

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 January 2024

DOCKET NUMBER: AR20230013327

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his undesirable discharge to fully honorable; a change to the narrative reason for discharge to "Secretarial Plenary Authority," a change to the separation code; and a change to the reentry eligibility code to a RE-1.

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

- DD Form 149 (Application for Correction of Military Record), 11 October 2022
- Counsel Letter, 27 September 2022
- Client-Attorney Agreement, 5 January 2022
- Counsel Brief Presentation in Support of Application with attachments, Exhibits 1 through Exhibit 14
  
- Exhibit 1 – DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 20 March 1973
- Exhibit 2 – SF 88 (Report of Medical Examination), 25 April 1972
- Exhibit 2 – SF 93 (Report of Medical History), 25 April 1972
- Exhibit 3 – DA Form 20 (Enlisted Qualification Record), page 2
- Exhibit 4 – DA Form 458 (Charge Sheet), page 2, with addenda, undated
- Exhibit 5 – SF 600 (Health Record), 17 February 1973
- Exhibit 5 – SF 88, Separation Medical Examination, 8 February 1973
- Exhibit 6 – letter, ERR\_\_\_\_, Esquire, 16 May 1973
- Exhibit 7 – Veterans Administration (VA) Rating Decision, 8 February 2021
- Exhibit 8 – Dr. DL\_\_\_\_, MD, Department of Psychiatry, (University) Behavioral Health, 3 March 2022
- Exhibit 9 – Drs. DHW\_\_\_\_ MD and RR\_\_\_\_ MD, progress notes, (Company) Medicine, 15 July 2015
- Exhibit 10 – Applicant and ARO\_\_\_\_ joint affidavit, 16 September 2022
- Exhibit 11 – Dr. MM\_\_\_\_, MD, (Company) Medicine, 5 October 2015
- Exhibit 12 – letter, ERR\_\_\_\_, Esquire, (Company), Attorneys at Law, 20 April 1973
- Exhibit 12 – DD Form 149, 20 April 1973

- Exhibit 13 – letter, ABCMR, Executive Secretary, 25 September 1973
- Exhibit 14 – letter, SBW\_\_\_\_, 8 May 2020

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) decision dated 19 September 1973, in denial letter, dated 3 October 1972.

2. Counsel for the applicant has indicated on the DD Form 149 application that post-traumatic stress disorder (PTSD) and other mental health conditions are related to the applicant's request for an upgrade of his discharge. Counsel has provided a 12-page written presentation detailing the applicant's issues and his arguments in support of an upgrade, which is available for Board review. Counsel states, on behalf of the applicant, in effect:

a. Mental Health Professionals have diagnosed the applicant with a mental health condition, schizophrenia with onset during service during the Vietnam era. As such, a mental health professional must be included as a member of the Board who reviews the application for relief.

b. This application is primarily based on matters relating to a mental health condition. A final decision should be expedited.

c. The applicant served in the US Army from April 1972 to March 1973, with over 6 months in Europe. In January 1973, the applicant had a 2-week period of a series of acts of misconduct that were totally out of character for him. These acts resulted in him being jailed and then discharged on March 20, 1973.

d. A medical brief before his discharge failed to detect his mental illness, however, a few weeks after his discharge, he was diagnosed with paranoid schizophrenia as a result of his service experience in Europe. In February 2021, the VA determined his paranoid schizophrenia was service connected.

e. Per the 2014 Hagel Memorandum and the 2017 clarifying guidance, the applicant requests liberal consideration of his case in that the behavior underlying his discharge was a direct result of symptoms related to his paranoid schizophrenia he suffered in service.

f. A medical examination performed at the time of his enlistment showed psychiatric and neurological results. Through basic training and advanced individual training, he was assessed excellent conduct and efficiency ratings. Upon reassignment to Germany

in September 1972, he was assessed excellent conduct and efficiency ratings. Several months later in 1973, he was charged with several acts of misconduct, all occurring over a 2-week period. These included five specifications of unauthorized absence, two specifications of cursing at a superior, three specifications of disobeying an order to go or stay with an officer, and two specifications of striking a superior with his hand. He had no prior history of poor behavior or misconduct. He was jailed and then discharged under other than honorable conditions.

g. Although he underwent brief medical evaluations prior to his discharge, these evaluations failed to detect his mental conditions. On 11 April 1973, just 22 days after his discharge, he was diagnosed with schizophrenic reactions, paranoid type. Dr. RC\_\_\_ determined his paranoid state resulted from his service experience since there was no evidence of psychosis prior to his enlistment in the Army. Dr. RC\_\_\_ opined that his competency to sign his undesirable discharge was very questionable.

h. On 8 February 2021, the VA determined his paranoid schizophrenia was service connected. He also has a diagnosis of PTSD and major Depressive Disorder (MDD) his physicians attribute to his service in the Army. Since his discharge, he has been dependent on family members. He has suffered hallucinations with tragic consequences. In 1978, he was injured when he believed he was being chased and threw himself in front of a train resulting in amputation of both legs and an arm. He has been in a wheelchair since this incident.

i. Per the 2017 Clarifying Guidance (Kurta Memorandum) and the 2018 Wilkie Memorandum, he requests the Board grant liberal consideration that the behavior that led to his discharge was the direct result of his mental health conditions. The Board may upgrade a discharge due to injustice. The Hagel Memorandum and subsequent Carson Memorandum instruct review boards to consider whether or not PTSD or other mental health conditions were mitigating factors in the misconduct that led to a Veteran's Discharge.

j. Since the applicant's first application to the Board for relief in 1973, the 2017 Clarifying Guidance directed the Board consider Veterans petitioning for discharge relief when the application for relief is based on mental health conditions. A diagnosis made by a licensed psychiatrist or psychologist that the condition existed during military service will receive liberal consideration.

k. His request for an upgrade should be granted in the interests of justice because the misconduct that led to his discharge was a direct result of his paranoid schizophrenia that first occurred during his service. His mental health conditions excuse and mitigate his discharge because his diagnosis was driving his behavior. His mental health conditions outweigh his other than honorable conditions discharge.

I. The VA and other physicians have assessed him to have serious mental illness from his service. The Board should view these significantly disabling mental health conditions as mitigating factors in the misconduct and recommend the relief requested, including an upgrade to fully honorable.

3. The applicant states, in a co-authored affidavit with ARO\_\_\_\_, in effect:

a. He remembers serving in Germany when he suffered his first hallucination and paranoid episode. He was smoking with other Soldiers and suddenly felt sick. He did not feel right after smoking the cigarette and thinks someone tried to drug him. A couple of weeks later his behavior was out of control. He recalled arguing with someone about whether or not it was his day to work. He became irate and Military Police was called and he was taken into custody.

b. He showed up one night at home without his personal belongings. His mother felt something was not right. He was taken to a hospital the next morning. He was put on medication. As time went on his hallucinations became worse. He was experiencing PTSD. The records are no longer available as records over 25 years were destroyed.

c. In 1978, his PTSD was so bad he tried to commit suicide. While he was out he started to hallucinate and he ran into the subway and jumped in front of a moving train.

d. His record showed his capability and dedication to the Army. He wanted to make his mother proud and serve his country proudly. He ascended to the rank of E-4.

4. Counsel provided a 12-page presentation outlined above with copies of:

a. An SF 88 and SF 93 showing the applicant underwent a Medical Examination and gave a Report of Medical History for the purpose of enlistment on 25 April 1972.

b. Page 3 of DA Form 20, showing his record of assignments.

c. Page 2 of an undated DA Form 458, with addenda, showing the charges and specifications of which he was charged with and the details of violations of the Uniform Code of Military Justice.

d. An SF 600, Chronological Record of Medical Care, dated 17 February 1973, showing the notes taken by the Chief MD, during side rounds. He saw the patient for about 20 minutes during which he was pleasant, verbal, cooperative, oriented, organized, expressed no delusions or hallucinations, did not manifest (unreadable), and was not depressed. He talked about being bad and mean however, (unreadable) on his behavior (unreadable). Stated that he wants out of the Army. Had been quite angry and wasn't going to take anymore crap. Yet it appears he also realized that the more he

(unreadable), the more he (unreadable). Resident of Philadelphia. 12 years schooling/(unreadable)/(unreadable)/no drug usage to speak of. Clearly wants out of Army. Impression – no mental illness present. Angry behavior was manifestation of anger and poor impulse control secondary to character disorder. Suggestion – follow up by social worker and (unreadable) today in counseling/low key.

e. An SF 88 showing the applicant underwent a Medical Examination on 8 February 1973 for the purpose of a chapter 10 separation. The physician's notes indicate the health record was reviewed and he was qualified for separation under the provisions of chapter 10 (Army Regulation 635-200 (Personnel Separations – Enlisted Personnel)).

f. A DD Form 214, dated 20 March 1973.

g. A DA Form 149, 20 March 1973, showing his earlier request for an upgrade of his discharge and a change to the narrative reason to medical disability, based on his medical disability by reason of paranoid schizophrenia and a rating of 100%. This form was signed by his mother for him.

h. A letter from his attorney, dated 20 April 1973, to the ABCMR, indicating the applicant was hospitalized at a psychiatric unit locked ward at (Company) Medical Center, and requesting an urgent request from his mother for review of his discharge.

i. A letter from Dr. RLC, MD, to the applicant's counsel, dated 16 May 1973, noting the applicant arrived home with an undesirable discharge. His mother said he looked quite different and would not talk. He was acting bizarrely. A sister apparently had been hospitalized for psychiatric reasons and a maternal grandmother died at Byberry (City) State Hospital-Byberry. His impression was that his paranoid state was precipitated by his service experiences since there was no evidence of psychosis prior to this. Also, his competency to sign an undesirable discharge and ability to hold a job at present were very questionable. The diagnostic impression was schizophrenic reaction, paranoid type; drug abuse, mild to moderate.

j. An ABCMR Decision Letter, Executive Secretary, Office of the Under Secretary, dated 25 September 1973, showing his request for an upgrade of his discharge was denied on 19 September 1973, due to insufficient evidence being presented to indicate probable material error or injustice.

k. Progress Notes from Drs DH\_\_\_\_, MD, and RR\_\_\_\_, MD, (Company) Medicine, dated 15 July 2015, showing his treatment and history of schizophrenia.

l. Six pages of Progress Notes from Dr. DAL\_\_\_\_, MD, dated 5 October 2015, (Company) Medicine, showing history of treatment and care.

m. . A letter of support written by SWB\_\_\_\_, dated 8 May 2020, reading in part the applicant was well liked and well-dressed but not the same after he left service.

n. A VA Rating Decision dated 8 February 2021, showing he was a Vietnam Era Veteran who was granted service connection for treatment purposes as the result of his condition of paranoid schizophrenia.

o. A letter, DL\_\_\_\_, MD, Department of Psychiatry (University) Behavioral Health, dated 3 March 2022, which reads, in part, an opinion that the applicant developed and still suffers from PTSD, MDD, and schizophrenia which are the sequelae of his time in the service.

p. An affidavit co-authored with ARO\_\_\_\_, dated 16 September 2022, and outlined above.

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

a. On 28 April 1972, he enlisted in the Regular Army for 3 years.

b. In connection with his enlistment, he underwent a medial examination (SF 88) and gave a report of medical history (SF 93) on 25 April 1972 at Armed Forces Examining and Entrance Station. The examining physician noted not physical or medical defects and indicated he was qualified for enlistment.

c. Special Orders Number 173, issued by Headquarters (HQ), U.S. Army Training Center, Infantry and Fort Dix, dated 21 June 1972, show he was awarded the Expert Marksmanship Qualification Badge with Rifle Bar (M-16) and Sharpshooter Marksmanship Qualification Badge with Hand Grenade Bar while undergoing basic combat training at Fort Dix. His grade/pay grade is shown as private/E-1.

d. On 24 September 1972, SO Number 268 issued by HQ, VII COSCOM, assigned him to Battery C, 1st Battalion, 36th Field Artillery, Germany.

e. On 11 January 1973, a bar to enlistment was imposed against him. An AE Form 1107 (Bar to Enlistment) shows he accepted nonjudicial punishment (NJP) under the provisions of Article 15, UCMJ:

(1) On 1 December 1972 for unauthorized absence. His punishment included forfeiture of \$35.00 per month for 1 month. A copy of the DA Form 2627 (Record of Proceedings Under Article 15 of the Uniform Code of Military Justice (UCMJ)) is not contained in the available records.

(2) On 10 January 1973 for four violations of Article 90 (Willful Disobedience of a superior Commissioned Officer), and one violation of Article 86 (Unauthorized Absence). His punishment included forfeiture of \$85.00 per month for 1 month, 7 days of restriction, and 7 days of extra duty. A copy of the DA Form 2627 is not contained in the available records.

f. On 23 January 1973, the Commanding Officer, 210th Field Artillery Group approved his bar to reenlistment.

g. The facts and circumstances leading to a discharge from the Army under the provisions of Army Regulation 635-200, chapter 10, are not contained in the available records. His records contain a DA Form 458 showing:

(1) Charge I: He was charged with five specifications of violation of Article 86 (Failing to Go) to his place of duty, Battery Orderly Room, Battery C, 1st Battalion, 36th Field Artillery, on 15 January 1973, 16 January 1973, 17 January 1973 (two specifications), and on (dated illegible).

(2) Charge II: He was charged with two specifications of violation of Article 89 (Assault of a Superior Commissioned Officer) at Battery C, 1st Battalion, 36th Field Artillery, on 23 January 1973 and on 26 January 1973 by behaving himself with disrespect toward CPT ROW\_\_\_\_.

(3) Charge III: He was charged with five specifications of violation of Article 90 (Willful Disobedience of a Superior Commissioned Officer) at Battery C, 1st Battalion, 36th Field Artillery, on 19 January 1973, 20 January 1973, 26 January 1973 (two specifications), and on 28 January 1973.

(4) Charge IV: He was charged with two specifications of violation of Article 91 (Insubordinate Conduct Towards a Noncommissioned Officer) at Battery C, 1st Battalion, 36th Field Artillery, on 22 January 1973 and 28 January 1973.

(5) Charge V: He was charged with one specifications of violation of Article 95 (Resistance, Breach of Arrest and Escape) at Battery C, 1st Battalion, 36th Field Artillery, on 28 January 1973, by willfully resisting being lawfully apprehended by SSC TTC\_\_\_\_, an armed forces policeman.

(6) Charge VI: He was charged with one specification of violation of Article 128 (Assault) at Battery C, 1st Battalion, 36th Field Artillery, on 20 January 1973 by striking PV2 RDG\_\_\_\_ with his fist.

(7) Charge VII: He was charged with two specifications of violation of Article 134 (General Article) by wrongfully communicating threats to (a) 1LT OGY\_\_\_\_, a threat to kill him on 21 January 1973 and (b) to SGT RLH\_\_\_\_, a threat to kill him.

h. A request for discharge in lieu of trial by court martial, a commanding officer's recommendation, and an approval by the court-martial convening authority, are not contained in the available records.

i. On 15 March 1973, he was reassigned to transfer station Fort Jackson, for separation processing from HQ, US Army Europe, and the Seventh Army under the provisions of Army Regulation 635-200, Chapter 10. His grade/pay grade was shown as private first class (PFC)/E-3.

j. His DA Form 20 (Enlisted Qualification Record) shows his highest grade held was PFC/E-3.

k. Special Orders Number 61, issued on 20 March 1973, by HQ, Fort Jackson, discharged him with an under other than honorable conditions characterization of service by reason of "For the Good of the Service." The authority was shown as Army Regulation 635-200 and Separation Program Number 246.

l. On 20 March 1973, he was discharged. His DD Form 214 shows he was separated with an Undesirable Discharged under the provisions of Army Regulation 635-200, chapter 10, For the Good of the Service, with an SPN 246 and a reenlistment code of 3 (RE-3). He completed 10 months and 23 days of net active service this period with no record of time lost. He completed 6 months and 10 days of foreign service. His grade/pay grade was shown as private/E-1. He was awarded the National Defense Service Medal and Expert Marksmanship Qualification Badge with Rifle Bar (M-16).

m. On 17 September 1973, the Department of the Army Surgeon General, provided a medical evaluation advisory opinion to the Office of the Secretary of the Army, ABCMR in response to the applicant's request for medical disability retirement in lieu of discharge. This advisory reads, in part:

(1) The applicant seeks medical disability retirement in lieu of discharge, Under provisions of Army Regulation 35-200 for the good of the service. He submits (a) letter from his (his) civilian psychiatrist indicating that he was admitted to a psychiatric hospital on 11 April 1973 with a diagnosis: Schizophrenic reaction, paranoid type. He (civilian psychiatrist) questions the competency of the applicant to have participated in the discharge proceedings.



(2) In rebuttal are offered the psychiatric examination of 29 September 1973 in which the expert opinion was expressed that the applicant was mentally responsible to tell right from wrong and to adhere to the right and had the mental capacity to understand and participate in board proceedings. The diagnosis of antisocial personality was made. Health record entry of 17 February 1973 by Chief, Neuropsychiatry, indicated that no mental illness was present. Applicant signed a request for discharge on 6 February 1973. No disqualifying defects were discovered on the prerelease physical examination of 8 February 1973.

5. On 25 September 1973, and in ABCMR Case AC73-1670, the Executive Secretary, ABCMR, denied the applicant's request for an upgrade of his undesirable discharge and a change to the narrative reason to disability retirement.

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

#### 7. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for upgrade of his undesirable discharge to fully honorable; a change to the narrative reason for discharge to "Secretarial Plenary Authority," a change to the separation code; and a change to the reentry eligibility code to a RE-1. The applicant and counsel assert PTSD and other mental health are mitigating factors in his discharge.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- The applicant enlisted in the Regular Army on 28 April 1972.
- On 11 January 1973, a bar to enlistment was imposed against him. An AE Form 1107 (Bar to Enlistment) shows he accepted nonjudicial punishment (NJP) under the provisions of Article 15, UCMJ for unauthorized absence on 1 December 1972 and for violation of Article 90 Willful Disobedience of a superior (Commissioned Officer), and one violation of Article 86 (Unauthorized Absence) on 10 January 1973.
- The full facts and circumstances leading to his discharge were not available however his record contained a DA Form 458 showing:
- Charge I: He was charged with five specifications of violation of Article 86 (Failing to Go) to his place of duty, Battery Orderly Room, Battery C, 1st Battalion, 36th Field Artillery, on 15 January 1973, 16 January 1973, 17 January 1973 (two specifications), and on (dated illegible).

- Charge II: He was charged with two specifications of violation of Article 89 (Assault of a Superior Commissioned Officer) at Battery C, 1st Battalion, 36th Field Artillery, on 23 January 1973 and on 26 January 1973 by behaving himself with disrespect toward CPT ROW\_\_\_\_.
- Charge III: He was charged with five specifications of violation of Article 90 (Willful Disobedience of a Superior Commissioned Officer) at Battery C, 1st Battalion, 36th Field Artillery, on 19 January 1973, 20 January 1973, 26 January 1973 (two specifications), and on 28 January 1973.
- Charge IV: He was charged with two specifications of violation of Article 91 (Insubordinate Conduct Towards a Noncommissioned Officer) at Battery C, 1st Battalion, 36th Field Artillery, on 22 January 1973 and 28 January 1973.
- Charge V: He was charged with one specifications of violation of Article 95 (Resistance, Breach of Arrest and Escape) at Battery C, 1st Battalion, 36th Field Artillery, on 28 January 1973, by willfully resisting being lawfully apprehended by SSC TTC\_\_\_\_, an armed forces policeman.
- Charge VI: He was charged with one specification of violation of Article 128 (Assault) at Battery C, 1st Battalion, 36th Field Artillery, on 20 January 1973 by striking PV2 RDG\_\_\_\_ with his fist.
- Charge VII: He was charged with two specifications of violation of Article 134 (General Article) by wrongfully communicating threats to (a) 1LT OGY\_\_\_\_, a threat to kill him on 21 January 1973 and (b) to SGT RLH\_\_\_\_, a threat to kill him.
- A request for discharge in lieu of trial by court martial, a commanding officer's recommendation, and an approval by the court-martial convening authority, are not contained in the available records.
- The applicant was discharged on 20 March 1973 with an Undesirable Discharge (UOTHC) under the provisions of Army Regulation 635-200, chapter 10, For the Good of the Service, with an SPN 246 and a reenlistment code of 3 (RE-3).
- On 25 September 1973, and in ABCMR Case AC73-1670, the Executive Secretary, ABCMR, denied the applicant's request for an upgrade of his undesirable discharge and a change to the narrative reason to disability retirement.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his ABCMR Record of Proceedings (ROP), his DD Form 214, documents from his service record and separation, as well as his counselor's statement, and counsel brief presentation in support of application with attachments and exhibits (service and separation records, civilian medical records and letters, previous ABCMR application and letters). The VA electronic medical record and DoD health record were reviewed

through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant and his counselor assert PTSD and other mental health as mitigating factors in his discharge. More specifically, they asserted paranoid schizophrenia was present during the period of misconduct that led to his discharge. He was experiencing visual and auditory hallucinations, paranoia, and other symptoms that impacted his ability to perform as required and follow the rules. Contemporaneous evidence shows his competency to sign his undesirable discharge was “very questionable.” In regard to his misconduct, they noted that he had a period of two weeks where he had a series of acts of misconduct that were “totally out of character for him.” These acts of misconduct led to him being jailed and then discharged with an Under Other Than Honorable Conditions Discharge. His records reflect the applicant has previously applied for relief. His previous request for a medical discharge in 1973 noted he’d been hospitalized (within weeks of his service discharge) and diagnosed with schizophrenic reaction, paranoid type and the psychiatrist questioned his competency to have engaged in the separation proceedings. The board’s rebuttal was that he had been examined as part of the separation process and was cleared/found mentally capable (see below).

e. The applicant’s time in service predates use of electronic health records (EHR) by the Army, hence no EHRs are available for review. His service record and supporting documents did contain at least part of his service treatment records (STR). A note dated 17 February 1973 appears to be a psychiatric evaluation. It was reported that the applicant did not express any delusions or hallucinations. While the full impressions are challenging to read (given poor handwriting), it appears that no mental health diagnosis was given and that his angry behavior was manifestation of anger and poor impulse control secondary to character disorder. In addition, his supporting documents and service records contained relevant medical information. His enlistment medical examination completed 25 April 1972 did not indicate any physical, medical or mental health concerns. His service record indicates he was initially functioning and performing well in the Army. His charge sheet does reflect a sudden, yet brief, episode of significant change in his behavior as evidenced by numerous misconduct charges over an approximate two-week period. His separation medical examination on 8 February 1973 did not indicate any neurologic or psychiatric concerns

f. On 11 April 1973 (22 days after discharge) the applicant was hospitalized, assessed and diagnosed with schizophrenic reaction, paranoid type and drug abuse – mild to moderate. The assessing psychiatrist determined that his state resulted from his service experience since there was no evidence of psychosis prior to his enlistment. It was also opined that the applicant’s competency to sign his discharge was “very questionable.” Of note, at the time the applicant also admitted to using marijuana and amphetamines. The applicant’s supporting documents also include a letter from his

niece and a neighbor, giving testimony which supported that there had been a dramatic change in demeanor and personality after his service.

g. Per the applicant's VA EHR, he is not service connected and has had minimal engagement with the VA. His records do not reflect any diagnosis or care being provided and the six available records are administrative in nature. However, given the characterization of his discharge, he would not typically be eligible for most VA benefits. While the applicant's VA EHR does not reflect service connection or treatment, the applicant's provided hard copy records show that on 8 February 2021 the VA determined that the applicant's paranoid schizophrenia was service connected, for treatment purposes only. In addition, his supporting documents include evidence that the applicant has consistently been diagnosed and treated with potentially mitigating conditions since his discharge, to include schizophrenia, PTSD, and MDD. As mentioned, he was diagnosed with schizophrenic reaction, paranoid type April 1973. Medical records/progress notes from Penn Medicine in 2015 show that he was diagnosed with chronic psychosis consistent with schizophrenia and depression not otherwise specified (NOS). Records reflect consistent history of psychotic symptoms starting during his time in service. His current treating psychiatrist (Dr. Levinsky; treating since 2016) summarized his psychiatric history, highlighting psychotic symptoms that started during his time in service secondary to stressors present. Her summary stated "...it is my medical opinion that Mr. Stanley Brooks developed and still suffers from PTSD, MDD, and schizophrenia which are the sequelae of his time in the service. It is my opinion, any misconduct or behaviors not in line with the protocols set out by the US Army, would have been a result of impaired cognitive processes, executive dysfunction, and impairments in reality testing."

h. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence that the applicant was experiencing a mitigating condition during his time of service and during the time of misconduct.

#### Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts other mental health (psychosis/schizophrenia) and PTSD mitigate his discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the mitigating condition occurred during his time in service. The applicant has been service connected (treatment purposes only) for paranoid schizophrenia.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. After reviewing the application and all supporting documents, this Agency Behavioral Health Advisor will provide an opine, with caution, given his full separation records are not available. However, his records did include his court martial charges/DD Form 458, which is where this advisor will focus her opine. The applicant and his counsel asserted schizophrenia and PTSD as mitigating factors, though PTSD was not diagnosed until years after his service and secondary to trauma after he was discharged. The applicant and his counsel do assert that schizophrenia was a mitigating condition during his service and the period of misconduct. While the applicant's separation medical exams do deny any mental health conditions, collateral evidence, his service record, and even the medical record indicate a significant change in his behavior during the period just before and during his misconduct. His medical records indicate significant anger and also allude to some paranoid and angry statements, which at the time were summarized as a character disorder. However, the applicant was exhibiting significant psychotic symptoms and hospitalized upon returning home to his family (within weeks of his discharge). In addition, the applicant has been service connected (treatment purposes only) for paranoid schizophrenia. At a minimum, the applicant was experiencing prodromal symptoms, though it is more likely than not that his hallucinations and delusional thinking had already started. A portion of the misconduct would typically be considered too severe to be outweighed by mitigation, and many mental health conditions do not impact one's ability to know the difference between right and wrong, and act in accordance with the right. That is not the case here. Individuals with psychotic symptoms may have impaired reality testing, delusional thinking, hallucinations, dysregulation and impaired impulse control. Hence, his mental health condition at the time of service and misconduct mitigates his charges, and therefore the basis of his separation. This Agency Behavioral Health Advisor would recommend an upgrade in his characterization of service.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents and the evidence found within the military record, the Board determined that relief was warranted. The Board carefully considered the applicant's request, supporting documents and evidence in the records. The Board considered the frequency and nature of the misconduct, the reason for separation and published DoD guidance for consideration of discharge upgrade requests. The Board found sufficient evidence that the misconduct that lead to the applicant's discharge was outside his span of control and too harsh for the misconduct in which he engaged. After due consideration of the request, the Board determined the evidence presented met the burden of proof in determining an error or injustice and a recommendation for relief is warranted.

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 issuing the applicant a new DD Form 214 for the period ending 25 September 1973 showing in:

- item 13a (Character of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200, paragraph 5-3
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

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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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the

Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 1-9 provided:

(1) 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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) 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 member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will ensure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to

consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

4. Army Regulation 600-8-19 (Enlisted Promotions and Reductions), prescribes the enlisted promotions and reductions function of the military personnel system. It is linked to the Army Regulation (AR) 600–8 series and provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support promotions and reductions. It provides the objectives of the Army's Enlisted Promotions System. Chapter 10-15. Approved for discharge from the service under other than honorable conditions. When the separation authority determines that a Soldier is to be discharged from the Service under other than honorable conditions, the Soldier will be reduced to the lowest enlisted grade. Further board action is not required for this reduction.

5. Army Regulation 635-5 (Separation Documents), then in effect, prescribed the separation documents that would be furnished each individual who was separated from the Army, including Active Duty Training (ACDUTRA) personnel, and established standardized procedures for the preparation and distribution of these documents.



a. A DD Form 214 will be issued at the time of separation to each member of the Regular Army and to each member of the Reserve Components, and the Army of the United States without component, call or ordered to active duty for ACDUTRA for a period of 90 days or more.

b. Appendix A. Separation Program Number and Authority Governing Separation. The separation program designator "246" corresponded to "For the Good of the Service" and the authority, Army Regulation 635-200, chapter 10.

6. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Chapter 3 prescribes basic eligibility for prior-service applicants for enlistment and includes a table of U.S. Army reentry eligibility (RE) codes.

- RE-1 applies to persons completing an initial term of active service who are considered qualified to reenter the U.S. Army if all other criteria are met
- RE-3 applies persons who are not considered fully qualified for reentry or continuous service at the time of separation, but disqualification is waivable
- RE-4 applies to persons separated from their last period of service with a nonwaivable disqualification

7. 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 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.

8. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

10. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//