5.

4. The FSM served in Thailand from 28 October 1969 through 27 October 1970.

5. The FSM was honorably discharged on 21 June 1971. He was issued a DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge), and credited with 2 years, 1 month, and 3 days of net active service for this period. He was awarded or authorized the National Defense Service Medal and the Vietnam Service Medal.
6. The FSM reenlisted in the Regular Army, on 22 June 1971 for 4 years.
7. On 20 September 1972, the FSM was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 16 October 1972.
8. On 19 October 1972, the FSM accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL. His punishment included forfeiture of \$150.00 pay per month for two months, reduction to E-4, and 45 days restriction and extra duty.
9. On 16 July 1973, the FSM was reported as AWOL a second time, and remained absent until he returned to military authorities on 20 July 1973.
10. On 2 August 1973, the FSM was reported as AWOL a third time.
11. A commander's inquiry memorandum, dated 6 August 1973, notes the FSM had been consulting with the Mental Hygiene Clinic and the initial indications were that he had a slight personality disorder.
12. Court-martial charges were preferred against the FSM on 7 August 1973, for violation of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with two specifications of going AWOL.
13. The FSM's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
14. The FSM was discharged on 13 February 1974. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Paragraph 10, with Separation Program Designator code 246 (discharge for the good of the service). He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 2 years, 2 months, and 17 days of net active service this period, with a cumulative total of 155 days of lost time.
15. Additionally the FSM's DD Form 214 shows he was awarded or authorized the National Defense Service Medal, Vietnam Service Medal, Vietnam Campaign Medal, and the Overseas Service Bar.
16. The applicant provides the following (provided in entirety for the Board):

a. VA documents that show the FSM had a combined rating evaluation of 100% for various illness and injuries, including PTSD.

b. The FSM's death certificate showing that he died on 7 January 2022.

17. The FSM was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he would have consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

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

19. MEDICAL REVIEW:

a. The applicant, the spouse of the deceased former service member (FSM), is applying to the ABCMR requesting an upgrade of the FSM's under other than honorable conditions (UOTHC) characterization of service. She contends the FSM experienced PTSD that mitigates his misconduct. 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 FSM enlisted in the Regular Army on 20 May 1969; 2) The FSM served in Thailand from 28 October 1969-27 October 1970; 3) On 19 October 1972, the FSM accepted non-judicial punishment (NJP) for going AWOL from 20 September-16 October 1972; 4) Court-martial charges were preferred against the FSM on 7 August 1973, for two specifications of going AWOL between July-August 1973; 5) The FSM was discharge on 13 February 1974, Chapter 10- for the good of the service. His service was characterized as UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the FSM's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts the FSM was experiencing PTSD while on active service, which mitigates his misconduct. There was evidence the applicant was experiencing personal and occupational stress while on active service. Specifically, the FSM declared bankruptcy, was not financially supporting his wife at that time, and was experiencing marital problems. On 6 August 1973, there was evidence the FSM was consulting with mental health providers, but there is insufficient evidence he was diagnosed with a mental health condition including PTSD.

d. A review of JLV provided evidence the FSM began to engage with VA in 2019 following a noticeable decline in his neurocognitive functioning and increase in mental health symptoms. There was evidence the FSM was beginning to experience dementia symptoms and increased confusion. As a result, he was also beginning to experience a rapid increase in symptoms associated with PTSD. The FSM was regularly experiencing nightmares, low mood, increased drinking, anxiety, intense flashbacks, irritability, and an overall inability to care for himself. Consequently, he was evaluated and diagnosed with service-connected PTSD and neurocognitive disorder, vascular type (100% SC).

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts the FSM experienced PTSD which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the FSM experienced PTSD that mitigates his misconduct while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the FSM was experiencing PTSD, while he was on active service. There is clear and sufficient evidence the applicant in 2019 was experiencing severe symptoms of PTSD likely exasperated by his declining neurocognitive state. The PTSD symptoms the FSM reported were associated with his experiences while on active service, and he was also exposed to Agent Orange during his active service. However, there insufficient evidence the applicant was experiencing PTSD symptoms at the time of his active service. Yet, the applicant contends the FSM was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

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 FSM was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. 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 reviewing official. The Board concurred with the medical official's finding insufficient medical documentation of any behavioral health condition during military service that would mitigate his misconduct. Also, the applicant provided insufficient evidence of the FSM's post-service achievements or letters of reference of a persuasive nature, and that outweigh his misconduct, in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the FSM 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.

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[REDACTED]

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[REDACTED]

[REDACTED]

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. Section 1556 of Title 10, U.S. Code, 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. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
  - a. 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.
  - 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 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.
4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members

administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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//