

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 August 2024

DOCKET NUMBER: AR20230013239

APPLICANT REQUESTS: Reconsideration of his previous requests for upgrade of his characterization of service.

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

DD Form 149 (Application for Correction of Military Record)

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:

- AR20110001342 on 19 July 2011
- AR20170000607 on 17 May 2019

2. The applicant states:

a. He was having a problem getting paid by the Army and was under a lot of stress. He was supposed to receive jump pay and wasn't receiving it, which put him in a bind because he was sending money to his family back home. His mother was sickly, and he went home to assist her with her needs. When he returned from Vietnam to the U.S., the people would treat him terribly and he felt out of place. His family needed him more than the Army did, so he left.

b. He thought he had submitted a request for an upgrade years ago, but never received anything. He served in Vietnam from 3 December 1970 to 2 December 1971 and had no difficulties there. He received 2 Bronze Service Stars for his tour.

c. The applicant lists post-traumatic stress disorder (PTSD) as related to his request.

3. The applicant enlisted in the Regular Army on 17 January 1967. His military occupational specialty (MOS) was 36C (Lineman).

4. The applicant was discharged on 5 June 1968. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation (AR) 635-212 (Personnel Separations-Discharge-Unfitness and Unsuitability), with Separation Program Number (SPN) 264 [unsuitability]. His service was characterized as under honorable conditions (general). He completed 1 year, 4 months, and 14 days of net active service this period.

5. By regulation, individuals would be discharged by reason of unsuitability when their records were characterized by one or more of the following: inaptitude, character and behavior disorders, apathy, defective attitudes, and inability to expend effort constructively, alcoholism, enuresis, and homosexuality. This regulation also prescribed that an honorable or general discharge was issued as warranted by the military record.

6. After a break in service, the applicant reenlisted in the Regular Army on 18 May 1970. His MOS was 12A (Pioneer).

7. He served in Vietnam from 3 December 1970 thru 2 December 1971.

8. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on:

- 6 October 1970 for absenting himself from his unit on or about 3 October 1970 until 6 October 1970; his punishment consisted of forfeiture of \$20.00, restriction and extra duty
- 11 December 1970 for absenting himself from his unit on or about 7 September 1970 until 8 September 1970; his punishment consisted of forfeiture of \$20.00, restriction and extra duty
- 3 May 1971, failing to go at the time prescribed to his appointed place of duty on 2 May 1971; his punishment consisted of reduction to E-2, forfeiture of \$25.00 pay for one month, and restriction

9. The applicant was absent without leave (AWOL) on 18 April 1972, dropped from the rolls (DFR) on 20 May 1972, and returned to military control on 6 June 1972.

10. The applicant accepted NJP under Article 15 of the UCMJ on 14 July 1972 for absenting himself from his unit on or about 11 July 1972 until 12 July 1972. His punishment consisted of forfeiture of \$175.00 per month for two months (suspended), and extra duty.

11. The applicant was AWOL on 24 August 1972 and DFR on 5 September 1972. He was pending court martial.

12. The Commander's letter, dated 11 October 1972, issued by Headquarters and Headquarters Company 14th Engineer Battalion, Fort Ord, CA, shows the applicant departed AWOL in August 1972 and there was no indication of mental instability or evidence of foul play involved.

13. Military Police Report, dated 31 March 1973 shows the applicant was apprehended by civil authorities, released to armed guards and confined at the post stockade.

14. The Report of Medical Examination shows the applicant was medically qualified for separation. The medical statement shows he was physically and mentally fit for duty without profile limitations. He was and is responsible for his acts, able to understand and participate in board proceedings.

15. The applicant consulted with legal counsel on 9 May 1973 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; the procedures and rights that were available to him.

a. After consulting with legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Separations), Chapter 10, for the good of the service-in lieu of trial by court-martial. 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 an under other than honorable conditions (UOTHC) discharge.

b. His Defense Counsel submitted a statement in behalf of the applicant. He stated the applicant started having problems in the Army when he returned back from Vietnam. His commanding officer was racially prejudiced. The applicant was put in for promotion by his platoon sergeant and reenlistment by his enlistment noncommissioned officer, they were both turned down by his commanding officer. The applicant had a family of five kids, a wife, and a sick mom with six sisters (ages 5-15) to support. Since he couldn't get a promotion or reenlist, he asked for a discharge, but that was also turned down. In order for the applicant to earn money he worked as a male nurse and as a musical entertainer, in addition to his Army duties. He wasn't receiving the pay he was supposed to receive from the Army when he got back to the U.S. He went to the Finance office at Fort Ord several times, but he never received the correct amount of pay. He felt his military career was ruined and that he should return to his family. So, he decided to leave military control.

16. Court martial charges were preferred against the applicant on 16 May 1973. His DD Form 458 (Charge sheet) shows he was charged with AWOL from on or about 18 April 1972 until on or about 6 June 1972 and on or about 24 August 1972 until on or about 31 March 1973.

17. The chain of command recommended approval of his discharge on 16 May 1973 and 17 May 1973.

18. The Staff Judge Advocate memorandum, dated 22 May 1973, shows the applicant indicated he went AWOL because he was being harassed, hadn't been paid, and had to support eight in his family. The requirements of AR 635-200, Chapter 10, had been fulfilled and was sufficient to warrant separation. The applicant's commanding officer recommend approval.

19. The separation authority approved the applicant's request for discharge on 22 May 1973, in lieu of court-martial and directed his reduction to private/E-1, with the issuance of an Undesirable Discharge Certificate.

20. The Statement of Medical condition shows there had been no change in his medical condition since his last separation examination.

21. The applicant was discharged from on 29 May 1973. His DD Form 214 shows he was discharged under the provision of AR 635-200, Chapter 10, for the good of the service with SPN 246 and Reenlistment Code RE-3. His service was characterized as UOTHC. He completed 2 years, 3 months, and 2 days of net active service. He had 273 days of lost time. He was awarded or authorized the Vietnam Service Medal with 2 Bronze Service Stars and the Expert Marksmanship Qualification Badge (rifle).

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

23. The applicant enlisted in the Army National Guard (ARNG) on or about 19 December 1973; however, the enlistment document is not available for review.

24. Letter Orders Number E-01-205, State [REDACTED], dated 17 January 1974 shows the applicant was ordered to active duty for training by direction of the Secretary of the Army. The applicant entered active duty on 8 February 1974.

25. The applicant accepted NJP under Article 15 of the UCMJ on:

- 14 March 1973 for absenting himself from his unit on or about 2 March 1974 until 12 March 1974; his punishment consisted of forfeiture of \$70.00 per month for one month, extra duty and restriction
- 4 April 1974 for absenting himself from his unit on or about 1 April 1974 until 9 April 1974; his punishment consisted of forfeiture of 7 days' pay, extra duty and restriction

26. An Evaluation of Discharge for Enlistees Before 180 Active-Duty Days, dated 6 June 1974 shows the applicant's first sergeant and commander counseled him, it also shows:

a. The applicant was granted emergency leave while awaiting his class. At this time, it was noticed he was an older, but not necessarily more mature, advanced individual training (AIT) student than his peers.

b. The applicant was counseled for moving off post without the unit commander's approval and missing company formation. He ignored established procedures for sick call and feeding. He must be closely supervised to accomplish the most simple tasks. The source of most of his problems appears to be his dealings in civilian life. He missed school on four different days to appear in court [REDACTED]. The applicant should be returned to his ARNG unit for discharge from the Army.

c. The commander counseled the applicant after he stormed into the dining facility for breakfast after normal feeding hours. He had no meal card, and his appearance was slovenly. In his opinion the applicant should be eliminated from the Army.

27. On 7 June 1974, the applicant was notified the commander was initiating action to discharge him from the Army, based on a review of his record and performance during AIT. The applicant acknowledged notification and did not desire counsel; he did not desire a separation medical examination and he did not desire to make statements or submit a rebuttal in his behalf.

28. The chain of command recommended approval of the discharge recommendation.

29. The separation authority approved the recommendation and directed the applicant's discharge under the provisions of Department of the Army message 01150Z August 1973, Evaluation and Discharge of Enlistees Before 180 Active-Duty Days, on 11 June 1974. The applicant would be given an Honorable Discharge Certificate.

30. The applicant was released from active duty on 19 June 1974, and returned to the control of the ARNG. His DD Form 214 confirms his service was characterized as honorable. He completed 3 months and 21 days of net active service. He had 21 days of lost time.

31. The previous case shows on 4 April 1977, the Department of Defense (DOD) directed the Services to review all less than fully honorable administrative discharges issued between 4 August 1964 and 28 March 1973. In the absence of compelling reasons to the contrary, this program, known as the DOD Special Discharge Review Program (SDRP), required a discharge upgrade to either honorable or general be issued in the case of any individual who had either completed a normal tour of duty in Southeast Asia, had been wounded in action, had been awarded a military decoration other than a service medal, had received an honorable discharge from a previous period of service, or had a record of satisfactory military service of 24 months prior to discharge. Consideration of other factors, including possible personal problems which may have contributed to the acts which led to the discharge and a record of good citizenship since the time of discharge, would also be considered upon application by the individual.

32. The applicant applied for consideration for SDRP on 19 May 1977. In a letter from the Reserve Component Personnel and Administration Center, dated 7 July 1977, he was informed he was ineligible for consideration by the SDRP because he was not discharged from the Army, ARNG or U.S. Army Reserve during the period 4 August 1964 through 28 March 1973. His discharge was 29 May 1973.

33. On 19 July 2011 and 17 May 2019, the ABCMR determined the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of the case were insufficient as a basis for correction of the applicant's records.

34. On 29 March 2024, an agency staff member requested the applicant provide medical documents that support his issue of PTSD. As of 30 April 2024, no response was provided.

35. 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.

36. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR for a reconsideration of his request to upgrade his under other than honorable conditions (UOTHC) characterization of service. His previous petitions to the ABCMR are summarized in Docket Numbers AR20110001342 dated 19 July 2011 and AR20170000607 dated 17 May 2019. On his application, the applicant indicates Posttraumatic Stress Disorder (PTSD) is related to his request. 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 in the Regular Army (RA) on 17 January 1967 and was discharged on 05 June 1968 under the provisions of Army Regulation (AR) 635-212 with a Separation Program Number (SPN) 264 [unsuitability]. His service was characterized as under honorable conditions (general).
- He re-enlisted in the RA on 18 May 1970.
- He served in Vietnam from 03 December 1970 through 02 December 1971.
- He received three Article 15s between 06 October 1970 and 03 May 1971 for absenting himself from his unit (two occasions) and failing to go at the prescribed time to his place of duty.
- The applicant was absent without leave (AWOL) on 18 April 1972 and returned to military control on 06 June 1972,.
- He received an Article 15 on 14 July 1972 for absenting himself from his unit.
- The applicant's court-martial charge sheet shows he was charged with AWOL from on or about 18 April 1972 until on or about 06 June 1972 and on or about 24 August 1972 until 31 March 1973.
- He was discharged on 29 May 1973 under the provisions of Army Regulation (AR) 635-200, Chapter 10, for the good of the service.
- He enlisted in the Army National Guard (ARNG) on 19 December 1973. He received two Article 15's between 14 March 1973 and 04 April 1974 for absenting himself from his unit.
- On 07 June 1974, the applicant's commander notified him he was initiating action to separate him from the Army based on a review of his record and performance during AIT.
- The applicant was released from active duty on 19 June 1974 and his service was characterized as honorable.
- The ABCMR denied his previous requests for relief as it was determined that there was no probable error of injustice.

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. The applicant's in-service medical records included as part of his application were reviewed. A review of his Report of Medical Examination(s) conducted for the purposes of enlistment and separation did not document any BH-related concerns or history. A progress note (undated) documented clinical impressions as 'anxiety-depression.' A separate progress note documented on Standard Form 509 dated 27 March 1971 documented that the impressions as 'mild anxiety or depression' though the reason for visit and rule out conditions are illegible to this Advisor. A memorandum dated 11 October 1972 signed by the applicant's commander documented that there was 'no

indication of mental instability or evidence of foul play' in reference to his going AWOL. A medical statement dated 06 April 1973 signed by a physician (unknown specialty) documented that a review of the applicant's physical and mental examinations did not 'reveal any defects' which would have contributed to the applicant's discharge. It was documented that according to AR 40-501, the applicant was physically and mentally fit for duty without profile limitations, that he was responsible for his actions, and able to understand and participate in Board Proceedings. A Report of Medical Examination dated 23 May 1974 for the purposes of REFRAD from the ARNG documented psychiatric as 'normal' on clinical evaluation.

d. Review of the applicant's service records shows his DA Form 20 documented conduct and efficiency as 'excellent' and 'good' through 11 December 1970. Beginning 17 January 1972 his conduct and efficiency were documented as 'unsatisfactory' and 'fair' due to AWOL and dropped from the rolls.

e. A review of JLV shows the applicant is 70% service-connected through the VA for physical health reasons (impaired hearing and Tinnitus). He is not service-connected for any BH conditions. The applicant underwent two Compensation and Pension (C&P) evaluations on 02 April 2018 and 17 April 2023. At the time of his initial evaluation in 2018, he was diagnosed with PTSD and that he reported experiencing problems since separating from the military but was unable to get help. He reported experiencing anxiety, worry, problems with sleep, dreams about combat, flashbacks (e.g., feeling as though he was back there again). Furthermore, he reported symptoms of intrusion, avoidance, increased arousal, and frequent mood changes, depression and suicidal ideation. He denied problematic use of alcohol and no had history of illicit drug use. The identified stressor associated with his diagnosis of PTSD was seeing his brother-in-law's leg get blown off while in Vietnam. At the time of his second C&P examination in 2023, his diagnosis was reaffirmed and attributed the provider attributed his condition to his service in Vietnam which was noted to be made worse by his 'physical infirmity and need for Caregiver.' Regarding BH treatment through the VA, the applicant completed an intake on 20 December 2017 after being referred by his PCM due to symptoms of depression and PTSD. At the time of the visit his diagnoses were noted as Major Depressive Disorder, Recurrent, Moderate and Chronic PTSD following military combat (Vietnam). He had a follow-up appointment on 19 January 2018 to which the diagnoses were continued. It was documented that the applicant was administered the PTSD Checklist (PCL) with the stressor identified as 'combat in Vietnam' and his score was 53, indicative of severe symptoms. He was also administered the Patient Health Questionnaire (PHQ9) as a measure of depressive symptoms and his score was reflective of severe depressive symptoms. The applicant did not show for his 01 July 2019 appointment. There was a gap in treatment until 21 August 2019 wherein he was referred for Tobacco Cessation treatment and was started on Wellbutrin though he only attended one visit. It was also documented the applicant requested medication to help 'calm him down.' Beginning in September 2020 the applicant started working with social



work through the VA to receive Home Health and Respite Care services for assistance with his activities of daily living (ADLs) and instrumental activities of daily living (IADLS) and has continued to receive these services through present day.

f. The applicant is applying to the ABCMR for a reconsideration of his request to upgrade of his UOHC characterization of service. The applicant contends PTSD is related to his request. Review of the available medical records indicate the applicant's service records were void of any BH diagnoses or treatment history though did indicate he was experiencing anxiety and/or depression in 1971. A medical statement provided at the time of the applicant's discharge documented that the applicant met retention standards IAW AR 40-501. Post-discharge, the applicant has been diagnosed by the VA with PTSD secondary to his service in Vietnam.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with PTSD secondary to his service in Vietnam through the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD secondary to his service in Vietnam through the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Although the applicant's military records were void of any BH diagnosis or treatment history, medical records from 1971 indicate the applicant was experiencing anxiety or depression, which are common symptoms associated with PTSD. Post-discharge, the applicant has been diagnosed with PTSD secondary to his service in Vietnam through the VA. It is of note that PTSD was not a diagnosable condition at the time of the applicant's discharge, and was not recognized in the DSM until 1980, seven years after his discharge. As there is an association between avoidance behaviors and going AWOL, there is a nexus between the applicant's misconduct of AWOL that led to his discharge and his diagnosis of PTSD. As such, BH mitigation is supported.




### 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. Based upon the misconduct leading to the applicant's separation, the Vietnam service of the applicant, the guidance on liberal consideration, and the mitigation found in the medical review, the Board

concluded there was sufficient evidence of an error or injustice warranting a change to the applicant's characterization of service to reflect Honorable.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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

3/6/2025

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.

REFERENCES:

1. Title 10, U.S. Code (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.
2. AR 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. AR 635-212 (Personnel Separations-Discharge-Unfitness and Unsuitability), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. Action would be taken to separate an individual for unsuitability when it was clearly established that it was unlikely that he would develop sufficiently to participate in further military training and/or become a satisfactory Soldier or the individual's psychiatric or physical condition was such as to not warrant discharge for disability and they met retention medical standards.
  - b. Paragraph 6b (2) then in effect, set forth the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. Paragraph 6b provided that an individual was subject to separation for unsuitability when one or more of the following conditions existed: (1) inaptitude; (2) character and behavior disorders; (3) apathy (lack of appropriate interest, defective attitudes, and inability to expend effort constructively); (4) alcoholism; (5) enuresis; and (6) homosexuality (Class III - evidenced homosexual tendencies, desires, or interest, but was without overt homosexual acts).
  - c. When separation for unsuitability was warranted, an honorable or general discharge was issued as determined by the separation authority based upon the individual's entire record.
4. AR 635-200, in effect at the time, sets 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. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged for the good of the service. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment.

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 Post-Traumatic Stress Disorder; 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. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and 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.

//NOTHING FOLLOWS//