

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 July 2024

DOCKET NUMBER: AR20230012904

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Character reference letters (3)
- Veteran Affairs Form 21-4138 (Statement in Support of Claim)
- DD Form 214 (Report of Separation from Active Duty)

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 AC91-10992 on 20 May 1992.
2. The applicant states he was having a lot of mental issues, he was not thinking right. He was told that he could take the discharge and be out the Army in one day. He was told he could get the records straight after his discharge. He was under a lot of stress, and his record shows he took emergency leave on multiple occasions.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) issues are related to his request.
4. On 16 February 1966, the applicant enlisted in the Regular Army, for 3 years. Upon completion of initial entry training, he was awarded the military occupational specialty 64B (Heavy Vehicle Driver). The highest grade he attained was E-4.
5. The applicant served in the Republic of Vietnam from 1 September 1967 through 31 August 1968.
6. On 3 September 1968, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 8 October 1968.

7. Before a special court-martial on 28 October 1968, at Fort Campbell, KY, the applicant was found guilty of one specification of going AWOL. The court sentenced him to forfeiture of \$101.00 per month for two months and reduction in grade to E-3. The sentence was approved, and the record of trial was forwarded for appellate review.

8. On 22 December 1968, the applicant was reported as AWOL a second time, and remained absent until his apprehension by civil authorities on 7 August 1974.

9. Court-martial charges were preferred against the applicant on 29 August 1974, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL.

10. 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 an undesirable discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. 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.

b. He submitted a statement in his own behalf stating he went AWOL for family emergencies. His grandmother had passed away and his wife had been assaulted. His father-in-law was sick and would subsequently pass away. He affirmed that he did not run from the Army, he went to Vietnam.

11. The separation authority approved the applicant's request for discharge for the good of the service on 5 September 1974, and directed an undesirable discharge.

12. The applicant was discharged on 30 September 1974. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Code KFS and Reentry Codes 3B and 4. He completed 2 years, 10 months, and 16 days of net active service this period with 730 days of lost time.

13. The applicant petitioned the Army Discharge Review Board (ADRB) requesting upgrade of his UOTHC discharge. On 15 May 1979, the Board voted to deny relief and determined his discharge was both proper and equitable.

14. The applicant petitioned the ADRB a second time, requesting upgrade of his UOTHC discharge. On 20 August 1981, the Board voted to deny relief and determined his discharge was both proper and equitable.

15. The applicant petitioned the ABCMR requesting an upgrade of his UOTHC discharge. On 20 May 1992, the Board voted to deny relief and determined the applicant had not presented and the records did not contain sufficient justification that it would be in the interest of justice to grant the relief requested or to excuse the failure to file within the time prescribed by law.

16. The applicant provides three character reference letters from members of his family that attest to his mental health following his return from the military. These letters are provided in their entirety for the Board's review within the supporting documents.

17. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

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

19. 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 16 February 1966; 2) The applicant served in the Republic of Vietnam from 1 September 1967 through 31 August 1968; 3) Before a special court-martial on 28 October 1968, the applicant was found guilty of going AWOL; 4) Court-martial charges were preferred against the applicant on 29 August 1974 for going AWOL; 5) The applicant was discharged on 30 September 1974, Chapter 10, for the good of the service. He was discharged in the lowest enlisted grade and 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 while on active service. He did report experiencing family and personal stressors, which contributed to his decision to go AWOL.

d. A review of JLV was void of medical documentation. The applicant does not receive any service-connected disability, and he did not provide any additional medical information.

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:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. One potential outcome discussed was to deny relief based upon the lack of mitigation found in the medical review. However, based upon the lengthy period of honorable service completed, to include service in Vietnam, prior to the AWOL leading to the applicant's separation and the guidance on liberal consideration related to Vietnam veterans, the Board concluded there was sufficient evidence of an error or injustice warranting a change to the applicant's characterization by showing it as Honorable.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

2. Additionally, prior to closing the case, the Board noted the administrative notes below from the analyst of record and recommended those changes also be completed to more accurately reflect the military service of the applicant.

1/6/2025

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.

ADMINISTRATIVE NOTE(S):

1. Army Regulation 635-5 (Separation Documents), in effect at the time, stated the DD Form 214 was to list all decorations, service medals, campaign credits, and badges awarded or authorized.
2. Army Regulation 600-8-22 states a bronze service star will be awarded, for wear on the Vietnam Service Medal, for participation in each campaign. Recognized campaigns for Vietnam include the Counteroffensive-Phase III (1 June 1967 to 29 January 1968), Tet Counteroffensive (30 January 1968 to 1 April 1968), Counteroffensive-Phase IV (2 April 1968 to 30 June 1968) and Counteroffensive-Phase V (1 July 1968 to 1 November 1968).
3. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) shows DAGO Number 8, dated 1974 awarded the Republic of Vietnam

Gallantry Cross with Palm Unit Citation to Headquarters, United States Army Vietnam, and its subordinate units during the period 20 July 1965 to 28 March 1973.

4. A review of the applicant's record shows his DD Form 214, for the period ending 30 September 1974 is missing important entries that affect recognition for his acts of heroism. As a result, amend the DD Form 214 by adding the following entries in item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized):

- Vietnam Service Medal with four bronze service stars
- Republic of Vietnam Campaign Medal
- Republic of Vietnam Gallantry Cross with Palm
- National Defense Service Medal
- Marksman Marksmanship Qualification Badge with Rifle bar (M14)

REFERENCES:

1. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

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, 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.

//NOTHING FOLLOWS//