

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230010702

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

- DD Form 293 (Application for the Review of Discharge or Dismissal)
- National Personnel Records Center letter
- DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge)
- In-service medical 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 he was a heavy drinker and he suffered from post-traumatic stress disorder (PTSD) due to service in Vietnam. He went absent without leave (AWOL) to help his parents that are Native American. It put an emotional and financial burden on him. He served honorably and fought in Vietnam.
3. On 12 March 1965, the applicant enlisted into the Regular Army. Upon completion of training, he was awarded military occupational specialty (71B) Clerk Typist. He was honorably discharged on 27 May 1966. His DD Form 214 confirms he completed 1 year, 2 months, and 16 days of net active service this period.
4. The applicant reenlisted in the Regular Army on 28 May 1966, for 3 years.
5. On 2 August 1966, the applicant began service in the Republic of Vietnam.
6. On 18 March 1967, the applicant was reported as AWOL and remained absent until he returned to military authorities on 19 March 1967.

7. On 14 April 1967, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL and failing to obey a lawful order from a noncommissioned officer. His punishment included detention of \$100.00 pay per month for three months, and reduction in grade to E-4.
8. The applicant departed the Republic of Vietnam on 2 August 1967.
9. On 4 December 1967, the applicant accepted NJP under Article 15 of the UCMJ, for breaking restriction. His punishment included reduction in grade to E-3, and 14 days restriction and extra duty.
10. On 28 December 1967, the applicant was reported as AWOL a second time, and remained absent until he returned to military authorities on 29 March 1968.
11. Before a special court-martial on 15 April 1968, at Fort Sill, OK, the applicant was found guilty of one specification of going AWOL from on or about 28 December 1967 through 29 March 1968. The court sentenced him to confinement at hard labor for four months, and forfeiture of \$20.00 pay per month for four months. However, his confinement at hard labor was suspended for four months. The sentence was approved on 19 April 1968.
12. On 29 April 1968, the applicant was reported as AWOL a third time, and remained absent until he returned to military authorities on 2 May 1968.
13. On 3 May 1968, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL. His punishment included forfeiture of \$21.00 pay per month for one month, and 14 days restriction and extra duty.
14. On 1 July 1968, the applicant was reported as AWOL a fourth time, and remained absent until he returned to military authorities on 20 July 1968.
15. Before a special court-martial on 15 August 1968, at Fort Sill, OK, the applicant was found guilty of one specification of going AWOL from on or about 1 July 1968 through 20 July 1968. The court sentenced him to confinement at hard labor for six months, and forfeiture of \$73.00 pay per month for six months. However, his confinement in excess of 29 days was suspended for six months. The sentence was approved on 15 August 1968.
16. On 17 January 1969, the applicant was reported as AWOL a fifth time, and remained absent until he returned to military authorities on 18 January 1969.

17. On 22 January 1969, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL. His punishment included forfeiture of \$36.00 pay per month for one month, and 14 days extra duty.
18. On 28 March 1969, the applicant accepted NJP under Article 15 of the UCMJ, for operating a vehicle while under the influence of alcohol and making an illegal left turn into a parking lot. His punishment included forfeiture of \$39.00 pay per month for two months, and 30 days restriction.
19. On 2 May 1969, the applicant was reported as AWOL a sixth time, and remained absent until he returned to military authorities on 28 August 1969.
20. On 13 October 1969, the applicant accepted NJP under Article 15 of the UCMJ, for driving a military vehicle 30 miles per hour over the posted speed limit. His punishment included forfeiture of \$38.00 pay per month for one month, and 14 days restriction and extra duty.
21. Before a special court-martial on 15 October 1969, at Fort Sill, OK, the applicant was found guilty of one specification of going AWOL from on or about 2 May 1969 through 28 August 1969. The court sentenced him to confinement at hard labor for five months, and forfeiture of \$25.00 pay per month for five months. The sentence was approved on 17 October 1969.
22. On 10 November 1969, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation. The attending physician noted he had malaria while serving in the Republic of Vietnam.
23. On 22 November 1969, the applicant underwent a psychiatric evaluation. The attending physician noted, the applicant was a 25-year-old, single, Indian male who stated he must leave the Army in order to help his parents. He had been AWOL three times for that reason, and he will continue to go AWOL until he is discharged. He was told he could never get a hardship discharge because he had relatives living with his parents. He had three court-martials and five Article 15s with no civilian convictions. He was diagnosed with neuropsychiatric observation, no disease found. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command. He recommended the applicant be separated from service, under the provisions of Army Regulation (AR) 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability).
24. On 1 December 1969, the applicant's commander notified him of his intent to initiate separation actions against him under the provisions of AR 635-212, by reason of unfitness.

25. On 3 December 1969, the applicant consulted with legal counsel and affirmed he had been advised of the basis for the contemplated separation action. Following his consultation, he waived his right to personally appear before, and to have his case considered by a board of officers. He declined to submit a statement in his own behalf and waived his right to further representation by military counsel. He acknowledged he could expect to encounter substantial prejudice in civilian life, if given either a general discharge (under honorable conditions) or an undesirable discharge.

26. The applicant's commander formally recommended the applicant's discharge, under the provisions of AR 635-212, for unfitness with an undesirable discharge. As the specific reasons, the commander cited the applicant's three special court-martials, periods of AWOL, his dislike for military service, lack of self-motivation and negative attitude toward the military.

27. Consistent with the chain of command's recommendations, the separation authority approved the recommended discharge on 16 December 1969, and directed the issuance of a DD Form 258A (Undesirable Discharge Certificate).

28. The applicant was discharged on 19 December 1969. His DD Form 214 confirms he was discharged under the provisions of AR 635-212, with Separation Program Number 386 (Unfitness, established pattern of shirking). He was assigned Reenlistment Code 3B. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 2 years, 6 months, and 14 days of net active service this period with 373 days of lost time, and 1 year, 2 months, and 16 days of prior active service.

29. Additionally, his DD Form 214 shows he was awarded or authorized the National Defense Service Medal, Overseas Service Bar (2), Vietnam Service Medal with one bronze service star, Combat Infantryman Badge, Republic of Vietnam Campaign Medal with 60 Device, and the Expert (Rifle) Badge.

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

31. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends he experienced mental health conditions including 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 12 March 1965; 2) The applicant served in

Vietnam from 2 August 1966-2 August 1967; 3) The applicant was found AWOL six times between 1967-1969; 4) The applicant's commander formally recommended his discharge for unfitness with an undesirable discharge. As the specific reasons, the commander cited the applicant's three special court-martials, periods of AWOL, his dislike for military service, lack of self-motivation and negative attitude toward the military; 5) The applicant was discharged on 19 December 1969 with Separation Program Number 386 (Unfitness, established pattern of shirking). His service was characterized as UOTHC. He completed 2 years, 6 months, and 14 days of net active service this period with 373 days of lost time, and 1 year, 2 months, and 16 days of prior active service.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy military 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. He also reported experiencing alcohol abuse and family stressors at the time of his active service. There was insufficient evidence the applicant reported or was diagnosed with a mental health condition, including PTSD while on active service. The applicant did complete a command directed psychiatric evaluation on 25 November 1969 as part of his separation proceedings. He reported to be a "heavy drinker" until three months before the evaluation and experiencing family stressors. However, he was not diagnosed with a psychiatric condition, found mentally responsible, able to distinguish between right and wrong and adhere to the right. He was not found to be experiencing a psychiatric condition sufficient to warrant discharge through medical channels. He was psychiatrically cleared for any administrative or disciplinary actions and be administratively separated. A review of JLV was void of any behavioral health documentation, and he does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that 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.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he was experiencing PTSD that contributed to his misconduct.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. He did consistently report experiencing family stressors, and he went AWOL to address them. In addition, the applicant did repeatedly go AWOL, which is avoidant behavior that can be a sequela to PTSD. However, the presence of misconduct is not sufficient to establish a history of a mitigating mental health condition during active service. However, the applicant contends he was experiencing PTSD 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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The available evidence shows the applicant's chain of command separated him for unfitness. The Board found sufficient evidence of misconduct in the form of at least 6 instances of NJP, extensive AWOL, and three court-martial convictions. The Board found no error or injustice in his available 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 during his military service that mitigated his misconduct. However, the Board did also note that the applicant completed a combat tour in Vietnam and his administrative infractions started after return from Vietnam. As a result, the Board determined while an upgrade to honorable characterization of service is not appropriate (given his overall misconduct); a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests is appropriate. The Board also determined that such upgrade did not change the underlying reason for his separation, and that there would be no change to the narrative reason for separation and/or corresponding codes.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 19 December 1969 showing:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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 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 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. Paragraph 1-9d provided that 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 had 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. Paragraph 1-9e provided that a general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. Army Regulation 635-212, 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.

5. 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 under other than honorable conditions 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.

6. 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.

7. 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. 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//