

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 June 2024

DOCKET NUMBER: AR20230012133

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 8 May 1967
- DD Form 214, 26 September 1970
- Excerpt of DA Form 20 (Enlisted Qualification Record)

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 due to the mental effects of participating in the TET offensive while in Vietnam has caused a lack in judgement, due to not knowing when or where you could be hit by the North Vietnamese. A review the first active military service it can be seen it was honorable. Then the second enlistment was a product of the TET offensive that he was a part of. On the applicant's request, he also states that PTSD and other mental health conditions as a contributing factor.
3. The applicant's service records are not available for review. An exhaustive search was conducted to locate the service records, but they could not be found.
4. The applicant provides:
 - a. DD Form 214, which shows he enlisted in the Regular Army on 14 February 1966. He was honorably released from active duty for immediate reenlistment on 8 May

1967. His DD Form 214 shows he completed 1 year, 2 months, and 25 days of active service. He was awarded or authorized:

- Sharpshooter Marksmanship Qualification Badge (Rifle)
- National Defense Service Medal

b. Excerpt of DA Form 20 shows:

(1) Item 38 (Record of Assignments): from 25 January 1968 - 1 November 1968 he was assigned to C Co, 2d Battalion, 8th Infantry Division. From 2 November 1968 – 4 January 1969 he was assigned to C Co, 124th Signal Battalion, 4th Infantry Division.

(2) Item 39 (Campaigns): Vietnamese Counter Offensive Phase III; Tet Counter Offensive; Vietnam Counter Offensive Phase IV; Vietnam Counter Offensive Phase V; 9th Campaign (Unnamed).

(3) Item 41 (Awards and Decorations): Sharpshooter Marksmanship Qualification Badge (Rifle) National Defense Service Medal, Vietnam Service Medal, Good Conduct Medal (1st Award), Republic of Vietnam Campaign Medal with 60 Device, 2 overseas bars, M-60 Machine Gun

(4) Item 44 (Time Lost Under Sections 472, Title 10, USC and Subsequent to Normal Date ETS):

- 4 June 1969 – 13 June 1969 (10 days) Absent without leave (AWOL)
- 12 July 1969 – 15 July 1969 (3 days) AWOL
- 22 December 1969 – 9 January 1970 (18 days) AWOL
- 21 February 1970 – 18 August 1970 (179 days) AWOL

c. DD Form 214, which shows he served in Vietnam from 8 January 1968 – 9 January 1969. He was discharged under other than honorable conditions on 26 September 1970, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) with a separation program number of 246 (For the Good of the Service). It also shows:

- Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal
- Item 26a (Non-Pay Periods Time Lost): 4 June 1969 - 13 June 1969; 12 July 1969 – 15 July 1969; 22 December 1969 – 9 January 1970; 21 February 1970 – 18 August; 11 December 1969 – 25 September 1970
- Item 30 (Remarks): 494 days lost under 10 USC 972

5. There is no evidence within the applicant's available service records that shows he applied to the Army Discharge Review Board within the Board's 15-year statute of limitations.

7. By regulation, (AR 635-200) Chapter 10 states, a member who 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 at any time after court-martial charges were preferred. An Undesirable Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.

8. 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 PTSD and Other Mental Health Issues 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 enlisted in the Regular Army on 14 February 1966 as an 11B. He was honorably released from active duty for immediate reenlistment on 08 May 1967, 2) DA Form 20 shows his record of assignments as 25 January 1968-01 November 1968 C Co 2de Battalion, 8th Infantry Division and from 02 November 1968-04 January 1969 C Co, 124th Signal Battalion, 4th Infantry Division, 3) DA Form 20 also shows campaigns related to Vietnamese Counter Offensive Phase III; Tet Counter Offensive; Vietnam Counter Offensive Phase IV; Vietnam Counter Offensive Phase V; 9th Campaign, unnamed; 4) he received several awards, medals and decorations notably the Vietnam Service Medal, Good Conduct Medal, and Republic of Vietnam Campaign Medal with 60 Device; 5) his DD 214 shows he served in Vietnam from 08 January 1968-09 January 1969, 6) the applicant was noted to be absent without leave four times in 1969, 7) the applicant was discharged on 26 September 1970 under the provisions of Army Regulation (AR) 635-200 with a separation program number of 246 (For the Good of the Service).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. No civilian BH records were available for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. There were no military behavioral health or medical service treatment records available for review.

d. The applicant had records available for review in JLV from 08 May 1967 through June 14, 2024, though care was not established until April 23, 2024 under the auspices of the Agent Orange Registry. Following his examination, he was subsequently referred to mental health for an evaluation on 31 May 2024 for PTSD and depressive symptoms. He endorsed symptoms of depression and anger and reported that being in crowds and hospitals worsen his symptoms. Furthermore, it was documented that the applicant experienced anger and sadness to “what he had seen and done in the war.” At the time of the visit on 31 May 2024, the psychologist noted the diagnostic impression as Major Depressive Disorder, Recurrent, Severe and Unspecified Trauma-and Stressor Related Disorder. This condition is diagnosed when individuals have a trauma exposure and symptoms of PTSD though do not meet full criteria for the condition. On 03 June 2024, a mental health note documented that the applicant had previously been unable to seek VA treatment but was recently able to due to a change in discharge status. The applicant is not service connected for any BH conditions through the VA.

e. The applicant is petitioning the Board to upgrade his UOTHC discharge. He contends that his misconduct was related to PTSD and Other Mental Health Issues. His military service records show that he served in Vietnam with an occupational specialty of infantryman. Per review of JLV, the applicant was recently diagnosed with Other Specified Trauma or Stressor Related Disorder and documented that the applicant reported difficulty due to some of the experiences he had during war while on active duty. Avoidance is characteristic of the natural sequelae associated with trauma-related disorders such as Unspecified Trauma and Stress Related Disorders and PTSD. His military records demonstrate that his four instances of AWOL occurred after his return from Vietnam. As AWOL is constituted as an avoidance behavior, there is a nexus between avoidance and his reason for discharge. As such, BH medical mitigation is supported.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant’s assertion.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes. The applicant asserts his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board’s consideration. A review of records demonstrates the applicant was diagnosed with Other Trauma or Stressor Related Disorder through the VA in June 2024. He just recently established care through the VA as his UOTHC discharge had previously rendered him ineligible for care. Although the applicant is not service connected for

Other Trauma or Stressor Related Disorder through the VA, it was documented in the record that the applicant reported symptoms related to his military service and war. Furthermore, in the era of the applicant's military service, PTSD was not a diagnosable condition and was not recognized in the DSM until 1980, 10 years after the applicant's discharge. Although his complete military service record was unavailable for review, there is no indication of misconduct prior to his going AWOL following his return from Vietnam in 1969. Given that AWOL is an avoidance behavior associated with the natural history and sequelae of trauma exposure, there is a nexus between his symptoms/experiences and the AWOL leading to discharge. As such, BH medical mitigation is supported.

Regarding the applicant's assertion of Other Mental Health Issues, while there is no evidence to support this diagnosis in-service, the applicant's self-assertion alone merits consideration by the Board.

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and requested discharge in lieu of trial by court-martial. The Board concurred with the medical reviewer's opinion finding that although there is not evidence to support the diagnosis of in-service post-traumatic stress disorder, the Board found the applicant's contention to be compelling and granted relief.
2. Prior to closing the discussion, the Board noted and concurred with the analyst of record's administrative notes below.
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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 26 September 1970, to show:

- item 11c (Reason and Authority): Army Regulation 635-200
- item 13a (Character of Service): Honorable
- item 13b (Type of Certificate Issued): DD Form 256



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 service records shows he is entitled to awards not listed on his DD Form 214. As a result, amend his DD Form 214 ending on 26 September 1970 to show:

- National Defense Service Medal
- Vietnam Service Medal with one silver service star

- Vietnam Campaign Medal with 1960 Device
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Republic of Vietnam Civil Actions Honor Medal First Class Unit Citation
- Combat Infantryman Badge
- Good Conduct Medal (1st Award)
- two overseas bars
- M-60 Machine Gun

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. Army Regulation (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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

3. AR 635-200 (Personnel Separation – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of the version in effect at the time provided that a member who 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 at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An undesirable discharge certificate would normally be furnished an individual who was discharged for the good of the Service.

b. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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. AR 635-5-1(Personnel Separations – Separation Program Designators) lists the specific authorities – regulatory, statutory, or other directive – and reasons for separation from active duty, active duty for training, or full-time training duty. SPN 246 reason for separation shows Enlisted personnel – Discharge for good of the service in accordance with para 10-1, AR 635-200.

5. 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.

6. 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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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. 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. 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//