

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20230012299

APPLICANT REQUESTS: a reconsideration for:

- an upgrade to his under other than honorable conditions (UOTHC) discharge to honorable
- A personal appearance before the Board via video/telephone

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

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 AR20110020823 on 22 May 2012.

2. The applicant states, in effect, he is requesting an upgrade to his UOTHC discharge to honorable so he may qualify for benefits from the Department of Veterans Affairs (VA). He has been exposed to agent orange and has been diagnosed with service-connected post-traumatic stress disorder (PTSD). He did serve his first term of service honorably. He has dealt with PTSD for many years, he was just unaware of his condition, which is impacting his way of life. He can no longer attend funerals or operate a vehicle for extended periods of time. He further states he is diagnosed with diabetes and heart problems.

3. The applicant's service record reflects the following:

a. He was inducted in the Army of the United States on 3 November 1967, was subsequently honorably discharged on 7 November 1967, and enlisted in the Regular Army on 8 November 1967. He reenlisted on 10 January 1969 for three years.

b. The applicant has continuous honorable service from 3 November 1967 through 9 January 1969, for which he was awarded and/or qualified for the following awards:

- National Defense Service Medal

- Armed Forces Expeditionary Medal

c. DA Form 2627-1 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), 22 March 1969, reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for on or about 9 March 1969, without authority, failing to go at the time prescribed to his appointed place of duty. He was found guilty. His punishment consisted of reduction to private first class (PFC) suspended till 1 April 1969. He did not request a trial by court-martial, and he did not submit matters in extenuation, mitigation, or defense.

d. DA Form 2627-1, 6 August 1969, reflects the applicant received non-judicial punishment under the provisions of Article 15, UCMJ for: on or about 4 July 1969, without authority, absent himself and remained do absent until on or about 1 August 1969. And on or about 5 August 1969 without authority, for failing to go at the time prescribed to his appointed place of duty. He was found guilty. His punishment consisted of reduction to PFC. He did not request a trial by court-martial, and he did not submit matters in extenuation, mitigation, or defense.

e. A document, titled "Deserter Wanted by the Armed Forces," shows the applicant's absence began on 19 January 1970, and he was dropped from rolls (DFR). The applicant was later apprehended by the Federal Bureau of Investigation.

f. Special Court-Martial Order (SPCMO) Number 94, dated 23 January 1970 shows that before a Special Court-Martial which assembled at Fort Hood, Texas, pursuant to Court-Martial Convening Order Number 1, dated 12 January 1970, [applicant] was arraigned, and tried. This document further shows:

- Charge: Violation of the Uniform Code of Military Justice, Article 86
- Specification: Did on or about 14 August 1969 without proper authority, absent himself from his organization, and did remain so absent until on or 2 January 1970
- Plea: Guilty
- Found: Guilty
- Sentence: To be confined at hard labor for three months, and to be reduced to the grade of private (PVT)-E-1. (No previous convictions considered.)
- The sentence was adjudged on 15 January 1970

g. Action memorandum shows that pursuant to SPCMO Number 94, 23 January 1970, reflects the sentence is approved and will be duly executed, but the execution of that portion thereof adjudging confinement for three months, is suspended for three months, at which time unless the suspension is sooner vacated, the unexecuted portion of the sentence will be remitted without further action.

h. Deserter Wanted by the Armed Forces Form, dated 28 February 1972, shows the applicant's absence began on 1 February 1972, and he was DFR on 29 February 1972.

i. In a memorandum subject: Participation in the Program Established by Presidential Proclamation 4313, dated 24 September 1974 shows the following:

(1) He requested to participate in the program.

(2) He was notified that he was eligible and was further directed to proceed and report to Fort Benjamin Harrison, Indiana on or about 2 October 1974.

(3) Upon reporting, he will be given an opportunity to request a discharge for the good of the service in accordance with existing Department of Defense (DOD) regulations, to reaffirm his allegiance to his country, and to pledge to perform alternate service for a period not to exceed 24 months. Prior to undertaking these obligations, he will be afforded an opportunity to consult with military lawyer-counsel, who would advise him regarding the adverse nature and effect of receiving an undesirable discharge.

(4) Upon completion of the above procedures he would be issued an undesirable discharge. If he refused to execute the request, the reaffirmation, or the pledge he would not be eligible to participate in the program and would be processed in accordance with procedures in effect at the time, which could have included trial by court-martial.

(5) After consulting with legal counsel, he elected to sign a Reaffirmation of Allegiance, sign a Pledge of Public Service, and accept an undesirable discharge.

(6) The Joint Alternate Service Board established by Presidential Proclamation 4313 reviewed the applicant's official records and determined that he would be required to serve 21 months of alternate service. On 5 October 1974, he reaffirmed his allegiance to the United States of America and pledged to faithfully serve 21 months alternate service.

(7) Having been afforded the opportunity to consult with military counsel, the applicant voluntarily requested discharge for the good of the service pursuant to the provisions of Presidential Proclamation 4313. He understood his absence was characterized as a willful and persistent unauthorized absence for which he was subject to trial by court-martial for a violation of the Uniform Code of Military Justice and could lead to the imposition of a bad conduct or dishonorable discharge.

(8) He understood that he would be discharged with an UOTHC discharge and furnished an Undesirable Discharge Certificate. He acknowledged that as a result of the issuance of such a discharge he would be deprived of all service benefits and be

ineligible for all benefits administered by the VA. He may be deprived of his rights and benefits as a veteran under both Federal and State laws, and he may encounter substantial prejudice in civilian life because of an undesirable discharge.

(9) Furthermore, he understood he must report to his State Director of Selective Service for alternate service within 15 days of discharge satisfactory completion of such service would be acknowledged by issuance of a Clemency Discharge Certificate such certificate would not alter his ineligibility for any benefits predicated on his military service.

j. His DD Form 214 shows he was discharged on 5 October 1974, with an UOTHC characterization of service, under the provisions of the Presidential Proclamation 4313. The applicant had agreed to serve 21 months alternate service pursuant to the Presidential Proclamation 4313. He completed 3 months, and 16 days of active service, and 1 year, 2 months, 7 days of prior active service. His grade/rank at the time of discharge was PVT/E-1. He has 995 days' time lost before his normal expiration of term of service and 991 days after his normal expiration of term of service. He was awarded and/or qualified for the Armed Forces Expeditionary Medal.

k. In a memorandum subject: U. S. Army Absentee Returned to Military Control, dated 10 October 1974, shows the applicant was returned to military control following a period of unauthorized absence from the U. S. Army. His absence has been cleared by the U. S. Army, nullifying his status as a deserter. The Department of the Army, gratefully acknowledged his participation in the Army Apprehension Program. Any previous Notices of Unauthorized Absences are hereby cancelled by this notice of return.

4. In a prior ABCMR Docket Number AR20110020823, dated 23 May 2012, the applicant requested an upgrade to his characterization of service to general. The Board noted that the evidence presented did not demonstrate the existence of a probable error or injustice. In addition, this case notes that on 16 June 1975, the National Headquarters Selective Service System stated the applicant was terminated from enrollment in the Reconciliation Service Program and he did not complete his required period of alternate service. Therefore, the Board determined that the overall merits of this case are insufficient as a basis for correction of the record of the individual concerned.

5. There is no indication that the applicant applied to the Army Discharge Review Board for an upgrade to his discharge within the ADRB's 15-year statute of limitations.

6. By regulation, a member who has committed an offense or offenses, the punishment for any of which includes a bad conduct or dishonorable discharge, may submit a

request for discharge for the good of the service. An UOTHC Discharge Certificate normally is appropriate for a member who is discharge for the good of the service.

7. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

8. Army Regulation 15-185 (Army Board for Correction of Military Records), 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.

9. Due to the applicant's claim of PTSD and exposure to agent orange while on active duty, the case is being forwarded to the Medical and Behavioral Health staff at the Army Review Boards Agency (ARBA).

10. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR - AHLTA) and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a discharge upgrade and VA presumptive service connection for exposure to agent orange. He states he has service-connected PTSD.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of Service under consideration along with additional supporting documentation shows he entered the regular Army 10 January 1969 and was discharged with an under other than honorable conditions characterization of service on 5 October 1974 under the provisions provided in under Presidential Proclamation No. 4313.

d. No medical documentation was submitted with the application and his period of service predates the EMR.

e. The ROP shows the applicant received several Article 15s for failure to report. As a special court martial on 23 January 1970, the applicant pled to and was found guilty of being absent without leave from 14 August 1969 to 2 January 1970.

f. On 5 October 1974, the applicant voluntarily requested discharge for the good of the service under provisions provided in Presidential Proclamation no. 4313 for a period of absence without leave from 1 February 1972 thru 3 October 1974.

g. Review of his records in JLV shows he is not registered with the VA.

h. The VBA presumptively service connects conditions related to a period of Service in a given geographic region and/or exposures which has been linked to environmental contaminants / factors associated with the potential to develop one or more associated conditions. Vietnam with possible exposure to agent orange is the best-known example of this policy. This is a VA policy and so not addressed by the ABCMR.

i. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? Applicant asserts PTSD is service connected.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant has submitted no medical documentation indicating a diagnosis of PTSD and/or other mental health conditions. Review of the EMR and VA medical records indicates that the applicant has not been diagnosed with either a service connected or nonservice connected BH condition. However, as per Liberal Consideration guidance, 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 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 noted the review of (ARBA) Medical Advisor finding after review of the EMR and VA medical

records indicates that the applicant has not been diagnosed with either a service connected or nonservice connected BH condition.

2. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? Applicant asserts PTSD is service connected.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant has submitted no medical documentation indicating a diagnosis of PTSD and/or other mental health conditions. Review of the EMR and VA medical records indicates that the applicant has not been diagnosed with either a service connected or nonservice connected BH condition. However, as per Liberal Consideration guidance, the applicant's self-assertion alone merits consideration by the board.

3. The Board determined the applicant's record reflects a pattern of willful and persistent unauthorized absences, including multiple periods of desertion, nonjudicial punishments under Article 15 of the Uniform Code of Military Justice (UCMJ), and a conviction by special court-martial for prolonged absence without leave. Although the applicant initially served honorably and was awarded the Armed Forces Expeditionary Medal, his later conduct significantly diminished the quality of his service. The Board noted, the applicant voluntarily participated in the clemency program established by Presidential Proclamation 4313, reaffirmed his allegiance, and accepted an undesirable discharge in lieu of trial by court-martial.

4. Furthermore, the applicant's records indicate he did not complete the required alternate service, resulting in termination from the Reconciliation Service Program. The Board found no evidence of error or injustice in the original discharge proceedings and agreed the characterization of service was appropriate based on the applicant's misconduct and failure to fulfill the terms of the clemency program. Therefore, relief is denied.

5. 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. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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 NumberAR20110020823 on 22 May 2012.

X //SIGNED//

CHAIRPERSON

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 NOTES:

A review of the applicant's records shows he is authorized additional awards not annotated on his DD Form 214 for the period ending 5 October 1974. As a result, amend his DD Form 214 by adding: Korea Defense Service Medal

REFERENCES:

1. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.
2. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), in effect at the time, provided the authority for separation of enlisted personnel upon expiration term of service (ETS), prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.
 - 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 separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, mandatory service obligation (MSO), or period for which called or ordered to active duty.
 - c. Under other than honorable conditions discharge (UOTHC). A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial. When the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army. When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army.
3. Presidential Proclamation 4313, issued on 16 September 1974, provided for the issuance of a clemency discharge to certain former Soldiers, who voluntarily entered into and completed an alternate public work program specifically designated for former

Soldiers who received a less than honorable discharge for AWOL-related incidents between August 1964 and March 1973. Under this proclamation, eligible deserters were given the opportunity to request discharge for the good of the service with the understanding that they would receive an undesirable discharge. Upon successful completion of the specified alternative service, the deserter was issued a clemency discharge. The clemency discharge did not affect the individual's underlying discharge and did not entitle him to any VA benefits. Rather, it restored federal and, in most instances, state civil rights which may have been denied due to the less than honorable discharge. If a participant of the program failed to complete the period of alternative service, the original undesirable characterization of service would be retained.

4. The Department of the Army Special Discharge Review Program (SDRP) was based on a memorandum from Secretary of Defense Brown and is often referred to as the "Carter Program." It mandated the upgrade of individual cases in which the applicant met one of several specified criteria and when the separation was not based on a specified compelling reason to the contrary.

a. The Army Discharge Review Board (ADRB) had no discretion in such cases other than to decide whether re-characterization to fully honorable as opposed to a general discharge was warranted in a particular case. An individual who had received a punitive discharge was not eligible for consideration under the SDRP.

b. Absentees who returned to military control under the program were eligible for consideration after they were processed for separation. Individuals could have their discharges upgraded if they met any one of the following criteria: wounded in action; received a military decoration other than a service medal; successfully completed an assignment in Southeast Asia; completed alternate service; received an honorable discharge from a previous tour of military service; or completed alternate service or were excused from completing alternate service in accordance with Presidential Proclamation 4313 of 16 September 1974.

c. Compelling reasons to the contrary to deny discharge upgrade were desertion/AWOL in or from the combat area; discharge based on a violent act of misconduct; discharge based on cowardice or misbehavior before the enemy; or discharge based on an act or misconduct that would be subject to criminal prosecution under civil law.

4. Army Regulation 635-5 (Personnel Separations-Separation Documents), prescribes the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service. The DD Form 214 (Armed Forces of The United States Report of Transfer or Discharge) is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current

active, prior active, and prior inactive duty service at the time of release from active duty (REFRAD), retirement, or discharge.

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. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury (TBI); or who reported sexual assault or sexual harassment.

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

8. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. By law, Title 10 (Armed Forces), U.S. Code, section 1552, this Board is not empowered to set aside a conviction. Rather, it is only empowered to change the

severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed. The ABCMR does not have authority to set aside a conviction by a court-martial.

9. Title 10, United States Code (USC) (Armed Forces), 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.

//NOTHING FOLLOWS//