

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 June 2024

DOCKET NUMBER: AR20230012893

APPLICANT REQUESTS: reconsideration of his previous request(s) to upgrade his under other than honorable conditions discharge

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Articles about effects of drugs on the brain

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 Numbers:

- AR20090011030 on 3 December 2009
- AR20170008689 on 15 July 2020
- AR20220003337 on 14 November 2022

2. The applicant states he is asking that the Board relook the decision. He does not feel that the effect of the drugs on his brain or his body was considered. He did seek help and asked for help and was diagnosed with issues but still not given help. This was never addressed. He is submitting two documents that show the effect of the drugs on the brain. He was 18 at the time so his brain was still developing, and this had a negative impact. According to the studies this impacted the ability to know right from wrong. Once he got off the drugs and got clean his ability to make better choices and to know right from wrong became clearer. He stopped the drugs and feels contrition over what he has done. He would go back and change things if he could. Because he wants to serve his country honorably.

3. A review of the applicant's service records shows:

a. He enlisted in the Regular Army on 9 October 1966 at 17 years of age. He held military occupational specialty 36C (Lineman). He was assigned to Fort Lewis, WA.

b. On 28 June 1967, he accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for leaving his guard post without authority and then being found inside the guard shack.

c. On 3 July 1967, his unit reported him in an absent without leave (AWOL) status. He returned to military control on 27 July 1967. He was again reported AWOL from 15 to 28 August 1967 (13 days).

d. On 10 October 1967, he was convicted by a special court-martial of two specifications of AWOL from 3 to 27 July 1967 and from 15 to 28 August 1967. The court sentenced him to 6-months' confinement, forfeiture of \$64 per month for 3 months, and reduction to private/E-1. On 18 October 1967, the convening authority approved the sentence but ordered the suspension of the applicant confinement until 5 April 1968.

e. On 23 January 1968, his unit again reported him AWOL, and on 5 February 1968, civilian authority detained the applicant. He returned to military control on 20 February 1968. On 23 February 1968, a special court-martial order announced the court-martial convening authority had vacated the applicant's suspended sentence to confinement.

f. On 11 March 1968, the applicant was convicted by a special court-martial of one specification of AWOL, from 23 January to 5 February 1968. The court sentenced him to 6-months' confinement and a forfeiture of \$68 per month for 6 months. On 12 March 1968, the convening authority approved the sentence and ordered its execution.

g. On 8 April 1968, a psychiatrist from the Fort Lewis Mental Hygiene Consultation Division rendered a neuropsychiatric evaluation of the applicant. The psychiatrist listed his diagnosis as, "Antisocial personality. LOD (line-of-duty): No, EPTS (existed prior to service)." The psychiatrist went on to state, "This Soldier gives a history of social inadaptability prior to service and of marked social inadaptability during his tour of duty. He uses poor judgement, is not committed to any productive goals, and is completely unmotivated for further service. It is believed that he will not adjust to further military service and further rehabilitative efforts probably will be nonproductive" and "There are no disqualifying mental or physical defects sufficient to warrant disposition through medical channels."

h. On 20 April 1968, after a special court-martial order initially suspended the unexecuted portion of applicant's forfeiture and sentence to confinement until August 1968, a second court-martial order further extended the period of suspense of confinement until September 1968.

i. The applicant served in Vietnam from 22 December 1968 to 7 April 1970. He was advanced to specialist four/E-4 on 14 April 1969.

j. On 22 October 1969, a U.S. Army Criminal Investigation Command Report of Investigation (ROI) disclosed that, on 2 October 1969, the applicant had presented an altered identification card in the name of another Soldier in an attempt to purchase \$800 worth of money orders. He was charged with wrongfully altering and possessing an Armed Forces Identification Card; wrongfully using an identification card with intent to defraud; and attempting an illegal currency transaction.

k. On 12 November 1969, the applicant's chain of command preferred court-martial charges against the applicant for the following UCMJ violations:

- one specification of possessing, on 2 October 1969 and with intent to deceive, a certain instrument purporting to be his Armed Forces of the United States Identification Card, then well knowing the same to be false
- one specification of possessing, on 2 October 1969 and, another Soldier's MACV (Military Assistance Command, Vietnam) Currency Control Card
- two specifications, in that, on or about 2 October 1969, the applicant affixed the name and signature of another person onto an authorization document, and the applicant represented himself as someone else

l. On 10 January 1970, the applicant's chain of command preferred court-martial charges against the applicant for the following UCMJ violations:

- one specification of on 20 November 1969, the applicant absented himself from his unit with the intent to remain away permanently, and he remained absent until apprehended, on 28 November 1969
- six specifications, in that, between September and November 1969, the applicant purchased and possessed military pay certificates (MPC) and money orders in excess of \$3,000, and asked another Soldier to purchase money orders
- two specifications of forgery, on 25 November 1969, the applicant forged his commander's signature on an emergency leave letter order, and, on 26 November 1969, he forged his commander's signature on a certificate for converting \$3,000 in MPC to traveler's checks

m. On or about 18 February 1970, after consulting with counsel, the applicant voluntarily requested discharge, in accordance with chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). In his request, he acknowledged that no one had subjected him to coercion to request this separation. Additionally, the applicant elected not to submit written statements in his own behalf.

n. Consistent with the chain of command's recommendations, on 1 April 1970, the separation authority approved the applicant's separation request and directed his undesirable discharge under other than honorable conditions.

o. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged on 9 April 1970, under the provisions of chapter 10 of AR 635-200 with an under other than honorable conditions discharge. He completed 3 years and 4 days of active service, with 177 days of lost time (AWOL/confinement). His DD Form 214, as amended by a DD Form 215 (Correction to DD Form 214) shows he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal with 4 bronze service stars
- Republic of Vietnam Campaign Medal with Device (1960)
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-14)
- Two overseas service bars
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

4. On 22 July 1975, after hearing arguments from the applicant's counsel (a representative from the Veterans of Foreign Wars), the Army Discharge Review Board (ADRB) voted to deny relief.

5. On 5 July 1977, following the applicant's request to be considered by a Department of Defense (DOD) Special Discharge Review Board (SDRP), the SDRP determined the applicant did not meet the program's criteria and denied relief.

6. On 24 February 1978, the applicant appeared with counsel before the ADRB and submitted testimony documentary evidence for the ADRB's consideration. After reviewing the applicant's service record and evaluating the testimony and evidence presented, the ADRB voted to deny relief; the ADRB noted that, other than his testimony, the applicant had provided no proof he no longer used drugs. Coupled with the lack of any mitigating circumstances, the ADRB felt strongly that the applicant's command had been justified in characterizing the applicant's service as undesirable.

7. On 3 December 2009 (ABCMR Docket Number AR20090011030), the ABCMR denied his request to upgrade his discharge. The Board reviewed the applicant's arguments and evaluated his service record; and found the applicant had committed UCMJ offenses that were punishable with a punitive discharge, and he had voluntarily requested separation to avoid court-martial. Additionally, the applicant's service record was void of any acts of valor but did reveal an extensive disciplinary history. Because of the foregoing and due to a lack of evidence, the Board voted to deny the applicant's requested relief.

8. On 16 March 2017 (ABCMR Docket Number AR20170008689), the applicant requested the Board reconsider its previous denial of relief. The applicant's counsel argued that the applicant's misconduct was never violent and was the direct result of the applicant's medically diagnosed behavioral health condition. Like many other Soldier during Vietnam, the applicant sought to self-medicate as a way of coping with daily life in combat; he subsequently became addicted. Given the applicant's behavioral health issues, his Agent Orange exposure, and his devotion to his community and church, counsel maintained the applicant's character of service should be upgraded in the interests of justice.

a. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military records. The medical reviewer indicated that the applicant's packet does not contain any documentation of behavioral health evaluations or treatment records. The applicant was evaluated by a psychiatrist while on active duty and meet retention standards at the time of his discharge. There are no documented behavioral health conditions to consider with respect to mitigation of the misconduct that led to his discharge. It should be noted that a diagnosis of PTSD (post-traumatic stress disorder) would not be a mitigating factor for wrongful use of a fraudulent Armed Forces identification card, MACV currency control card, attempt to purchase \$800 worth of money orders, or making a false statement.

b. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical advisory opinion and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered his military medical records, medical records provided, and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding insufficient evidence of in-service mitigating factors to overcome the premeditated misconduct. In addition, the applicant displayed a pattern of misconduct prior to his Vietnam service. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. After reviewing the application and all supporting documents, the Board found that relief was not warranted.

9. On 14 November 2022 (ABCMR Docket Number AR20220003337), the Board reconsidered his request to upgrade his undesirable discharge under other than honorable conditions, and again denied it.

a. The ARBA Medical Advisor reviewed the supporting documents and the applicant's military records. The medical reviewer indicated that based on the available information, the applicant has not successfully demonstrated the presence or history of

a mental health condition that would reasonably mitigate the factors leading to his discharge under other than honorable conditions. The applicant contends that the conditions occurred while he was on active duty, and influenced his behavior while on active duty, although there is no evidence of such a diagnosis or treatment in the reviewed military record or available post-discharge records. The record does include references to poor adjustment and judgment prior to the military and throughout his service, to include a diagnosis of a personality disorder under the psychiatric diagnostic criteria utilized at the time of his military service.

b. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical advisory opinion, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the medical records and conclusions of the advising official. The Board agreed PTSD does not mitigate all of his misconduct as it does not affect one's ability to distinguish right from wrong and act in the accordance with the right. The Board concurred with the medical advisory opinion finding insufficient evidence of in-service mitigating factors to overcome the misconduct. Based upon a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request(s) to upgrade his under other than honorable conditions discharge. He contends PTSD and substance abuse 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 9 October 1966.
- On 28 June 1967, he accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for leaving his guard post without authority and then being found inside the guard shack.
- On 10 October 1967, he was convicted by a special court-martial of two specifications of AWOL from 3 to 27 July 1967 and from 15 to 28 August 1967.
- On 23 January 1968, his unit again reported him AWOL, and on 5 February 1968, civilian authority detained the applicant. He returned to military control on 20 February 1968. On 23 February 1968, a special court-martial order announced the court-martial convening authority had vacated the applicant's suspended sentence to confinement.

- On 11 March 1968, the applicant was convicted by a special court-martial of one specification of AWOL, from 23 January to 5 February 1968. The court sentenced him to 6-months' confinement and a forfeiture of \$68 per month for 6 months.
- The applicant served in Vietnam from 22 December 1968 to 7 April 1970. He was advanced to specialist four/E-4 on 14 April 1969.
- On 22 October 1969, a U.S. Army Criminal Investigation Command Report of Investigation (ROI) disclosed that, on 2 October 1969, the applicant had presented an altered identification card in the name of another Soldier in an attempt to purchase \$800 worth of money orders. He was charged with wrongfully altering and possessing an Armed Forces Identification Card; wrongfully using an identification card with intent to defraud; and attempting an illegal currency transaction.
- On 12 November 1969, the applicant's chain of command preferred court-martial charges against the applicant for the following UCMJ violations:
 - one specification of possessing, on 2 October 1969 and with intent to deceive, a certain instrument purporting to be his Armed Forces of the United States Identification Card, then well knowing the same to be false
 - one specification of possessing, on 2 October 1969 and, another Soldier's MACV (Military Assistance Command, Vietnam) Currency Control Card.
 - two specifications, in that, on or about 2 October 1969, the applicant affixed the name and signature of another person onto an authorization document, and the applicant represented himself as someone else
- On 10 January 1970, the applicant's chain of command preferred court-martial charges against the applicant for the following UCMJ violations:
 - one specification of on 20 November 1969, the applicant absented himself from his unit with the intent to remain away permanently, and he remained absent until apprehended, on 28 November 1969
 - six specifications, in that, between September and November 1969, the applicant purchased and possessed military pay certificates (MPC) and money orders in excess of \$3,000, and asked another Soldier to purchase money orders
 - two specifications of forgery, on 25 November 1969, the applicant forged his commander's signature on an emergency leave letter order, and, on 26 November 1969, he forged his commander's signature on a certificate for converting \$3,000 in MPC to traveler's checks
- On or about 18 February 1970, after consulting with counsel, the applicant voluntarily requested discharge, in accordance with chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). In his request, he acknowledged that no one had subjected him to coercion to request this separation. Additionally, the applicant elected not to submit written statements in his own behalf.
- His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged on 9 April 1970, under the provisions of

chapter 10 of AR 635-200 with an under other than honorable conditions discharge (Separation Code 246 and Reenlistment Code 4).

- On 22 July 1975 and 24 February 1978, the Army Discharge Review Board (ADRB) considered the applicant's request for an upgrade in characterization of service and voted to deny relief.
- On 5 July 1977, following the applicant's request to be considered by a Department of Defense (DOD) Special Discharge Review Board (SDRP), the SDRP determined the applicant did not meet the program's criteria and denied relief.
- The applicant's case has been previously considered by the Army Board for Correction of Military Records (ABCMR) on 3 December 2009, 15 July 2020, and 14 November 2022.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states he is asking that the Board relook the decision. He does not feel that the effect of the drugs on his brain or his body was considered. He did seek help and asked for help and was diagnosed with issues but still not given help. This was never addressed. He is submitting two documents that show the effect of the drugs on the brain. He was 18 at the time so his brain was still developing, and this had a negative impact. According to the studies this impacted the ability to know right from wrong. Once he got off the drugs and got clean his ability to make better choices and to know right from wrong became clearer. He stopped the drugs and feels contrition over what he has done. He would go back and change things if he could. Because he wants to serve his country honorably. The applicant provides two articles regarding the effects of drugs on the brain but, as with his prior applications, he does not provide any medical documentation substantiating his assertion of PTSD.

d. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy documentation shows on 8 April 1968, a psychiatrist from the Fort Lewis Mental Hygiene Consultation Division rendered an evaluation of the applicant. The psychiatrist listed his diagnosis as Antisocial Personality Disorder that existed prior to service (EPTS). The evaluation further indicates, "this Soldier gives a history of social inadaptability prior to service and of marked social inadaptability during his tour of duty. He uses poor judgement, is not committed to any productive goals, and is completely unmotivated for further service. It is believed that he will not adjust to further military service and further rehabilitative efforts probably will be nonproductive".

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic behavioral health medical records were available for review, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of PTSD.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. However, per Liberal Consideration, the applicant's assertion of PTSD is sufficient to warrant consideration by the Board.

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 22 December 1968 to 7 April 1970. However, there is no medical documentation indicating the applicant was diagnosed with PTSD during military service or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, other than a personality disorder, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for PTSD or any other mental health condition. And while the applicant self-asserted PTSD, he did not provide any medical documentation substantiating any BH diagnosis including PTSD or any other mental health condition. A diagnosis of PTSD would mitigate the applicant's incidents of AWOL, since there is a nexus between PTSD and avoidance. However, PTSD would not mitigate his more serious offenses. PTSD would not be a mitigating factor for wrongful use of a fraudulent Armed Forces identification card, MACV currency control card, attempting to purchase \$800 worth of money orders, forging his commander's signature, or making false statements. PTSD does not impair an individual's ability to distinguish right from wrong, understand consequences, and make purposeful, conscious decisions.

BOARD DISCUSSION:

The Board again carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD and substance abuse claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the

conclusion of the medical advising official regarding his misconduct being only partially mitigated by a behavioral health condition. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Numbers AR20090011030 on 3 December 2009, AR20170008689 on 15 July 2020, and AR20220003337 on 14 November 2022.

12/19/2024

X

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.

REFERENCES:

1. Army Regulation 635-200, in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. An honorable discharge was a separation with honor. Separation authorities were to conditions the issuance of an honorable discharge based upon proper military behavior and proficient duty performance. In addition, separation authorities could characterize a Soldier's service as honorable based on conduct ratings of at least "Good"; efficiency ratings of at least "Fair"; no general court-martial, and no more than one special court-martial conviction.

b. A general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 permitted a Soldier to request discharge for the good of the service when they had committed an offense or offenses which, under the UCMJ and the Manual for Courts-Martial, United States 1969 (Revised Edition), included a bad conduct or dishonorable discharge as a punishment. The Soldier could submit such a request at any time after court-martial charges were preferred. Once approved, an undesirable discharge was normally furnished, but the discharge authority could direct either an honorable or a general discharge, if warranted.

2. 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 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.

3. 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.

4. 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. 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//