

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 June 2024

DOCKET NUMBER: AR20230011691

APPLICANT REQUESTS:

- Upgrade of his under other than honorable conditions discharge, which is related to post-traumatic stress disorder (PTSD) and other mental health conditions incurred while on active duty
- Permission to appear personally before the Board, via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Selective Service System Order to Report for Induction
- DA Form 2496 (Disposition Form)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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 served 6 months in Vietnam; he was only 20 years old when he was drafted, and he experienced major stressors and harassment because the Army did not train him properly for the duties he was assigned.

a. In the applicant's unit, morale was very low and his fellow Soldiers had a "mutinous attitude." Additionally, his roommate slashed his wrists and had to be hospitalized; they ultimately sent his roommate home.

b. While in Vietnam, the applicant had no support system and this caused him to incur major depression and PTSD; he wanted to end his life or shoot his way out of there. He currently has no access to the Department of Veterans Affairs (VA) health care system, but he continues to suffer from mental health issues and depression; as he

has gotten older, his depression and mental health issues have only worsened. By granting his request, the Board would enable to him access the care he needs.

c. The applicant points out that his leadership in Vietnam never court-martialed him; he just had a hard time adapting and he was constantly "messing up." He adds, "Vietnam changed me forever and negatively affected my entire life."

d. In support of his request, the applicant provides documents from his service record and a copy of his "Selective Service System Order to Report for Induction," dated 5 August 1969. He does not include documentary evidence detailing the events that precipitated his PTSD and other mental health issues.

3. A review of the applicant's service record reveals the following:

a. On 15 August 1969, the applicant enlisted into the U.S. Army Reserve Delayed Entry Program (USAR DEP); his contract stated he was to remain in the USAR DEP until his Regular Army enlistment. On or about 7 December 1969, the USAR DEP discharged the applicant, and, on 8 December 1969, he enlisted in the Regular Army for 2 years; he was 20 years old. He immediately transferred to Fort Polk, LA (now renamed Fort Johnson) for basic combat training (BCT); on 20 February 1970, he graduated from BCT and his training leadership awarded him an accelerated promotion to private (PV2)/E-2 because he had "demonstrated outstanding Soldierly qualities."

b. Following the completion of BCT, orders reassigned the applicant to the U.S. Army Intelligence School at Fort Holabird, MD to complete advanced individual training (AIT) in military occupational specialty (MOS) 96B (Intelligence Analyst); on 4 May 1970, the Army awarded him MOS 96B and promoted him to specialist four (SP4)/E-4.

c. Upon graduation from AIT, orders reassigned him to Vietnam, and he arrived in country, on 30 May 1970; orders then further assigned him to the U.S. Army Support Command, Qui Nhon, and he arrived at his new unit, on 10 June 1970. The unit assigned him duties as a clerk-typist and administrative specialist.

d. While assigned to the U.S. Army Support Command, Qui Nhon, the command offered and the applicant accepted nonjudicial punishment (NJP) six times, of which three are available for review in the applicant's service record:

- 8 July 1970 – failure to clean his weapon
- 10 July 1970 – disobeyed an order
- 13 July 1970 – applicant allegedly allowed a nude man to loiter around his guard post; due to the applicant's aptitude scores, the command dismissed all charges

- 26 July 1970 – the applicant failed to report to the Message Center on time; willfully disobeyed the lawful order of a noncommissioned officer (NCO) to button his blouse; and absented himself from guard mount, from 1645 to 1735 hours; punishment included reduction to private first class (PFC)/E-3
- 24 August 1970 – the applicant absented himself from the Message Center, from 1300 to 1900 hours; among the punishments was a suspended reduction to private (PV2)/E-2; on 30 August 1970, the command vacated that suspension, but the service record does not provide the reason
- 1 September 1970 – the applicant absented himself from the Message Center, from 1200 to 1700 hours; the imposing commander's punishments included the reduction to private (PV1)/E-1

e. On 2 September 1970, an Army psychiatrist completed a psychiatric evaluation of the applicant. In the report, the psychiatrist stated:

(1) "IMPRESSIONS: No psychiatric disease."

(2) "BRIEF CLINICAL ABSTRACT: This 20-year-old E-2 was interviewed by me on the above-mentioned date. Mental status; coherent, rational, oriented as to time, place, person and event. Memory and judgement are intact. Affect appropriate. No evidence of any thinking disorder. According to command, EM (enlisted member) frequently leaves his place of work (4 Article 15s for absent from duty) and admits smoking marijuana and using speed. He maintains a strong negative attitude towards the military and has no motivation for further service. I believe his rehabilitative potential is nil and he should be separated UP (under the provisions of) AR (Army Regulation) 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability)."

f. On 12 September 1970, the applicant's commander advised him, via memorandum, that he was initiating separation action against the applicant for unfitness, per AR 635-212. In addition to citing the above-cited NJP actions, the commander stated he was basing his action on the applicant's conduct and efficiency while assigned to the unit and noted the leadership had counseled the applicant on numerous occasions.

g. On 16 September 1970, the applicant's commander-initiated bar to reenlistment action against the applicant, citing the same misconduct listed for the separation action.

h. On 17 September 1970, after consulting with counsel (an Ordnance officer), the applicant affirmed counsel had advised him of the basis for his pending separation action. The applicant elected to waive his rights to personally appear before and have his case considered by a board of officers; he additionally waived his right to representation by counsel.

i. On 24 September 1970, the applicant's commander submitted his unfitness recommendation to the separation authority; he stated the action was based on the applicant's "habits and traits of character manifested by frequent incidents of a discreditable nature with military authorities." "During the period 10 June 1970 to 20 September 1970, this Soldier has been assigned to various duty assignments commensurate with his training and ability and has served under different superior officers and NCOs. His military superiors and the psychiatric examiner agree that further rehabilitative efforts would be useless." The commander additionally included three statements:

(1) Staff Sergeant (SSG) K__ R. P__ stated the applicant was assigned to perform administrative duties at the Message Center; SSG P__ had to counsel the applicant several times due to his appearance, attitude, and absences from duty.

(2) First Sergeant (1SG) W__ L. G__ stated, on arrival, the applicant was assigned to the Message Center and, on numerous occasions, the applicant would leave his section without permission. The 1SG spoke with the applicant and the applicant acknowledged he wanted "out of the Army any way he can get out...."

(3) Captain R__ A. M__ stated, while the applicant's qualification test scores indicated he was very intelligent, he was nonetheless a constant problem because of his conduct and efficiency. "Basically, he is a non-conformist to Army rules and regulations." "[Applicant] has absented himself from his place of duty several times without permission. In spite of all the effort made to rehabilitate this individual, no results have been obtained."

j. On 27 September 1970, the applicant's higher command approved his bar to reenlistment. On 15 October 1970, the separation authority approved the commander's separation recommendation and directed the applicant's undesirable discharge under other than honorable conditions.

k. On 3 December 1970, the applicant completed his tour in Vietnam, and orders transferred him to the U.S. Army Personnel Center at Oakland, CA for separation processing. On 4 December 1970, the Army discharged the applicant under other than honorable conditions. His DD Form 214 shows the following:

- Item 11c (Reason and Authority) – AR 635-212, SPN (Separation Program Number) 28B
- Item 15 (Reenlistment (RE) Code) – RE-3 (code based on Table 2-3 (Persons Ineligible for Immediate Reenlistment), Line "F," AR 601-280 (Army Reenlistment Program))
- item 17c (Date of Entry) – 15 August 1969

- Item 22a (1) (Statement of Service – Net Service This Period) – 1 year, 3 months, and 20 days
- Item 22a (2) (Statement of Service – Other Service) – "0/0/0"
- Item 22a (3) (Total (Net Service This Period plus Other Service)) – 1 year, 3 months, and 20 days
- Item 22b (Total Active Service) – 1 year, 3 months, and 20 days
- Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – National Defense Service Medal, Vietnam Service Medal, and Republic of Vietnam Campaign Medal with Device (1960)
- Item 26 (Non-Pay Periods Time Lost) – "None"

I. On 16 January 1978, a Department of Defense Special Discharge Review Board (SDRP) considered the applicant for an upgraded character of service. The SDRP determined the applicant's separation was proper and equitable, and voted not to change the applicant's character of service.

4. AR 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

5. The ABCMR does not grant requests for upgraded characters of service solely to make someone eligible for Veterans' benefits; however, in reaching its determination, the Board can consider the applicant's petition, his evidence and assertions, and his service record in accordance with the published equity, injustice, or clemency guidance.

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade of his other than honorable conditions character of service. He contends he experienced an undiagnosed mental health condition, 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:

- The applicant enlisted into the Regular Army on 15 August 1969.
- On 12 September 1970 the applicant was notified of his commander's intent to initiate separation action against him for unfitness, per AR 635-212 based on "habits and traits of character manifested by frequent incidents of a discreditable nature with military authorities." Additionally, "military supervisors and the psychiatric examiner agree that further rehabilitative efforts would be useless." Specific issues included multiple counseling statements for appearance, attitude,

leaving his section without permission, non-conformity to Army rules and regulations, and absences from duty.

- The applicant was discharged on 04 December 1970.

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 PTSD and other mental health conditions incurred in-service. Specifically, he noted stressors and harassment secondary to the Army not properly training him for his duties. Additionally, he noted his roommate attempted suicide and was sent home with unit morale low. He noted a lack of support resulting in PTSD and mental health difficulties with suicidal ideation. The applicant noted he wasn't court-martialed, rather "just had a hard time adapting and he was constantly messing up."

d. Service records indicate in February 1970, he was recommended for accelerated promotion because he had demonstrated outstanding Soldier qualities. He completed training and AIT without incident. However, between his arrival in Vietnam in May 1970 and discharge, he had multiple nonjudicial punishments (NJP).

e. Service records contain a September 1970 psychiatric evaluation. The provider indicated the applicant admitted to using marijuana and speed as well as the misconduct. Additionally, he was not motivated for further service and rehabilitative potential was "nil." The mental status exam was normal. He was cleared for separation with no diagnosis.

f. The VA's Joint Legacy Viewer (JLV) was also reviewed which is void of contacts.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. Although there is an absence of medical records, the applicant's sudden change from being an "outstanding" Soldier to frequent misbehavior within a month in Vietnam suggests something did occur impacting his behavior. While the in-service psychiatric exam was void of a diagnosis, this does not equate to an absence of mental health struggles; it was common for behavioral health providers to clear Soldiers for separation at that time especially without our current knowledge of how mental health conditions and PTSD can present. Rather, the provider's notation of drug use, a second shift from pre-Vietnam behavior, supports the applicant was experiencing some form of psychological distress.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes.

(2) Did the condition exist or experience occur during military service? Yes. The applicant asserts PTSD. Additionally, this advisor determined it is more likely than not the applicant was experiencing psychiatric difficulties during the time of the misconduct.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Based on liberal consideration and the nexus between trauma and avoidance, difficulty with authority, and overall conformity to include appearance and attitude the basis for separation is mitigated.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/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 determinations requests for upgrade of his characterization of service. One possible outcome was to deny relief based on the applicant not providing sufficient to support his request for an upgrade. However, upon review of the applicant's petition and available military records, the Board concurred with the advising official finding sufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

2. The opine noted the applicant's sudden change from being an "outstanding" Soldier to frequent misbehavior within a month in Vietnam suggests something did occur impacting his behavior. The Board agreed there is sufficient evidence based on the advising official that warrants and upgrade to the applicant's characterization of service. Therefore, the Board granted relief with an upgrade to general under honorable conditions.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

4. 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:

In addition to the administrative notes annotated by the Analyst of Record (below the signature), 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 reissuing the applicant a DD Form 214 for the period ending 4 December 1970, showing his characterization of service as general, under honorable conditions.

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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.

ADMINISTRATIVE NOTE(S):

1. AR 635-5 (Separation Documents), in effect at the time, stated the following:
 - a. Item 17c (date of Entry) was to show the date the Soldier entered active duty or the date of enlistment.
 - b. Item 22a (1) (Statement of Service – Net Service This Period) reflected the Soldier's total active-duty service for the period of the report, minus any lost time.

c. Item 22a (2) (Statement of Service – Other Service) showed all prior active-duty service.

d. Item 22a (3) (Statement of Service – Total) stated the total of items 22a (1) and 22a (2).

e. Item 22b (Total Active Service) listed the Soldier's total active service, beginning with the earliest period of active service up to and including current period of active duty.

f. Item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) was to list all decorations, service medals, campaign credits, and badges awarded or authorized.

2. AR 600-8-22 (Military Awards), currently in effect, states the Vietnam Service Medal is awarded to all members of the Armed Forces of the United States based on their qualifying service in Vietnam after 3 July 1965 through 28 March 1973. A bronze service star will be awarded for wear on the Vietnam Service Medal for the Soldier's participation in each recognized campaign; Vietnam campaigns include the following:

- Sanctuary Counteroffensive (1 May 1970 to 30 June 1970)
- Counteroffensive, Phase VII (1 July 1970 to 30 June 1971)

3. Department of the Army Pamphlet (DA PAM) 672-3 (Unit Citation and Campaign Participation Credit Register) shows that Department of the Army General Order (DAGO) Number 8, dated 1974, awarded all units that served in Vietnam the Republic of Vietnam Gallantry Cross with Palm Unit Citation.

4. Based on the foregoing, amend the applicant's DD Form 214, ending 4 December 1970, as follows:

a. Item 17c – delete the current entry and replace with "8 DEC 69."

b. Item 22:

- Item 22a (1) – delete current entry and replace with "0/11/27"
- Item 22a (3) – delete current entry and replace with "0/11/27"
- Item 22b – delete current entry and replace with "0/11/27"

c. Item 24: delete Vietnam Service Medal and add the following:

- Vietnam Service Medal with two bronze service stars
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

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 (Ex Parte Communications Prohibited) requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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 applicant's (and/or their counsel) prior to adjudication.

3. AR 635-212, in effect at the time, set forth the basic authority for separating enlisted personnel for reasons of unfitness or unsuitability. Paragraph 6 (Applicability) stated Soldiers were subject to separation for unfitness under the provisions of this regulation when they were involved in such misconduct as frequent acts of a discreditable nature.

4. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 1-9d (Honorable Discharge) stated an honorable discharge was a separation with honor. Issuance of an honorable discharge was conditioned upon proper military behavior and proficient duty performance. A Soldier's service was to be characterized as honorable based on conduct ratings of at least "Good"; efficiency ratings of at least "Fair"; no general court-martial, and no more than one special court-martial conviction.

b. Paragraph 1-9e (General Discharge) stated a general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.

5. AR 600-200 (Enlisted Personnel Management System), in effect at the time, prescribed policies and procedures for the management of enlisted personnel. Paragraph 7-30b (3) (Reduction Authority and Reasons – Reasons for Reduction –

Approved for Discharge from Service with an Undesirable Discharge) stated Soldiers approved for separation with an undesirable discharge were required to be reduced to the lowest enlisted grade.

6. AR 635-5, in effect at the time, prescribed policies and procedures for the completion of the DD Form 214.

a. Appendix A (SPN and Authority Governing Separations) showed Soldiers separated under the provisions of AR 635-212 for unfitness because of frequent involvement in incidents of a discreditable nature with civil or military authorities received the SPN "28B."

b. Item 15 (Reenlistment Code). The "Remarks" section of each enlisted person's qualification record will be checked for eligibility for reenlistment. The regulation listed the RE codes:

- RE-1 – Fully qualified for immediate reenlistment
- RE-3 – Not eligible for reenlistment unless a waiver is granted
- RE-4 – Not eligible for reenlistment

7. AR 601-280 (Army Reenlistment Program) prescribed eligibility criteria for the immediate reenlistment in the Regular Army of persons currently serving on active duty with the Army. Table 2-3 (Persons Ineligible for Immediate Reenlistment) listed disqualifications for immediate reenlistment; Line "F" disqualified Soldiers separated per AR 635-212.

8. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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.

9. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD); Traumatic Brain Injury (TBI); 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.

10. 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, BCM/NRs 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.

11. AR 15-185, currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

//NOTHING FOLLOWS//