

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20230013767

APPLICANT REQUESTS:

- reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) character of service
- as a new issue, deletion of derogatory information from his service record

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- Army Service Records (17 Pages), dated 20 June 1958 to 2 November 1960
- Department of Veterans Affairs (VA) Rating Decision, dated 16 August 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20150007749 on 29 March 2016.

2. The applicant states, in effect:

a. All of the accusations against him are lies. He would like them removed from his record. He cannot get compensation from the VA, only medical attention. His life is completely messed up. He wants his life back. He notes post-traumatic stress disorder (PTSD) as a condition related to his claim.

b. In an additional self-authored statement, he provides a timeline of his military service and explains the circumstances surrounding his misconduct. The incidents in his record are fabrications of what really happened. He shot expert with the M-1 rifle and was awarded the expert medal. He was also awarded the sharpshooter medal for the Browning automatic rifle. He notes he has had issues with his ankle since an accident in a military vehicle in 1959. He witnessed a paratrooper fall to the ground without opening his parachute. He later learned the paratrooper committed suicide. He was never issued any earplugs and has almost a total loss of hearing. From the time of his discharge, he

has been employed or owned his own companies. He is now 82 years old and unemployable.

3. The applicant enlisted in the Regular Army on 20 June 1958. He was awarded military occupational specialties 140.07 (Cannoneer) and 310.07 (Wireman).

4. Special Orders (SO) Number 111, 3rd Training Regiment, Infantry, U.S. Army Training Center, Fort Knox, KY, shows the applicant was awarded the Expert Marksmanship Qualification Badge with Rifle bar (M-1) on 6 August 1958.

5. The applicant was honorably discharged on 19 August 1959, for the purpose of immediate reenlistment. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was awarded or authorized the parachutist badge. He was credited with 1 year and 2 months of net active service this period.

6. The applicant reenlisted on 20 August 1959, for a 3-year period. The highest rank he attained was private first class/E-3.

7. Before a special court-martial, at Baumholder, Germany, on 16 August 1960, the applicant pled guilty to and was found guilty of willfully disobeying a lawful command from his superior officer to report to the mess hall and to wash the dining room floor, on or about 9 August 1960.

- the court sentenced him to reduction to E-1, forfeiture of \$70.00 per month for six months, and confinement at hard labor for six months
- on 16 August 1960, only so much of the sentence that provided for confinement at hard labor for three months, hard labor without confinement for three months, reduction to E-1, and forfeiture of \$70.00 pay per month for 6 months was approved and ordered duly executed.

8. Before a special court-martial, at Mainz, Germany, on 21 September 1960, the applicant pled guilty to and was found guilty of absenting himself from his unit without authority (AWOL), on or about 5 September 1960 until on or about 16 September 1960.

- The court sentenced him to confinement at hard labor for six months and forfeiture of \$75.00 pay per month for six months
- On 23 September 1960, only so much of the sentence that provided for confinement at hard labor for six months and forfeiture of \$70.00 per month for six months was approved and ordered duly executed.

9. Special Court-Martial Order Number 17, 5th Howitzer Battalion (Airborne), 81st Artillery (Towed), dated 17 October 1960, shows the unexecuted portion of the

applicant's confinement at hard labor for six months and forfeiture of \$70.00 pay per month for six months was remitted, effective 18 October 1960.

10. The applicant underwent a pre-separation medical examination on 1 November 1960. The relevant Standard Form (SF) 89 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) shows the applicant reported being in excellent health. The examining provider determined he was qualified for transfer.

11. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged on 2 November 1960, under the provisions of Army Regulation (AR) 635-208 (Personnel Separations - Discharge – Unfitness). His characterization of service was UOTHC, with Separation Program Number 28B (unfitness-frequent incidents of a discreditable nature with civil or military authorities). He was credited with 1 year, 1 month, and 18 days of net service this period, with 36 days of lost time. His DD Form 214 does not show any awards.

12. The applicant's DA Form 24 (Service Record), Section 9 (Medals, Decorations, and Citations) shows the applicant was authorized or awarded the following:

- Expert Marksmanship Qualification Badge with Rifle Bar (M-1), SO Number 111, dated 6 August 1958
- Parachutist Badge, SO Number 1, dated 2 January 1959
- Marksman Marksmanship Qualification Badge with Carbine Bar, SO Number 110, dated 17 June 1959
- Marksman Marksmanship Qualification Badge with Field Artillery Bar, SO Number 25, dated 9 July 1960

13. The ABCMR reviewed the applicant's request for an upgrade of his UOTHC discharge on 29 March 2016. After careful consideration, the Board determined the evidence presented did not demonstrate the existence of a probable error or injustice. The Board denied his request for relief.

14. The applicant provides 17 pages of Army service records, dated 20 June 1958 to 2 November 1960, which are summarized in the Record of Proceedings above, and a VA rating decision, dated 16 August 2023, which shows PTSD, depression, and anxiety "for treatment purposes only."

15. Regulatory guidance, in effect at the time, stated that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or

an established pattern showing dishonorable failure to pay just debts. An undesirable discharge was normally issued.

16. At the time of the applicant's separation, there was no regulatory requirement to list awards earned during a previous period of service on a subsequent DD Form 214; nevertheless, in the interest of clarity, there is no harm to the Army or the applicant if these awards are listed on his DD Form 214 for the period ending 2 November 1960 [see Administrative Notes].

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

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a deletion of derogatory information from his service record and reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) character of service. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) was related to his request. More specifically, he asserted that the accusations against him are untrue and that because of his characterization of service he is only eligible for treatment through the VA and that his life is 'completely messed up.' Removal of information from the applicant's service records is outside of the scope of this advisory and therefore will only address any BH-related conditions as it pertains to his discharge. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army (RA) on 20 June 1958 as a cannoneer and wireman, 2) he was honorably discharged on 19 August 1959 for the purposes of immediate re-enlistment and was authorized the parachutist badge. He re-enlisted on 20 August 1959, 3) on 16 August 1960, a special court-martial found him to be guilty of disobeying a lawful command from his superior officer to report to the mess hall and to wash the dining room floor, 4) on 21 September 1960, a special court-martial found the applicant guilty of absenting himself without authority (AWOL). 5) the applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. His DD Form 214 shows he was discharged on 02 November 1960 under the provisions of Army Regulation (AR) 635-208. His characterization of service was UOTHC, with a separation program number 28B (unfitness-frequent incidents of a discreditable nature with civil or military authorities), 6) the ABCMR denied the applicant's previous upgrade request on 29 March 2016 due to lack of evidence to demonstrate the existence of probable error or 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. An in-service Report of Medical History dated 20 June 1958 for the purposes of enlistment documented the applicant stated he was in 'good health.' He did not mark 'yes' to any items indicative of BH-related concerns. His Report of Medical Examination dated 20 June 1958 and 18 August 1959 (re-enlistment) documented item number 42, psychiatric, as 'normal' on clinical evaluation. A Report of Medical History dated 01 November 1960 for the purposes of separation documented the applicant reported his health as excellent and he did not mark 'yes' to any items indicative of BH-related concerns. The applicant's service treatment records (STR) were available for review from 25 August 1958 through 01 November 1960. There was no indication that the applicant reported or was treated for any BH-related concerns in the available documentation.

d. Regarding his service records, his DA Form 24, Section 4, shows that his conduct and efficiency were documented as 'excellent' or 'unknown' from 01 July 1958 through 30 November 1958. Review of his service records shows a special court-martial dated 28 April 1959 documented he was found guilty of sleeping on his post.

e. As part of the applicant's application, a Department of Veterans Affairs Rating Decision Letter dated 16 August 2023 documented he was not entitled to Chapter 17 for treatment purposes only for PTSD, Depression, and Anxiety though was entitled for Tinnitus and Bilateral Hearing Loss. Review of JLV does not show that the applicant is service-connected for any conditions and there were no BH Compensation and Pension (C&P) evaluations available for review. Regarding his BH treatment through the VA, a consultation for PTSD was submitted on 29 June 2023; however, due to illness he had been unable to keep previously scheduled appointments and did not end up completing a full intake until 15 April 2024. At the time of the of the appointment, the applicant expressed shame regarding his discharge and finds himself ruminating about his military service with regret, self-criticism, and other concerns in his life related to finances and other issues. He reported he felt ashamed for his behavior in the military and how he did not stand up for himself, resulting in him receiving an UOHC discharge. There were several military-related experiences that were detailed during the visit to include an incident following his return from being AWOL wherein a Sergeant told him he was going to give him a haircut, the applicant responded no, and stated the Sergeant responded by pulling out a gun and cocking it (though the applicant reported he was not scared during this incident). He described another incident wherein he was driving in a convoy and a Sergeant took the wheel in an effort to get around the other vehicles which resulted in everyone being ejected from the vehicle. The applicant reported he sustained an ankle injury from that incident which he never sought treatment for. He reported when stationed at Baumholder he was court martialed for not following orders

to clean the floor and said that is when the process was started to separate him from the military. He was diagnosed with Generalized Anxiety Disorder at the time of the visit. He had one follow-up appointment on 10 May 2024. It was documented on 24 May 2024 when trying to re-schedule an appointment the applicant stated he did not need any additional appointments at this time. There are no additional BH notes in the record.

f. The applicant is applying to the ABCMR requesting a deletion of derogatory information from his service record and reconsideration of his previous request for an upgrade of his UOTHC character of service. The applicant indicated PTSD was related to his request. The applicant's service treatment records are void of any BH diagnosis or treatment history. As part of his record, the applicant provided a VA letter indicating he was ineligible for Chapter 17 (service-connection for treatment purposes only) for PTSD, Depression, and Anxiety. Review of JLV did not show that the applicant was service-connected for any conditions and there were not any BH C&P evaluations available for review. The applicant was diagnosed with Generalized Anxiety Disorder by his treating provider in April 2024 though the provider did not associate this diagnosis with the misconduct noted in the applicant's record or with his time in service.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends PTSD was related to his discharge.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant's service treatment records were void of any BH diagnosis or treatment history. Post-discharge, the records do not show that the applicant service-connected through the VA for any BH conditions. He was diagnosed with Generalized Anxiety Disorder through the VA in 2024; however, there is no documentation available to indicate that the condition existed during service or was related to the applicant's misconduct and there is no documentation available that the applicant has been diagnosed with PTSD. Furthermore, the applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. Given the lack of information regarding the specific circumstances surrounding his discharge coupled with lack of documentation associating a potentially mitigating BH condition with his service, there is insufficient evidence to establish that his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on BH mitigation. Regarding applicant's assertion of PTSD, while there is no evidence to support this diagnosis, applicant's self-assertion of PTSD alone merits consideration by the board.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged in November 1960, under the provisions of AR 635-208 for unfitness - frequent incidents of a discreditable nature with civil or military authorities, with an under other than honorable conditions characterization of service. The burden of proof rests with the applicant. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination that the lack of information regarding the specific circumstances surrounding his discharge coupled with lack of documentation associating a potentially mitigating behavioral health condition with his service means there is insufficient evidence to establish that his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on behavioral health mitigation. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Deletion of derogatory information from his service record: Deny. The Board assumes the applicant is referring to the multiple courts-martial convictions filed in his service record. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created, unless there is sufficient evidence that shows a material error or injustice. The applicant has not provided evidence or a convincing argument that the court-martial orders should be removed from his record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. Regarding the issue being reconsidered (discharge upgrade), in addition to the correction addressed in Administrative Note(s) below, the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20150007749 on 29 March 2016.

2. Regarding the new issue (deletion of derogatory information from his service record) the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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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.

ADMINISTRATIVE NOTE(S): The applicant is authorized administrative correction of his DD Form 214 for the period ending 2 November 1960, to show the following awards in Item 26 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized):

- Parachutist Badge
- Expert Marksmanship Qualification Badge with Rifle bar (M-1)
- Marksman Marksmanship Qualification Badge with Carbine bar
- Marksman Marksmanship Qualification Badge with Field Artillery bar

REFERENCES:

1. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product.

Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to ABCMR applicants (and/or their counsel) prior to adjudication.

2. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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.

3. AR 340-21 (The Army Privacy Program) paragraph 2-10 (Amendment of Records) states individuals may request the amendment of their records, in writing, when such records are believed to be inaccurate as a matter of fact rather than judgement, irrelevant, untimely, or incomplete. Consideration of a request for amendment would be appropriate if it can be shown that circumstances leading up to the event recorded on the document were challenged through administrative procedures and found to be inaccurately described.

4. AR 635-5 (Personnel Separations – Separation Forms), in effect at the time, prescribed the forms to be used in the separation of Army personnel. Appendix III, provided the preparation instructions for the DD Form 214, which states all available records will be used as a basis for the preparation of the DD Form 214, to include the

DA Form 24, DA Form 20 (Enlisted Qualification Record), and/or DA Form 66 (Officer Qualification Record).

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

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

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

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

7. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-

martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//