

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 June 2024

DOCKET NUMBER: AR20230012531

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service.

APPLICANT'S SUPPORTING DOCUMENT CONSIDERED BY THE BOARD:

DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)

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 AC89-07854 on 7 March 1990.
2. The applicant states that after his service in Vietnam, he became depressed, had anxiety, and post-traumatic stress disorder (PTSD). While stationed at Homestead Air Force Base, FL, he was prescribed medication that made him forget things such as fighting and harming other people. At that time, PTSD was not recognized. If he had been treated properly at the time, he would have become an ideal Soldier.
3. The applicant's service record contains a note from the National Personnel Records Center which states the applicant's record was located in a mold contaminated area. Many of the documents in his service record are illegible, stuck together, or too fragile to scan. However, the record does contain a fully constituted DD Form 214 and several additional documents with which the Board can conduct a fair and impartial review of the applicant's petition.
4. The applicant enlisted in the Regular Army on 22 January 1968, for a 3-year period. Upon the completion of initial entry training, he was awarded military occupational specialty 63B (Wheeled Vehicle Mechanic). The highest rank he attained was specialist fourth class/E-4.
5. The applicant served in the Republic of Vietnam from 18 November 1968 to 30 September 1969.

6. A DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence) shows the applicant was reported absent without leave (AWOL) on 15 March 1970 and subsequently dropped from the rolls on 13 April 1970. He returned to military control on 21 November 1972.

7. The applicant underwent a pre-separation medical examination on 30 November 1972. The examining provider deemed him medically qualified for separation and further determined there were no reasonable grounds to believe the applicant was mentally "defective, deranged, or abnormal." Therefore, a psychiatric examination was not considered appropriate.

8. Court-martial charges were preferred against the applicant for a violation of the Uniform Code of Military Justice (UCMJ). However, the relevant DD Form 458 (Charge Sheet) is not available for review.

9. The applicant consulted with legal counsel on 24 January 1973.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of a discharge UOTHC, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his own behalf. His statement is not available for review. However, the previous ABCMR Memorandum of Consideration, dated 7 March 1990, shows the applicant "stated that he had a wife and three children at home to take care of, and he no longer had any desire to serve in the Army."

10. The applicant's immediate and intermediate commanders recommended approval of his request for discharge for the good of the service and further recommended the issuance of a DD Form 258A (Undesirable Discharge Certificate).

11. On 2 February 1973, the separation authority approved the applicant's request for discharge and further directed the applicant be reduced to the lowest enlisted grade and the issuance of an Undesirable Discharge Certificate.

12. Accordingly, the applicant was discharged on 9 February 1973, under the provisions of AR 635-200, Chapter 10, for the good of the service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms his service was characterized as UOTHC, with separation program number 246 and reenlistment codes RE-3B and 4. He was credited with 2 years, 4 months, and 12 days of net active service, with 313 days of lost time and 669 days lost subsequent to normal expiration term of service.

13. The Army Discharge Review Board considered the applicant's request for a change in the nature of his discharge on 26 October 1979 and 11 January 1989. On both occasions, the Board determined the applicant was properly and equitably discharged and denied his request for relief.

14. The ABCMR reviewed the applicant's petition for an upgrade of his discharge on 7 March 1990. After careful consideration, the Board determined the applicant did not present sufficient justification to conclude that it would be in the best interest of justice to grant the relief he requested or to excuse his failure to file within the time prescribed. His request for an upgrade of his characterization of service was denied.

15. 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. A UOTHC characterization of service is normally considered appropriate.

16. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

17. 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 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 22 January 1968; 2) The applicant served in the Republic of Vietnam from 18 November 1968 to 30 September 1969; 3) The applicant was reported AWOL from 15 March 1970-21 November 1972; 4) The applicant was discharged on 9 February 1973, Chapter 10, for the good of the service. His service was characterized as UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review.

c. The applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder including PTSD while on active service.

d. A review of JLV was void of any medical documentation for the applicant, and there was insufficient evidence that he receives any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support 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 misconduct? Yes, the applicant asserts he experienced PTSD which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did go AWOL, which could be avoidant behavior and a natural sequelae to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates 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 record and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The opine noted the applicant's record is absent sufficient evidence beyond his self-report of experiencing PTSD while on active duty.

2. The Board determine there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL 313 days with 669 days of lost time and being apprehended by authorities. The Board noted the applicant was deemed medically qualified for separation and further determined there were no reasonable grounds to believe the applicant was mentally "defective, deranged, or abnormal." Therefore, a psychiatric examination was not considered appropriate. The Board carefully considered the applicant's contentions regarding his PTSD, however, found that the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Based on the preponderance of evidence, and advising official opine, the Board agreed reversal of the previous Board determination is without merit and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 AC89-07854 on 7 March 1990.

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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, U.S. Code, Section 1556, 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.

2. 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 regulation states, the ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

3. AR 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 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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. 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; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are 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 misconduct that led to the discharge.

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, 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.

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//