

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2024

DOCKET NUMBER: AR20230012925

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Board of Veterans' Appeals decision summary (docket # 21024-138797 (10 pages)), 2 March 2023
- cover letter for docket, 2 August 2023

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 AR2000045488 on 18 January 2001, AR20150015725 on 12 January 2016, and AR20210005950 on 14 October 2021.
2. As a new argument, the applicant states he has filed multiple appeals through the VA and would like the Board to grant him relief based on the findings in VA docket # 210204-138797. The applicant notes post-traumatic stress disorder (PTSD) as a condition related to his request.
3. The applicant enlisted in the Regular Army on 17 December 1958 for 3 years. The highest rank/grade he held was private first class/E-3.
4. Special Court Martial Order Number 49, issued by Headquarters, 3d Battalion, Artillery Training Command, Fort Chaffee, AR, shows the applicant was found guilty of stealing the property of another Soldier of a value of \$4.00, \$6.50, and \$1.95, on or about 25 March 1959. He was sentenced to forfeiture of \$57.00 pay per month for two months. The sentence was adjudged on 21 May 1959 and on 22 May 1959 was approved and ordered duly executed.

5. Summary Court-Martial Order (SCMO) Number 12, issued by Headquarters, 2d Brigade 31st Infantry, Fort Rucker, AL, shows he was found guilty of failing to go at the time prescribed to his appointed place of duty, on or about 1 July 1959. He was sentenced to hard labor without confinement for 14 days and forfeiture of \$50.00 pay per month for one month. The sentence was adjudged on 9 July 1959 and on 10 July 1959 was approved and ordered duly executed.

6. SCMO Number 16, issued by Headquarters, 2d Brigade 31st Infantry, Fort Rucker, AL, shows he was found guilty of absenting himself from his prescribed place of duty and breaking restrictions, on or about 11 March 1960. He was sentenced to hard labor without confinement for 45 days and forfeiture of \$30.00 pay per month for one month. The sentence was adjudged, approved, and ordered duly executed on 16 March 1960.

7. The applicant accepted nonjudicial punishment, under the provisions of Article 15 of the Uniform Code of Military Justice, on three occasions:

a. On or about 26 June 1959, for failing to report to reveille formation. His punishment was 14 days extra duty.

b. On or about 14 August 1959, for missing work call formation. His punishment was 10 days restriction.

c. On or about 7 March 1960, for failing to report to reveille formation. His punishment was 12 days restriction.

8. On 25 February 1960, the applicant underwent a neuropsychiatric examination as part of his consideration for discharge due to his misconduct. His psychiatric evaluation noted, he failed to see his own responsibility in various difficulties in which he was involved, he ascribed all his troubles to others, and showed no evidence of hallucinations, delusions, or psychotic thinking. It was further noted, the applicant was not insane, possessed sufficient capacity mentally to know the difference between right and wrong, was able to adhere to the right and refrain from the wrong, and was mentally responsible for his actions.

9. The applicant's record is void of his commander's notification of intent to initiate action to separate him from service.

10. On 25 March 1960:

a. The applicant was counseled on the basis for the contemplated separation action initiated on 8 April 1959 under the provisions of Army Regulation 635-208 (Personnel Separations-Discharge-Unfitness) or Army Regulation 635-209 (Personnel Separations-Discharge-Unsuitability) its effects, and the rights available to him. He requested

consideration and personal appearance before a board of officers and elected not to submit statements in his own behalf.

b. His immediate commander formally recommended the applicant's elimination from the service under the provisions of AR 635-208, by reason of frequent incidents of a discreditable nature with civil or military authorities, an established pattern of shirking, and an established pattern for showing dishonorable failure to pay just debts.

11. On 28 March 1960, the applicant was notified to appear before a board of officers on 1 April 1960 to consider his retention on active duty and whether he was unsuitable for further military service because of character or behavior disorders.

12. A board of officers was convened on 4 April 1960 and 5 April 1960 and found a discharge under the provisions of Army Regulation 635-208, was warranted due to undesirable habits or traits of character, specifically, an established pattern of shirking. The board further recommended the applicant be separated from the military with an undesirable discharge.

13. On 15 April 1960, the separation authority approved the recommended separation action by the board of officers, and directed the applicant's discharge.

14. 18 April 1960, the applicant underwent a medical examination as part of his consideration for discharge due to his misconduct. His medical examination noted, he qualified for separation from active duty.

15. The applicant was discharged accordingly on 21 April 1960, under the provisions of Army Regulation 635-208. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) confirms he received an UOTHC characterization of service in the grade of E-1. He was credited with 1 year, 4 months, and 5 days of net active service during the period covered.

16. As new evidence, the applicant provides the following documents which are available in their entirety for the Board's review within the supporting documents:

a. Ten-page VA Board of Veterans' Appeals decision summary (docket # 210204-138797), showing the applicant was granted service connection for treatment purposes for PTSD on 2 March 2023.

b. A cover letter requesting the ABCMR review the decision from docket # 210204-13879 and outlining the VA Board of Veterans' Appeals finding that the applicant provided enough credible evidence that suggest bias and improper discharge could be a factor in the applicant's PTSD and that the claimed in-service stressors of racism and physical abuse at the hands of his platoon commanders during his active-duty service.

17. The applicant petitioned the Army Discharge Review Board (ADRB) for upgrade of his service characterization. On 13 September 1962, after careful consideration the ADRB determined he was properly and equitably discharged.

18. The ABCMR considered the applicant's request for an upgrade on 18 January 2001, 12 January 2016, and 14 October 2021. After reviewing the applications and all supporting documents, the Board determined relief was not warranted. The Board found the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for correction of the applicant's records.

19. Regulatory guidance in effect at the time provided an undesirable discharge was normally considered appropriate for Soldier's discharged under the provisions of Army Regulation 635-208, by reason of unfitness.

20. The Board should consider the applicant's argument and evidence, along with the overall record, in accordance with the published equity, injustice, or clemency determination guidance.

21. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for 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 17 December 1958; 2) Special Court Martial Orders shows the applicant was found guilty of stealing the property of another Soldier on 25 March 1959; 3) Summary Court-Martial Orders show the was found guilty of failing to go at the time prescribed to his appointed place of duty on 1 July 1959; 4) Summary Court-Martial Orders shows the applicant was found guilty of absenting himself from his prescribed place of duty and breaking restrictions, on 11 March 1960; 5) The applicant was discharged on 21 April 1960, due to undesirable habits or traits of character. He received an UOTHC characterization of service.

b. The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and VA documentation provided by the applicant were also examined. No additional medical documentation was provided by the applicant.

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 condition including PTSD while on active service. On 25 February 1960, the applicant underwent a neuropsychiatric examination as part of his consideration for discharge due to his misconduct. His psychiatric evaluation noted, he failed to see his own responsibility in various difficulties in which he was involved, he ascribed all his troubles to others, and showed no evidence of hallucinations, delusions, or psychotic thinking. It was further noted, the applicant was not insane, possessed sufficient capacity mentally to know the difference between right and wrong, was able to adhere to the right and refrain from the wrong, and was mentally responsible for his actions.

d. A review of JLV provided evidence the applicant passed away on 14 January 2024. He had been evaluated and diagnosed with service-connected PTSD for treatment purposes.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially mitigates his misconduct which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(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. The VA has diagnosed the applicant with service-connected PTSD.

(3) Does the condition experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did engage in avoidant and erratic behavior, which is a natural sequelae to PTSD. However, there is no nexus between the applicant's PTSD and his theft of property. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is partially mitigable.

BOARD DISCUSSION:

The Board 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, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. 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 PTSD. 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 AR2000045488 on 18 January 2001, AR20150015725 on 12 January 2016, and AR20210005950 on 14 October 2021.

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. Title 10, U.S. Code, 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.

2. Army Regulation 15-185 (ABCMR) states 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.

3. Army Regulation 635-200 (Personnel Separations – General Provisions for Discharge and Release), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. Army Regulation 635-208, in effect at the time, set forth the policy for administrative separation for unfitness. Paragraph 3 provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: (a) frequent incidents of a discreditable nature with civil or military authorities, (b) sexual perversion, (c) drug addiction, (d) an established pattern of shirking, and/or (e) an established pattern showing dishonorable failure to pay just debts. This regulation prescribed that an undesirable discharge was normally issued unless the particular circumstances warranted a general or honorable discharge.

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 Discharge Review Boards (DRB) and 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 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.

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//