

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 June 2024

DOCKET NUMBER: AR20230012751

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded to an honorable discharge.

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

DD Form 149 (Application for Correction of Military Record)

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:

a. He served in Vietnam from 3 August 1969 until 3 August 1970. Due to his exposure to certain situations, he needs a mental health evaluation and help with his post-traumatic stress disorder (PTSD). His family life and relationships are adversely affected by his inability to sustain them. His health suffers and he can't get the medical attention he needs to deal with these problems due to being denied benefits based on his negative discharge status.

b. Although he was discharged UOTHC, at the same time he did serve his country with love and honor. He would like to be rewarded for that time served. He knows he was exposed to agent orange while in Vietnam and feels he should have access to all the benefits that are afforded to others so that some of his medical issues can be addressed. He has had to live with his medical issues since he can't get afford the medical attention he needs. Nothing erases the fact that his time was spent in Vietnam, and he respectfully asks that he be recognized for that service time.

c. He has always believed his opinion doesn't count especially when dealing with the Federal Government, but the older he gets he realizes you never know until you ask. He has not had access to a computer except through the help of his sister. He has

let this eat at him his entire life, ruminating about it at times wondering if there might be a remedy.

d. The applicant indicated on his DD Form 149 that PTSD and other mental health conditions are related to his request.

3. The applicant was inducted into the Army of the United States on 29 January 1969. He was honorably discharged on 3 February 1969 for immediate enlistment. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 6 days net active service this period.

4. The applicant enlisted in the Regular Army on 4 February 1969 for three years. His military occupational specialty was 55B (Ammunition Storage Specialist).

5. The applicant served in Vietnam from 3 August 1969 through 3 August 1970.

6. The applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 26 July 1971 for without authority, being absent without leave (AWOL) from his unit, the Overseas replacement Station from on or about 30 April 1971 until on or about 24 June 1971. His punishment consisted of forfeiture of 1/2 months' pay for two months and reduction to corporal/E-4.

7. The applicant was reported as AWOL on 11 October 1971 and dropped from the rolls (DFR) on 9 November 1971. He was apprehended by civil authorities and returned to military control on 16 January 1972.

8. Court-martial charges were preferred against the applicant for violation of the UCMJ on 1 January 1972. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 11 October 1971 until on or about 16 January 1972.

9. A Report of Medical Examination, dated 9 February 1972, is stamped with: "There is no reasonable ground for belief that this individual is or ever has been mentally defective, deranged, or abnormal. A psychiatric examination is not deemed to be appropriate." He was found to be qualified for administrative separation.

10. A Report of Investigation, dated 14 February 1972, shows the applicant's commander determined the charge was substantiated by competent evidence and that punishment for this offense included a punitive discharge. Therefore, the applicant qualified for administrative elimination under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10.

11. The applicant consulted with legal counsel and 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 UOTHC discharge and the procedures and rights that were available to him.

a. After consulting with legal counsel, he voluntarily requested discharge under the provisions of AR 635-200, Chapter 10, in lieu of court-martial for the good of the service. He further acknowledged he understood that if his discharge request was 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 and he may expect to encounter substantial prejudice in civilian life because of a dishonorable discharge.

b. He elected to submit statements in his own behalf however, the statements are not available for review.

12. The applicant's commander recommended approval of his request and that he be furnished an undesirable discharge. The commander noted the applicants records in conjunction with his negative attitude toward honorable service indicated that the best interest of the U.S. Army would be served by approval of the applicant's request.

13. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 15 February 1972. He directed the applicant's undesirable discharge and his reduction to the lowest enlisted grade.

14. A Statement of Medical Condition, dated 18 February 1972, shows the applicant indicated there had been no change in his medical condition, to the best of his knowledge, since his last separation examination.

15. Orders and the applicant's DD Form 214 show he was discharged on 18 February 1972 under the provisions of AR 635-200, Chapter 10, for the good of the service-in lieu of trial by court-martial with Separation Program Number 246 and Reenlistment Codes RE-3B and 4. His service was characterized as UOTHC. He completed 2 years, 7 months, and 8 days of net active service. He had 160 days of time lost from 30 April 1971 to 1 July 1971 and from 11 October 1971 to 15 January 1972.

16. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

17. On 8 December 2023, a staff member at ARBA, requested the applicant provide medical documents that support his issue of PTSD. As of 9 January 2024, no response was provided.

18. In reference to his Veterans Administration (VA) health benefits, decisions of the VA are solely within the jurisdiction of that agency. While the ABCMR can correct errors in an individual's military records it has no authority to direct or influence decisions by other agencies.

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

20. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable. He contends he experienced Posttraumatic Stress Disorder (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 was inducted into the U.S. Army on 29 January 1969 and was honorably discharged on 03 February 1969 for immediate enlistment. He enlisted in the Regular Army on 04 February 1969 and his military occupational specialty was an ammunition storage specialist, 2) the applicant served in Vietnam from 03 August 1969 to 03 August 1970, 3) the applicant received an Article 15 on 26 July 1971 for being absent without leave (AWOL) from his unit from 30 April 1971 until on or about 24 June 1971, 4) he was again AWOL on 11 October 1971 and apprehended by civil authorities and returned to military control on 16 January 1972, 4) court martial charges were preferred against the applicant for being AWOL from 11 October 1971 until on or about 16 January 1972, 5) the applicant was discharged on 18 February 1972 under the provisions of Army Regulation (AR) 635-200, Chapter 10 in lieu of court martial.

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. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. An in-service Report of Medical Examination dated 09 February 1972 documented that there is no indication the individual ever had a mental illness and a psychiatric examination was not deemed to be appropriate. A statement of medical condition dated 18 February 1972 documented that the applicant indicated there was no change in his medical condition.

d. A review of JLV was void of medical information. The applicant is not diagnosed with any behavioral health (BH) conditions through the VA and is not service-connected for any BH conditions. No civilian BH records were provided for review.

e. The applicant requests an upgrade of his UOTHC discharge to honorable. He contends his misconduct was related to PTSD and Other Mental Health Issues. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. His in-service medical examination documented that there was no indication of psychiatric illness and therefore deemed a referral for psychiatric evaluation as inappropriate. The applicant asserts that his mental health has negatively impacted his relationships and functioning since being discharged from the military. His military service record show that he served in Vietnam asserted that he was exposed to agent orange while serving in Vietnam. The applicant's incidents of AWOL occurred following his service to Vietnam.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient medical evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends 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.

g. 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 the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. The applicant does not have any VA records as his UOTHC discharge renders him ineligible for VA services. However, the lack of documentation of PTSD symptoms in the applicant's military records does not necessarily indicate he did not have in-service PTSD. In the era of the applicant's military service, PTSD was not a diagnosable condition. PTSD was not recognized in the DSM until 1980, 8 years after the applicant's discharge. In such cases, the presence of PTSD has to be inferred from behavioral indicators documented

in the applicant's record. Such is the case with this applicant. The applicant had an otherwise unremarkable record prior to his deployment to Vietnam, after which he had several incidents of AWOL which ultimately led to his discharge. There is a nexus between avoidance symptoms associated with the diagnosis of PTSD and AWOL. This pattern of performing well followed by suddenly going AWOL is not uncommon in Soldiers suffering from PTSD.

h. Furthermore, per the standards set forth today under MEDCOM/OTSG Policy 21-024, individuals being separated under Other Than Honorable conditions who have deployed overseas within the previous 24 months require a psychiatric evaluation prior to discharge. Per the applicant's service record, he was discharged within 18 months of his return from Vietnam and under today's standards would have been required to undergo a psychiatric evaluation prior to discharge to which he was not. AWOL associated with his discharge occurred after his service in Vietnam. Given that AWOL is an avoidance behavior associated with the natural history and sequelae of trauma-exposure-PTSD and there is no indication of misconduct prior to his deployment, 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 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 the medical review, the Board concurred with the advising official finding insufficient medical evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. The opine noted the applicant's records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues.

2. the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of going AWOL for 160 days and being apprehended by civilian authorities. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board carefully considered the applicant's deployment in the Republic of Vietnam, the advising official finding that AWOL is an avoidance behavior associated with the natural history and

sequelae of trauma-exposure-PTSD and there is no indication of misconduct prior to his deployment. However, the Board found the applicant length of AWOL was not mitigated and denied relief.

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:

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.

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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. AR 635-200, Personnel Separations, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. When a Soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply. Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

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 of that regulation provides that a Soldier who has committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier or where required, after referral, until final action by the court-martial convening authority.

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 Service 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 (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.

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

6. On 4 April 2024, 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 eligibility for medical retirement or separation benefits. This guidance is being promulgated in light of *Doyon v. United States* and is consistent with that decision. Accordingly, the BCM/NR will apply liberal consideration to the eligible applicant's assertion that combat- or military sexual trauma -related PTSD or TBI potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief is appropriate. After making that determination, the BCM/NR will then separately assess the individual's claim of medical unfitness for continued service due to that PTSD or TBI condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

//NOTHING FOLLOWS//