

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 June 2024

DOCKET NUMBER: AR20230011755

APPLICANT REQUESTS: Reconsideration of his prior denial of his 17 June 1971 under other than honorable conditions (UOTHC) discharge to be upgraded to an under honorable conditions (general) discharge.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record) with continuation sheets

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 AR20110012871 on 27 October 2011.
2. The applicant states he deserve a general discharge because he served very honorably in country during the Vietnam War and an infantryman. He continues to fight that war in his mind. He feels he has been wronged by the people in charge during the war and feels he is entitled to benefits all Vietnam Veterans are entitled to,
3. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD), as a contributing and mitigating factor in the circumstances that resulted in his separation. However, the applicant has not provided any evidence to support this diagnosis.
4. The applicant enlisted in the Regular Army on 23 December 1964 for a period of 3 years. He completed his training and was awarded military occupational specialty 16B (Hercules Missile Crewman). On 29 December 1965, he was honorably discharged with an immediate reenlistment on 30 December 1965 for a period of 4 years. The DD Form 214 issued at that time lists his awards as the Basic Missile Badge and the Marksman Qualification Badge with Rifle Bar.
5. Special Court-Martial Order Number 268, issued by Headquarters, U. S. Army Artillery and Missile Center, Fort Sill on 13 June 1966, shows the applicant was found guilty of being absent without leave (AWOL) from 14 March 1966 until 2 May 1966. and

for approximately 18 hours on 11 May 1966. He was sentenced to confinement at hard labor for 3 months and to a forfeiture of \$30.00 pay for 3 months.

a. On 13 June 1966, the convening authority approved the sentence.

b. On 29 July 1966 Special Court-Martial Order Number 387 suspended 3 months of his period of confinement.

6. Special Court-Martial Order Number 706, issued by Headquarters, U. S. Army Artillery and Missile Center, Fort Sill on 14 November 1966, shows the applicant was found guilty of being AWOL from 8 August 1966 to 1 October 1966. He was sentenced to confinement at hard labor for 6 months and to a forfeiture of \$37.00 pay for 6 months.

a. On 14 November 1966, the convening authority approved the sentence but reduced the forfeiture to \$35.00 per month .

b. Special Court-Martial Order Number 706, issued by Headquarters, U. S. Army Artillery and Missile Center, Fort Sill on 8 December 1966, suspended the unexecuted portion of the confinement for 6 months.

7. Special Court-Martial Order Number 706, issued by Headquarters, U. S. Army Artillery and Missile Center, Fort Sill on 21 August 1967, vacated the sentence as prorogated by Special Court-Martial Order Number 706.

8. Special Court-Martial Order Number 733, issued by Headquarters, U. S. Army Garrison Troops, Fort Hood on 7 September 1967, shows the applicant was found guilty of being AWOL from 15 January 1967 until 8 August 1967. He was sentenced to confinement at hard labor for 6 months and to a forfeiture of \$35.00 pay for 6 months.

a. On 7 September 1967, the convening authority approved the sentence.

b. Special Court-Martial Order Number 733, issued by Headquarters, U. S. Army Disciplinary Barracks, Fort Leavenworth on 19 January 1968, remitted the unexecuted portion of the applicant's confinement.

9. His record is void of the specific facts, circumstances, and processing surrounding his discharge.

10. His DA Form 20 (Enlisted Qualification Record) shows:

- the highest grade he held was E-5
- service in Germany from 9 March 1968 to 4 August 1968
- service in Vietnam from 13 September 1968 to 12 September 1969

- service in Vietnam during one campaign period
- service in Vietnam with the 606 Ordnance Company from 18 September 1968 to 3 October 1968 and with the 870th Transportation Company from 4 October 1967 to 5 September 1969
- he went AWOL on 5 July 1970, was dropped from rolls on 6 August 1970, and returned to military control on 5 April 1971
- award of the National Defense Service Medal, Vietnam Service Medal with one bronze service star, Republic of Vietnam Campaign Medals with Devise (-1960), and the Marksman Qualification Badge with Rifle Bar

11. The DD Form 214 for the period ending 17 June 1971 shows he was discharged for the good of the service in lieu of trial by court-martial on 17 June 1971 under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. It shows:

- 3 years and 16 days of net service this period
- 1 year and 7 days of other service
- 4 years and 23 days total active service
- 47 days in excess leave
- 629 days of lost time
- award of Vietnam Service Medal with one bronze service star, Republic of Vietnam Campaign Medals with Devise (-1960), and the Marksman Qualification Badge with Rifle Bar

12. Based on his period of service in Vietnam he is shown to have served during the following campaign periods:

- Counteroffensive, Phase V 1 July 1968- 1 November 1968
- Counteroffensive, Phase V 2 November 1968 - 22 February 1969
- Tet 69/ Counteroffensive 23 February 1969 - 8 June 1969
- Summer-Fall 1969 9 June 1969 - 31 October 1969

13. The ABCMR denied the applicant's prior request for an upgrade on 27 October 2011.

14. The applicant would have been charged due to the commission of an offenses punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he would have consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

15. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

16. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general). He contends he experienced 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 23 December 1964 and was honorably discharged on 29 December 1965 with an immediate reenlistment on 30 December 1965.
- The applicant's enlistment record shows service in Germany 1968 and service in Vietnam from 13 September 1968 to 12 September 1969. The applicant was found guilty of being AWOL from 14 March 1966 to 2 May 1966 by a special court-martial in June 1966. He was also found guilty of being AWOL from 8 August 1966 to 1 October 1966 and again from 15 January 1967 to 8 August 1967. He also went AWOL in July 1970 and was dropped from the rolls in August 1970. He was discharged for the good of the service in lieu of trial by court-martial on 17 June 1971 under the provisions of Army Regulation 635-200, Chapter 10.
- The applicant was discharged on 17 June 1971 and was credited with 3 years and 16 days of net active service; 1 year and 7 days of other service; and 4 years and 23 days of total active service.

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 had PTSD at the time of his misconduct. His previous application to the ABCMR discusses his AWOL prior to his tour in Vietnam as related to family problems and concerns about his daughter, who was eventually put up for adoption. It also explains that after returning from Vietnam, he "should have got counseling" and "turned to alcohol." There were no medical or mental health records included in either application. There was insufficient evidence that the applicant was diagnosed with PTSD while on active service.

d. The VA's Joint Legacy Viewer (JLV) was also reviewed and showed no history of mental health related treatment or diagnoses.

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 PTSD at the time of the misconduct. There were no medical or mental health records included in the application, and JLV showed no medical or mental health history.

(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.

(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 while on active service. 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 mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

1. 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 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 insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. The opine noted, the presence of misconduct is not sufficient evidence of a mitigating mental health condition during active service.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL on multiple occasions for a period of 628 days. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board noted, the record

is absent sufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Therefore, the Board denied relief.

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.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

:            :            :            GRANT PARTIAL RELIEF

:            :            :            GRANT FORMAL HEARING

█           █           █            DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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 AR20110012871 on 27 October 2011.

█ [REDACTED]  
[REDACTED]  
[REDACTED]

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):

A review of the applicant's record shows his DD Form 214, for the period ending 17 June 1971 is missing entries that do not require Board action. As a result, amend the DD Form 214 by:

- a. deleting from item 13 (Decoration, Medals, Badges, Citations, and Campaign Ribbons) the Vietnam service Medal with one bronze service star; and
- b. adding the following entries to item 13:
  - National Defense Service Medal
  - Meritorious Unit Commendation
  - Vietnam Service Medal with four bronze service stars
  - Republic of Vietnam Gallantry Cross with Palm Unit Citation

REFERENCES:

1. Title 10, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (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. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR if the decision has not previously been reconsidered. The applicant must provide new evidence or argument that was not considered at the time of the ABCMR's prior consideration.
3. Department of the Army General Orders Number 8, dated 1974, announced award of the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, USARV, and its subordinate units during the period 20 July 1965 to 28 March 1973.
4. Army Regulation 600-8-22 (Military Awards) provides the following:
  - a. National Defense Service Medal (NDSM) was a United States Armed Forces service award given to members who served honorably during periods of armed conflict or national emergency including from 1 January 1961 to 14 August 1974.

b. The Field Artillery Missileman's Badge was a local individual award created by the 9th Field Artillery Missile Group to recognize proficiency on the various missile systems. It was awarded from December 1976 through 1979. In 1978, the Army began to rescind authorization for local uniforms and awards and the badge was withdrawn in 1979.

5. Department of the Army Pamphlet shows that the Department of the Army General Order Number 39 of 1970 awarded the 606th Ordnance Company the Meritorious Unit Commendation for the period 1 July 1968 to 31 March 1969.

6. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. Chapter 10 of that regulation provided, in pertinent part, 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, an under other than honorable conditions discharge was normally considered appropriate.

7. 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 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 a 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.



8. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR 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//