

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 April 2024

DOCKET NUMBER: AR20230010645

APPLICANT REQUESTS: reconsideration of his previous request that 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)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Department of Veterans Affairs (DVA) Letter

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 AC87-05674 on 8 June 1988.

2. The applicant states he requests upgrade due to a mental condition that has altered his behavior. His discharge does not reflect his behavior. The things he did are and were uncharacteristic of him due to mental health post-traumatic stress disorder (PTSD). In support of his application, he provides a DVA rating decision confirming mental health diagnosis.

3. The applicant enlisted in the Regular Army on 26 May 1966 for three years. His military occupational specialty was 12A (Pioneer).

4. The applicant served in:

- Germany from 16 November 1966 through 2 June 1967
- Vietnam from 1 August 1967 through 31 July 1968
- Alaska from 10 September 1968 through 27 November 1969

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

- 7 September 1966, for absenting himself from his unit on or about 5 September 1966 until on or about 6 September 1966; his punishment consisted of forfeiture of \$22.00 pay for two months and extra duty
- 1 November 1966, for wrongfully appearing at formation in an unclean uniform on or about 1 November 1966; his punishment consisted of forfeiture of \$22.00, reduction to private/E-1 and extra duty and restriction
- 15 May 1967, being absent from the company without a pass on or about 8 May 1967; his punishment consisted of forfeiture \$15.00 for one month, restriction, and extra duty
- 17 May 1967, for breaking restriction and absence without a pass on or about 17 May 1967; his punishment consisted of reduction to private 2/E-2, forfeiture of \$10.00 for one month, restriction and extra duty
- 27 December 1967, for missing a supply convoy on or about 14 December 1967 and was absent from his unit until 18 December 1967; his punishment consisted of forfeiture of \$30.00 for one month and extra duty
- 12 February 1968, for absenting himself from his place of duty on or about 11 February 1968; his punishment was forfeiture of \$15.00 and extra duty
- 14 October 1968, for being derelict in his performance by falling asleep during drivers testing and failing to complete the test on or about 11 October 1968; willfully disobeyed a lawful order on or about 12 October 1968, and breaking restriction on or about 13 October 1968; his punishment was reduction to E-2, forfeiture of \$46.00 for one month, restriction and extra duty

6. Before a special court martial 24 February 1969, the applicant was found guilty of without authority, absenting himself from his unit on or about 6 January 1969 until 5 February 1969 and on or about 6 February 1969 until on or about 7 February 1969. The court sentenced him to forfeiture of \$73.00 per month for six months, to be confined at hard labor for six months, and to be reduced to private/E-1. The sentence was approved on 28 February 1969 and ordered to be duly executed.

7. The applicant's rehabilitative reassignment was approved on 19 August 1969. He would be given every opportunity to prove himself as a Soldier. His reassignment was to determine his suitability for retention in the military service.

8. The applicant was confined, from 28 February 1969 to 8 August 1969 he was considered to be an escape risk. The correctional officer's letter dated 23 August 1969 shows the applicant described himself as a "hippie" and lived with a very undesirable group of individuals while absent without leave (AWOL) and in escape status. He will undoubtedly rejoin this group at the earliest possible time and will again go AWOL.

9. The applicant's commander letter shows the applicant had proven himself to be both irresponsible and unreliable. He had returned to the unit only after he was arrested by civil authorities.

10. The applicant underwent a psychiatric evaluation on 1 October 1969, he was found to be free of mental defect or illness and able to understand the nature and probable consequences of his acts, able to distinguish between right and wrong and to adhere to the right. He was able to understand the nature of any proceedings against him and to cooperate in his own defense. He was not suffering from any mental condition which would warrant separation. His diagnosis was character and behavior, with excessive drinking, drug abuse, and irresponsibility. He was psychiatrically cleared for any administrative action deemed appropriate by command.

11. Before a summary court martial 13 October 1969, the applicant was found guilty of AWOL from on or about 26 August 1969 until 4 September 1969. The court sentenced him to forfeiture of \$109.00 for one month, confinement at hard labor for one month, and to be reduced to private/E-1. The sentence was approved on 14 October 1969.

12. The available record is void of a separation packet containing the specific facts and circumstances surrounding the applicant's discharge.

13. The applicant was discharged on 28 November 1969. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 635-212 (Personnel Separations-Discharge-Unfitness and Unsuitability), with Separation Program Number 28B (unfitness) and Reenlistment Code 4. His service was characterized as UOTHC. He completed 2 years, 7 months, and 7 days of net active service this period. He had 325 days of lost time. He was awarded the National Defense Service Medal, Republic of Vietnam Service Medal, and the Republic of Vietnam Campaign Medal.

14. Regulatory guidance provides that an individual is subject to separation when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier further effort is unlikely to succeed.

15. The applicant provides his DD Form 214 and a DVA letter, dated 3 April 2023, which shows service connection for PTSD.

16. The U.S. Army Reserve Components Personnel and Administration Center, St. Louis, MO, dated 20 May 1984 states there was a major fire at the National Personnel Records Center in July 1973 and his record was not recovered. Fortunately, a number of alternate sources of information exist which enable the reconstruction of service record data lost in the fire.

17. On 8 June 1988 the ABCMR denied the applicant's petition because it was not filed within the time required and was not in the interest of justice to excuse the applicant's failure to do so. Additionally, the applicant did not provide sufficient justification to establish that it would be in the interest of justice to excuse the failure.

18. 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.

19. On 3 March 2011, the applicant's request for consideration was again denied for failure to timely file within one year of the ABCMR's original decision.

20. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request that his under other than honorable conditions (UOTHC) discharge be upgraded.

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 26 May 1966.
- Applicant served in:
  - Germany from 16 November 1966 through 2 June 1967
  - Vietnam from 1 August 1967 through 31 July 1968
  - Alaska from 10 September 1968 through 27 November 1969
- Applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on:
  - 7 September 1966, for absenting himself from his unit on or about 5 September 1966 until on or about 6 September 1966; his punishment consisted of forfeiture of \$22.00 pay for two months and extra duty
  - 1 November 1966, for wrongfully appearing at formation in an unclean uniform on or about 1 November 1966; his punishment consisted of forfeiture of \$22.00, reduction to private/E-1 and extra duty and restriction
  - 15 May 1967, being absent from the company without a pass on or about 8 May 1967; his punishment consisted of forfeiture \$15.00 for one month, restriction, and extra duty
  - 17 May 1967, for breaking restriction and absence without a pass on or about 17 May 1967; his punishment consisted of reduction to private 2/E-2, forfeiture of \$10.00 for one month, restriction and extra duty
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  - 14 October 1968, for being derelict in his performance by falling asleep during drivers testing and failing to complete the test on or about 11 October 1968; willfully disobeyed a lawful order on or about 12 October 1968, and breaking

restriction on or about 13 October 1968; his punishment was reduction to E-2, forfeiture of \$46.00 for one month, restriction and extra duty

- Before a special court martial 24 February 1969, the applicant was found guilty of without authority, absenting himself from his unit on or about 6 January 1969 until 5 February 1969 and on or about 6 February 1969 until on or about 7 February 1969.
- Before a summary court martial 13 October 1969, the applicant was found guilty of AWOL from on or about 26 August 1969 until 4 September 1969. The court sentenced him to forfeiture of \$109.00 for one month, confinement at hard labor for one month, and to be reduced to private/E-1.
- Applicant was discharged on 28 November 1969. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 635-212 (Personnel Separations-Discharge-Unfitness and Unsuitability), with Separation Program Number 28B (unfitness) and Reenlistment Code 4. His service was characterized as UOTHC. He completed 2 years, 7 months, and 7 days of net active service this period. He had 325 days of lost time. He was awarded the National Defense Service Medal, Republic of Vietnam Service Medal, and the Republic of Vietnam Campaign Medal.

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, VA rating decision letter, ABCMR Record of Proceedings (ROP), and documents from his service record and separation. 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 requests upgrade due to a mental condition that has altered his behavior. His discharge does not reflect his behavior. The things he did are and were uncharacteristic of him due to mental health post-traumatic stress disorder (PTSD). In support of his application, he provides a DVA rating decision confirming mental health diagnosis.

d. Due to the period of service, no active-duty electronic medical records were available for review. The applicant submitted hardcopy medical documentation from his time in service showing a mental status evaluation dated 1 October 1969, indicating the applicant had no significant mental illness or diagnosis other than "excessive drinking, drug abuse, and irresponsibility". He was able to distinguish right from wrong and met medical retention standards. He was psychiatrically cleared for any administrative action deemed appropriate by the command.

e. The VA electronic medical record available for review indicates the applicant is not service-connected, likely due to the characterization of his service. The VA medical record evidences encounters primarily related to issues with homelessness but indicates prior diagnosis of PTSD. In addition, the applicant provides a VA rating

decision letter dated 16 March 2023, indicating service connection for treatment purposes for posttraumatic stress disorder (PTSD) that was granted because the records show combat service in Vietnam.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is evidence to support the applicant had a behavioral health condition 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 self-asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is service connected for treatment purposes for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The VA electronic record indicates a history of PTSD, although most of the applicant's encounters are due to issues with homelessness. In addition, the applicant provides documentation evidencing service connection for PTSD. Given the nexus between PTSD and avoidance as well as difficulty with authority, the applicant's incidents of AWOL, failure to report, and dereliction of duties are mitigated by his behavioral health condition.

**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 record of service, documents submitted in support of the petition, and executed a comprehensive and standard review based on law, policy, and regulation, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review finding that the condition or experience mitigated the discharge; however, the Board majority found no error or injustice in the separation processing of the applicant. Based on this and the misconduct happening prior to his service in Vietnam, the Board majority determined relief was not warranted. The Board minority found the misconduct to be mitigated and recommended to grant relief.

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 to amend the decision of the ABCMR set forth in Docket Number AC87-05674 on 8 June 1988.

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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. 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 635-212 (Personnel Separations-Discharge Unfitness and Unsuitability), 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.
  - a. Paragraph 6a (1) of the regulation provided, in pertinent part, that members involved in frequent incidents of a discreditable nature with civil or military authorities were subject to separation for unfitness. An undesirable discharge was normally considered appropriate.
  - b. Paragraph 1-9f (Issuance of an undesirable discharge) states an undesirable discharge is an administrative separation from the service under conditions other than honorable.
  - c. Paragraph 3-7a (Honorable Discharge) states 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.
  - d. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions.
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 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.

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service 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//