

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20230011063

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to under honorable conditions (General).

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

- DD Form 149 (Application for Correction of Military Record)
- Service Documents
- Two DD Forms 214 (Armed Forces of the United States Report of Transfer or Discharge)
- DD Form 215 (Correction to DD Form 214)

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:

a. He was injured in combat and as a result of his injuries he was not thinking clearly when he went absent without leave (AWOL). He was injured on 8 November 1970 by a mine explosion which caused severe injuries to his body. He was then treated at Camp Zama Army hospital from 27 March 1971 to 13 Apr 1971 but due to the severity of his injuries he was later evacuated to the continental U.S. for further treatment of his injuries. While recovering from his injuries he suffered a psychotic breakdown which caused him to go AWOL for a total of 101 days.

b. He asks that his military records be corrected in that he was severely injured, and his actions were the result of his service-connected injuries which the Army failed to diagnose properly at the time of his medical treatment. He completed 4 years military service and received an honorable discharge prior to being injured. He received the Bronze Star Medal (BSM), Republic of Vietnam Campaign Medal (VCM), the Korea Defense Service Medal (KDSM), and has earned multiple unit citation awards.

c. The applicant states post-traumatic stress disorder (PTSD), traumatic brain injury (TBI) and other mental health conditions are related to his request.

3. The applicant was inducted into the Army of the United States on 26 November 1968. He was honorably discharged on 25 December 1969 for immediate reenlistment. His DD Form 214 shows he completed 1 year and 1 month active service. His awards include the National Defense Service Medal (NDSM), Armed Forces Expeditionary Medal (AFEM) (Korea).

4. The applicant enlisted in the Regular Army on 26 December 1969 for 6 years. His military occupational specialty was 11D (Armor Reconnaissance Specialist). He was honorably discharged for reenlistment on 30 September 1970. His DD Form 214 shows he completed 9 months and 5 days active service.

5. The applicant reenlisted on 1 October 1970 for 6 years.

6. The applicant served in Vietnam from 18 December 1970 through 14 April 1971.

7. The applicant's DA Form 20 (Enlisted Qualification Record), item 44 (Time Lost), shows he was AWOL from 14 June 1971 to 22 September 1971. He was dropped from the rolls on 14 July 1971. The applicant was apprehended by civilian authorities on 23 September 1971 and returned to military control.

8. Medical documents, dated 15 March 1971 and 28 March 1971, show the applicant had chronic drainage and pain in the left ear following a land mine injury 8 November 1970. He qualified for medical evacuation to Japan and an aeromedical evaluation to the continental United States.

9. Court-martial charges were preferred against the applicant on or about 15 November 1971, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 14 June 1971 until on or about 23 September 1971. He was placed in confinement on 29 September 1971.

10. The Report of Investigation letter, dated 16 November 1971 determined the charge was substantiated by competent evidence.

11. The applicant consulted with legal counsel on 20 October 1971 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 a UOTHC discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested.

discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, for the good of the service-in lieu of trial by court-martial. In his request for discharge, 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.

b. He elected to submit a statement in his own behalf and stated he had been to Vietnam. In effect, his financial and family status made him chose AWOL. He consulted proper channels twice. He tried Army Emergency Relief and the other sources for help, but they were of no use. He incurred a heavy financial problem when he brought his wife to the states. He believed that what he did was for his family and his own good.

12. The applicant's commander recommended approval of his request for discharge on 16 November 1971. He noted the applicant's negative attitude toward honorable service and recommended the applicant be furnished an undesirable discharge.

13. The separation authority approved the applicant's request for discharge on 17 November 1971, for the good of the service with Separation Program Number (SPN) 246. He further directed the applicant be reduced to the lowest enlisted grade and the issuance of a DD Form 258A (Undesirable Discharge Certificate).

14. The applicant was discharged on 22 November 1971. His DD Form 214 shows he was discharged under the provisions of AR 635-200, Chapter 10, with SPN 246 for the good of the service-in lieu of trial by court-martial and Reenlistment Code 3B and 4. His service was characterized as UOTHC. He completed 9 months and 24 days of active service this period. He had 101 days of lost time from 14 June 1971 to 22 September 1971.

15. 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.

16. On 17 May 2018, the ABCMR determined the evidence presented was sufficient to warrant partial relief by correcting his DD Form 214 for the period ending 22 November 1971 and the Board further determined the evidence present was insufficient to warrant a portion of the requested relief. As a result, the Board recommended denial of so much of the application that pertained to a correction of his date of discharge. The DD Form 215 added a Purple Heart, AFEM (Korea), NDSM with one bronze service star, VSM, Republic of Vietnam Gallantry Cross with Palm Unit Citation, and VCM with 1960 device.

17. 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.

18. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable conditions (general). He contends he experienced an undiagnosed mental health condition, including PTSD, and Traumatic Brain Injury (TBI) 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:

- The applicant inducted into the Regular Army on 26 November 1968 and honorably discharged on 25 December 1969. He then enlisted in the Regular Army on 26 December 1969 and reenlisted on 1 October 1970. He served in Vietnam from 18 December 1970 to 14 April 1971.
- The applicant was AWOL from 14 June 1971 to 22 September 1971 and had court-martial charges preferred against him. He requested discharge for the good of the service in lieu of trial by court-martial.
- The applicant was discharged on 22 November 1971 under the provisions of AR 635-200, Chapter 10, with SPN 246 for the good of the service-in lieu of trial by court-martial. His service was characterized as UOTHC. He completed 9 months and 24 days of net active service this period.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he suffered a mine explosion causing severe physical injuries and that this event caused "a psychotic breakdown" resulting in his AWOL. A medical record document dated 14 April 1971 shows a landmine injury on 8 November 1970 resulting in chronic drainage and pain to the applicant's ear and that he was medevac to Japan. There is also discussion of a wrist injury requiring casting. There were several pages of medical documentation, some of which was illegible and repetitive, but it was noted that the applicant was returned to the U.S. for treatment due to his injuries. A Report of Medical Examination dated 26 October 1971 showed the applicant was considered qualified for duty and that there was no indication of need for a psychiatric examination. A self-authored statement dated 4 November 1971 indicated that the applicant attributed his AWOL to financial and family difficulties. There was insufficient evidence that the applicant was diagnosed with PTSD, TBI, or another psychiatric condition while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed no records under this applicant's name and social security number.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that 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 discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, as well as a TBI at the time of the misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. Medical documentation provides evidence of a traumatic event resulting in physical injuries to the applicant's ear and a wrist injury.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition, including PTSD, or a TBI while on active service. There is evidence of a traumatic event, resulting in physical injuries, but there is no documentation of a psychiatric condition being diagnosed, neither while in service nor since discharge.

g. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct is not sufficient evidence of a mitigating mental health condition during active service. However, the applicant contends he was experiencing a mental health condition 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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with being absent without leave from 14 June 1971 to 23 September 1971, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice

BOARD VOTE:

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

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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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. Title 10, USC, 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.

3. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel) 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. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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. 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 DRBs and BCM/NRs 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. 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.

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