

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 May 2024

DOCKET NUMBER: AR20230011793

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 13 July 2023
- Orders 115-174, from Department of the Army, Headquarters U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Oklahoma, 25 April 1977
- Orders 115-175, from Department of the Army, Headquarters U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Oklahoma, 25 April 1977
- Letter of Debarment, 27 April 1977
- Discharge Certificate, UOTHC, 27 April 1977
- Disposition Form
- DD Form 214 (Report of Separation from Active Duty), 27 April 1977

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, in effect, after returning from Southeast Asia, he was having depressed days and flash backs. He did not realize what he was dealing with until new information came out about post-traumatic stress disorder (PTSD). On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) is related to his request.
3. The applicant enlisted in the Regular Army on 11 March 1971, for a 3-year period.
4. His DA Form 20 (Enlisted Qualification Record) shows the following:
 - a. Item 22 (Military Occupational Specialty) - 55B (Ammunition Storage and Operator Specialist).

b. Item 31 (Foreign Service) - service in Vietnam from 15 August 1971 to 16 April 1972.

c. Item 33 (Appointment and Reductions) – highest rank he attained was private first class (PFC)/E-3 with a date of rank of 17 August 1971.

d. Item 38 (Record of Assignments) – he served with the 576th Ordnance Company in Vietnam starting on 21 August 1971 and ending on an unreadable date.

5. A review of the applicant's record and governing regulation show he meets the regulatory criteria for additional awards not currently listed on his DD Form 214, for the period ending 27 April 1977 (See Administrative Notes).

6. While serving in Vietnam, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), on 10 February 1972, for violating a lawful battalion policy by having a flare in his possession in a private room, on or about 9 February 1972; for wrongfully altering an individual sick slip with the intent to deceive by adding words of quarters for 14 days, and for absenting himself from his place of duty on or about 1230 hours on 9 February 1972 and remaining absent until on or about 1730 hours on 9 February 1972. His punishment consisted of reduction to private/E-2, forfeiture of \$171.00 pay for one month, and extra duty for 14 days.

7. When he returned from Vietnam, he accepted NJP under the provisions of Article 15, of the UCMJ on 7 July 1972, for failing to go to his prescribed place of duty on or about 1 July 1972 and on or about 5 July 1972. His punishment imposed was reduction to private/E-2, forfeiture of \$45.00 pay for one month, extra duty and restriction for seven days.

8. He accepted NJP under the provisions of Article 15, of the UCMJ on 6 October 1972 for failing to go to his prescribed place of duty on or about 3 October 1972 and 5 October 1972. His punishment imposed was reduction to private/E-2, forfeiture of \$30.00 for one month, and extra duty for five days.

9. The applicant went absent without leave (AWOL) on or about 1 December 1972.

10. A DA Form 268 (Report for Suspension of Favorable Personnel Actions) shows the applicant was apprehended by civil authorities for a civilian charge of aggravated robbery on 8 January 1974.

11. A DA Form 4187 (Personnel Action) dated 11 April 1977, shows the applicant's duty status changed from dropped from unit rolls to was attached, present for duty effective 24 March 1977.

12. Court-martial charges were preferred against the applicant on 7 April 1977, for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from on or about 1 December 1972 and remaining AWOL until on or about 24 March 1977.

13. The applicant's commander recommended him for trial by general court-martial.

14. The applicant consulted with legal counsel on 8 April 1977, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service in Lieu of Trial by Court-Martial). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf.

15. The applicant's intermediate commander recommended approval and issuance of a UOTHC discharge on 13 April 1977. Additionally stating the applicant was charged with AWOL for 1,574 days for personal problems and he surrendered to military authorities.

16. The separation authority approved the applicant's request for discharge for the good of the service on 20 April 1977. Further, he directed the applicant's reduction to private/E-1.

17. The applicant was discharged accordingly on 27 April 1977, under the provisions of AR 635-200, Chapter 10, for the good of the service, in the grade of E-1. His DD Form 214 confirms his service was characterized as UOTHC, with separation program designator code JFS and reenlistment code RE-3B. He was credited with 1 year, 9 months, and 11 days of net active service this period, with 8 months and 2 days of foreign service to Vietnam. He had 1,589 days of time lost.

18. The applicant provides his discharge orders, letter of debarment from military reservations, his UOTHC Discharge Certificate, and his disposition form for his DD Form 214.

19. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC characterization of service is normally considered appropriate.

20. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

21. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) as related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the Regular Army on 11 March 1971.
- While serving in Vietnam, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), on 10 February 1972, for violating a lawful battalion policy by having a flare in his possession in a private room, on or about 9 February 1972; for wrongfully altering an individual sick slip with the intent to deceive by adding words of quarters for 14 days, and for absenting himself from his place of duty on or about 1230 hours on 9 February 1972 and remaining absent until on or about 1730 hours on 9 February 1972.
- When he returned from Vietnam, he accepted NJP under the provisions of Article 15, of the UCMJ on 7 July 1972, for failing to go to his prescribed place of duty on or about 1 July 1972 and on or about 5 July 1972.
- Applicant accepted NJP under the provisions of Article 15, of the UCMJ on 6 October 1972 for failing to go to his prescribed place of duty on or about 3 October 1972 and 5 October 1972.
- Applicant went absent without leave (AWOL) on or about 1 December 1972.
- A DA Form 268 (Report for Suspension of Favorable Personnel Actions) shows the applicant was apprehended by civil authorities for a civilian charge of aggravated robbery on 8 January 1974.

- Court-martial charges were preferred against the applicant on 7 April 1977, for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from on or about 1 December 1972 and remaining AWOL until on or about 24 March 1977.
- Applicant consulted with legal counsel on 8 April 1977, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service in Lieu of Trial by Court-Martial).
- Applicant was discharged accordingly on 27 April 1977, under the provisions of AR 635-200, Chapter 10, for the good of the service, in the grade of E-1. His DD Form 214 confirms his service was characterized as UOTHC, with separation program designator code JFS and reenlistment code RE-3B.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, DD Form 214, ABCMR Record of Proceedings (ROP), and documents from his service record and separation packet. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states, after returning from Southeast Asia, he was having depressed days and flashbacks. He did not realize what he was dealing with until new information came out about post-traumatic stress disorder (PTSD).

e. Due to the period of service, no active-duty electronic medical records were available for review. No VA electronic medical records were available for review, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of PTSD.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health diagnosis that mitigates his misconduct. However, per Liberal Consideration guidelines, the applicant's self-assertion of PTSD merits consideration by the Board

g. Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts a mitigating condition.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant has been diagnosed with any BH condition.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for PTSD. And while the applicant self-asserted PTSD, he did not provide any medical documentation substantiating any BH diagnosis including PTSD. However, per Liberal Consideration guidelines, the applicant's self-assertion of PTSD merits consideration by the Board.

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 DoD guidance for liberal consideration of discharge upgrade requests.

a. The applicant was charged with commission of an offense (AWOL from December 1972 to March 1977) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient medical documentation of any behavioral health condition during military service that would mitigate his misconduct. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature, and that outweigh his misconduct, in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 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.



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 and Army regulations show he meets the regulatory criteria for additional awards not currently listed on his DD Form 214; for the period ending 27 April 1977. Add the following in:

Item 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized):

- Vietnam Service Medal with four bronze service stars
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Sharpshooter Marksmanship Qualification Badge (Rifle)

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, 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.

4. 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 post-traumatic stress disorder; 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.

5. 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//