

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 July 2024

DOCKET NUMBER: AR20230011973

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

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

- DD Form 149 (Application for Correction of Military Record)
- Request for Assistance to Honorable [REDACTED] with Agency response letter
- In-service documents
- Post-service medical documents

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 he was wounded in Vietnam and believes he suffered from post-traumatic stress disorder (PTSD) during the period of his discharge. PTSD is the reason for his disciplinary issues.
3. The applicant was inducted into the Regular Army, on 29 April 1968.
4. On 2 July 1969, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty, on or about 26 June 1969. His punishment included forfeiture of \$32.00 and reduction to E-3.
5. The applicant was honorably discharged on 24 September 1969. He was issued a DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge), and credited with 1 year, 4 months, and 26 days of net active service for this period. He was awarded or authorized the National Defense Service Medal, Parachute Badge, and Sharpshooter Marksmanship Qualification Badge with Rifle Bar.

6. The applicant reenlisted in the Regular Army, on 25 September 1969, for 3 years.
7. On 25 April 1970, the applicant began service in the Republic of Vietnam.
8. General Orders Number 1243, issued by Headquarters, 173D Airborne Brigade, Army Post Office San Francisco, on 30 May 1970, notes the applicant was awarded the Purple Heart for wounds received in connection with military operations against a hostile force.
9. On 1 February 1971, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military control on 17 February 1971.
10. On 3 March 1971, the applicant was reported as AWOL a second time and remained absent until he returned to military control on 13 April 1971.
11. A DA Form 20 (Enlisted Qualification Record) notes the applicant departed the Republic of Vietnam on 14 April 1971.
12. On 12 May 1971, the applicant accepted NJP under Article 15 of the UCMJ, for operating a vehicle with expired license plates and a taillight out, on or about 29 April 1971. His punishment included forfeiture of \$95.00 and 14 days extra duty.
13. On 21 June 1971, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL on two occasions. His punishment included reduction to E-3, detention of \$104.00 per month for two months.
14. On 23 July 1971, the applicant was reported as AWOL a third time and remained absent until his apprehension by civil authorities on 4 February 1972.
15. On 10 March 1972, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.
16. On 10 March 1972, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
17. Court-martial charges were preferred against the applicant for violations of the UCMJ; however, the relevant DD Form 458 (Charge Sheet) is not available for review.
18. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.

19. The applicant was discharged on 17 March 1972. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, Separation Program Number 246 (for the good of the service). He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 1 year, 8 months, and 17 days of net active service this period with 276 days of lost time.

20. Additionally his DD Form 214 shows he was awarded or authorized the Vietnam Service Medal with 4 bronze service stars, Republic of Vietnam Campaign Medal with 60 device, Purple Heart, Army Commendation Medal, and Expert Rifle Badge.

21. The applicant provides post-service medical documents that show he received treatment for various medical illnesses, including PTSD, anxiety, and depression. These documents are provided in their entirety for the Board's review within the supporting documents.

22. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he 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.

23. 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.

24. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable. He contends PTSD mitigates his discharge.

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 25 September 1969.
- On 25 April 1970, the applicant began service in the Republic of Vietnam.
- General Orders Number 1243, issued by Headquarters, 173D Airborne Brigade, Army Post Office San Francisco, on 30 May 1970, notes the applicant was awarded the Purple Heart for wounds received in connection with military operations against a hostile force.
- On 1 February 1971, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military control on 17 February 1971.

- On 3 March 1971, the applicant was reported as AWOL a second time and remained absent until he returned to military control on 13 April 1971.
- A DA Form 20 (Enlisted Qualification Record) notes the applicant departed the Republic of Vietnam on 14 April 1971.
- On 12 May 1971, the applicant accepted NJP under Article 15 of the UCMJ, for operating a vehicle with expired license plates and a taillight out, on or about 29 April 1971.
- On 21 June 1971, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL on two occasions.
- On 23 July 1971, the applicant was reported as AWOL a third time and remained absent until his apprehension by civil authorities on 4 February 1972.
- The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
- The applicant was discharged on 17 March 1972. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, Separation Program Number 246 (for the good of the service). He was assigned Reentry Code 4. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 1 year, 8 months, and 17 days of net active service this period with 276 days of lost time.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he "was wounded in Vietnam and believes he suffered from post-traumatic stress disorder (PTSD) during the period of his discharge. PTSD is the reason for his disciplinary issues."

d. Due to the period of service, no active-duty electronic medical records were available for review. However, there is evidence in the service record the applicant was awarded the Purple Heart for wounds received in connection with military operations against a hostile force. On 10 March 1972, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic medical records were available for review. However, the applicant submitted post-military service medical documentation substantiating his assertion of PTSD along with symptoms of anxiety and depression.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had an experience (wounded in combat) and subsequent behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition, PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant served in Vietnam from 25 April 1970 to 14 April 1971. His service record indicates he was wounded in combat and awarded the Purple Heart.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There is medical documentation substantiating the applicant's assertion of PTSD. Given the nexus between PTSD and avoidance, the applicant's incidents of AWOL which appear to be the reason for his discharge, are mitigated by his BH condition.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the findings of mitigation for that misconduct by the medical review, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to Honorable.

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 the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

1/6/2025
X [REDACTED]
CHAIRPERSON [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.

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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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 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. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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//