

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 April 2025

DOCKET NUMBER: AR20230013742

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to under honorable conditions (general)

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

- DD Form 149 (Application for Correction of Military Record), 13 October 2023
- Military Personnel Record Jacket documents (90 pages) in support of his claim
- Medical records (521) pages) in support of his claim

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states his service record reflects he was notified that he would be issued an under honorable conditions (general) characterization of service, but instead he received an under other than honorable conditions characterization of service. When he was denied leave upon his return from Vietnam, he went absent without leave and spent time in the stockade. Considering he was seventeen years old at the time and dealing with post-traumatic stress disorder, he should have received an under honorable conditions (general) characterization of service.
3. A review of the applicant record shows:
 - a. He was inducted into the Army of the United States on 2 June 1964.
 - b. He had foreign service in the Republic of Vietnam from 27 November 1964 to 15 September 1966.
 - c. He received non-judicial punishment on:

- 10 April 1965, for on or about 7 April 1965, fail to obey a lawful order to report to his first sergeant; his punishment included 14 days restriction and forfeiture of \$20.00
- 30 July 1965, for failing to go at the time prescribed to his appointed place of duty; his punishment included reduction to the grade/rank of private second class/E-2, forfeiture of \$20.00, and 14-days restriction and extra duty
- 19 October 1965, he did, on or about 15 October 1965, fail to go to his appointed place of duty, but instead went to Area X, giving driver training to an unauthorized two and half ton vehicle operator; his punishment included forfeiture of \$20.00, and 14-days restriction and extra duty

d. On 30 May 1966, at Cu Cid, Vietnam, the applicant was convicted by a special court-martial for, on or about 5 May 1966, without proper authority, absent himself from his unit, and did remain so absent until on or about 13 May 1966. His punishment, adjudged on 26 May 1966, included reduction to the rank/grade of private/E-1, confinement at hard labor for 3 months, and forfeiture of \$50.00 per month for 3 months. The sentence was approved on 30 May 1966.

e. On 16 September 1966, the applicant underwent a medical examination for the purpose of separation. The examining official did not note any medical conditions and found the applicant qualified for separation.

f. The applicant's complete separation packet pertaining to his discharge is not available for the Board to review. However, his record does contain a letter, 16 September 1966, from the Assistant Adjutant, U.S. Army Personnel Center, notifying the applicant that he was being issued a general discharge from the Army. The applicant acknowledged and signed the letter on 16 September 1966.

g. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged in the rank/grade of private/E-1 on 16 September 1966 under the provisions of Army Regulation 635-212, (Personnel Separations – Discharge Unfitness and Unsuitability), paragraph 6a. He completed 1 year, 11 months, and 28 days of net active service with 107 days lost time. His service was characterized as under other than honorable conditions. Item 26 (Decorations, Medal, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized), shows he was awarded or authorized the following:

- National Defense Service Medal
- Vietnam Service Medal
- Vietnam Campaign Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

h. On 28 March 1974, the Army Discharge Review Board, after careful consideration of his military records and all other available evidence, determined that he was properly and equitably discharged. Accordingly, his request for a change in the type and nature of his discharge was denied.

4. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-212 for unfitness, an under other than honorable conditions characterization of service is normally appropriate.

5. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general). He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant was inducted into the Army on 2 June 1964.
- The applicant had foreign service to Vietnam from 27 November 1964 to 15 September 1966.
- On 10 April 1965 he received NJP for failure to obey a lawful order to report to his first sergeant (7 April 1965). On 30 July 1965 he received NJP for failing to go at the time prescribed to his appointed place of duty; and again, on 19 October 1965, failure to go to his appointed place of duty.
- The applicant was convicted by a special court-martial for being AWOL from 5 May 1966 to 13 May 1966.
- The applicant's complete separation packet pertaining to his discharge is not available for the Board to review. However, his record does contain a letter, 16 September 1966, from the Assistant Adjutant, U.S. Army Personnel Center, notifying the applicant that he was being issued a general discharge from the Army. The applicant acknowledged and signed the letter on 16 September 1966.
- His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged on 16 September 1966 under the provisions of Army Regulation 635-212, (Personnel Separations – Discharge Unfitness and Unsuitability), paragraph 6a. He completed 1 year, 11 months, and 28 days of net active service with 107 days lost time. His service was characterized as under other than honorable conditions.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he went AWOL after being denied leave and spent time in the stockade. He discussed being only 17 years old at the time and "dealing with PTSD." He indicated PTSD and "other mental health" as issues or conditions related to his request. The applicant provided roughly 500 pages of medical documentation, which primarily addressed physical health problems, but a Progress Note dated 10 August 2023 showed the applicant reported depression symptoms over the previous year secondary to loss of his physical functioning. He also mentioned a childhood history of abuse and his military discharge as stressors. There was also a Psychiatry Clinical Record dated 27 July (no year) that showed the applicant had attempted suicide and that he had been threatening suicide. The documentation appears to be from his time in the stockade and mentions that he was refusing to eat and not talking to anyone. An entry dated 28 July stated "acknowledges he scratched wrists so that he could finish sentence in hospital. No evidence of thought disorder. Affect appropriate." It was recommended that he be separated as quickly as possible and "separation was recommended in Aug 65." A Report of Medical Examination for the purpose of separation dated 16 September 1966 showed no indication of any psychiatric symptoms and that he was qualified for separation. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service, but there was evidence of suicidal behavior while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed no history of DoD or VA records. A continuity of care document from St. Elizabeth Healthcare showed a diagnostic history of Major Depressive Disorder dated 6 May 2024. The documentation noted a history of trial of medication that was discontinued due to side effects and a history of counseling, although he declined medication and counseling at the time of this assessment.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to fully opine on the change of his characterization of discharge because of the absence of the specific facts and circumstances surrounding his discharge processing. However, there is evidence that the applicant was experiencing mental health symptoms while on active service.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. Records from his time in service showed he was in the hospital following suicidal behavior (i.e. scratching or injury to his wrist) and refusing to eat or communicate while he was in the stockade. There was not a full evaluation conducted, but it was documented that separation was recommended by

psychiatry. Records post-discharge in 2023 and 2024 showed indication of depression-related symptoms.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. He deployed to Vietnam from November 1964 to September 1966.

(3) Does the condition or experience actually excuse or mitigate the discharge? NA. A review of military medical and mental health records revealed evidence of suicidal behavior while on active service. Records post-discharge showed a diagnosis of Major Depressive Disorder in 2024 and treatment history in 2023. The applicant's misconduct related to failure to report to duty, failure to obey an order, and being AWOL can be natural sequelae to mental health conditions associated with exposure to traumatic or stressful events. However, in the absence of a separation packet, no recommendation regarding mitigation under liberal consideration can be made. However, his assertion of PTSD is sufficient to merit consideration by the board.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found the relief was warranted. The Board carefully considered the applicants request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board concurred with the advisory opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to fully opine on the change of his characterization of discharge because of the absence of the specific facts and circumstances surrounding his discharge processing. However, there is evidence that the applicant was experiencing mental health symptoms while on active service.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. Records from his time in service showed he was in the hospital following suicidal behavior (i.e. scratching or injury to his wrist) and refusing to eat or communicate while he was in the stockade. There was not a full evaluation conducted, but it was documented that separation was recommended by psychiatry. Records post-discharge in 2023 and 2024 showed indication of depression-related symptoms.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. He deployed to Vietnam from November 1964 to September 1966.

(3) Does the condition or experience actually excuse or mitigate the discharge? NA. A review of military medical and mental health records revealed evidence of suicidal behavior while on active service. Records post-discharge showed a diagnosis of Major Depressive Disorder in 2024 and treatment history in 2023. The applicant's misconduct related to failure to report to duty, failure to obey an order, and being AWOL can be natural sequelae to mental health conditions associated with exposure to traumatic or stressful events. However, in the absence of a separation packet, no recommendation regarding mitigation under liberal consideration can be made. However, his assertion of PTSD is sufficient to merit consideration by the board.

3. The Board noted that regulatory guidance at the time prescribed such a characterization for separations under this provision. However, in accordance with current equity, injustice, and clemency guidance, the Board finds that the applicant's combat service, length of service, and the absence of any serious or violent misconduct warrant consideration for relief. The Board acknowledged the applicant's lost time but also recognizes his service in Vietnam and the awards received. Given the totality of the circumstances and the absence of aggravating factors beyond the AWOL incidents, the Board determined that the applicant's discharge should be upgraded to General, Under Honorable Conditions as a matter of equity.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:XXX	:XXX	:XXX	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's DD Form 214 to show his character of service as under honorable conditions (General).

X **//SIGNED//**

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 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. 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 considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. 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. The ABCMR members will direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record.
3. Army Regulation 635-212, in effect at the time, set forth the basic authority for the elimination of enlisted personnel for unfitness and unsuitability. Paragraph 6a provided that an individual was subject to separation for unfitness when one or more of the following conditions existed:
 - a. frequent incidents of discreditable nature with civil or military authorities;
 - b. sexual perversion;

c. drug addiction or the unauthorized use of possession of habit-forming drugs or marijuana

d. an established pattern or shirking; and

e. an established pattern showing dishonorable failure to pay debts;

4. Army Regulation 635-200 (Personnel Separation), the regulation currently in effect, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b states that 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. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

6. 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.

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.

7. Title 10, U.S. Code, section 1556, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//