

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2024

DOCKET NUMBER: AR20230011571

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service to under honorable conditions (general), and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- Information page, Georgia War Veterans Home

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, he was a conscientious objector prior to being drafted. He served honorably until the stress of his beliefs forced him to request a discharge. He would like to seek benefits as a Veteran. He notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to his request.
3. The applicant was inducted into the Army of the United States on 22 September 1969. He subsequently enlisted in the Regular Army on 29 September 1969 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 71C (Stenographer). The highest rank he attained was specialist/E-4.
4. The applicant served in the Republic of Vietnam from 3 May 1970 through 7 December 1970.
5. He was command referred for a psychiatric evaluation on 17 October 1970. The examining provider noted there was no evidence of psychiatric disease, anxiety, or mental deficiency. He was deemed mentally responsible and able to understand and

participate in board proceedings. Rehabilitative efforts would likely not be productive. The applicant was psychiatrically cleared for separation.

6. Court-martial charges were preferred against the applicant on 27 October 1970 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with two specifications of willfully disobeying a lawful command, on or about 27 October 1970.

7. The applicant consulted with legal counsel on 29 October 1970.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were 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.

c. He was advised he could submit any statements he desired in his own behalf. In an attached statement, the applicant stated, he could not support the Army because it justified killing. He was a firm believer in the commandment “Thou shalt not kill.”

8. The applicant underwent a medical evaluation on 5 November 1970. A Standard Form (SF) 89 (Report of Medical History), and the corresponding SF 88 (Report of Medical Examination) show the applicant reported being in excellent health. The examining provider determined the applicant was medically qualified for separation.

9. The applicant's immediate and intermediate commanders recommended approval of his request for a discharge for the good of the service and further recommended the issuance of an Undesirable Discharge Certificate. The chain of command further stated the applicant's negative attitude and refusal to do anything for the Army undermined the morale and discipline of the command.

10. The separation authority approved the applicant's request for discharge on 30 November 1970, directed the applicant be reduced to the lowest enlisted grade, and the issuance of a DD Form 258A (Undesirable Discharge Certificate).

11. Accordingly, the applicant was discharged on 7 December 1970, under the provisions of AR 635-200, Chapter 10, for the good of the service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his service was characterized as UOTHC, with separation program number 246 and reenlistment code RE-4. He was credited with 1 year, 2 months, and 9 days of net active service.
12. The applicant provides an information page from the Georgia War Veterans Home.
13. In the processing of this case, the Army Review Boards Agency (ARBA), sent the applicant a letter on 22 November 2023, requesting a copy of medical documentation to support his contentions of PTSD and other mental health. To date, no additional documentation has been received.
14. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate.
15. In reference to his Veterans benefits, decisions of the Veterans Administration and other agencies are solely within the jurisdiction of the specific agency. While the ABCMR can correct errors in an individual's military records it has no authority to direct or influence decisions regarding benefits by other agencies.
16. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.
17. MEDICAL REVIEW:
 - a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced mental health conditions including 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 applicant was inducted on 22 September 1969. He subsequently enlisted in the Regular Army on 29 September 1969; 2) The applicant served in the Republic of Vietnam from 3 May-7 December 1970; 3) Court-martial charges were preferred against the applicant on 27 October 1970 for two specifications of willfully disobeying a lawful command; 4) The applicant was discharged on 7 December 1970, 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 applicant's military service and available medical records. The VA's

Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experiencing mental health problems including PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant ever reported or was diagnosed with a mental health condition while on active service. He underwent a command directed psychiatric evaluation on 17 October 1970. He was not diagnosed with a mental health condition, and he was psychiatrically cleared for separation.

d. A review of JLV provided evidence the applicant engaged with the VA in June 2023 following an increase in alcohol abuse and illegal drug abuse. He consistently reported a history of PTSD symptoms related to his experiences in Vietnam. The applicant described being assigned the duty of being a recorder and interviewer of severely injured service members in a military hospital to obtain their stories and events of their combat to award Purple Hearts. The repeated exposure to severely injured and dying military members qualifies as a traumatic event. These experiences resulted in the applicant no longer wanting to participate in his military service and long-term PTSD symptoms and substance abuse. He consequently was diagnosed with PTSD and alcohol dependence by the VA. He was not treated by the VA due to his current military discharge status, but he was referred to services in the civilian sector. He does not currently receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient 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 discharge? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA in 2023 with PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct while on active service. The VA reported the applicant stated his symptoms started during his deployment to Vietnam and have continued since his discharge.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did actively avoid following orders or engaging in military duties after returning from Vietnam. This avoidant behavior could be a natural sequelae to PTSD. The applicant was exposed to potentially traumatic events

repeatedly during his deployment, and he has consistently reported experiencing PTSD symptoms associated with his deployment. Therefore, it is recommended the applicant's discharge status be upgraded to a general under honorable conditions, and it is recommended the narrative reason for his separation be amended to Secretarial Authority.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

2. The Board found sufficient evidence of in-service mitigating factors to overcome the misconduct. The Board determined there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. Based on the preponderance of evidence and opine review the Board determine an upgrade of the applicant characterization of service to under honorable conditions (general) and amending his narrative reason to Secretarial Authority is warranted. Therefore, relief was granted.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by re-issuing the applicant's DD Form 214 for the period ending 7 December 1970 to show his characterization of service as under honorable conditions (general) and the narrative reason for separation as secretarial authority.



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, USC, 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, 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. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides the ABCMR may, in its discretion, hold a hearing. Applicants do not have a

right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. 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.

c. 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.

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 Discharge Review Boards (DRB) and 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 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 sexual assault or sexual harassment was unreported, or 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//