

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20230013775

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show:
 - his narrative reason for separation as "Secretarial Authority" or "Disability"
 - the appropriate corrections to the corresponding separation code and reentry code

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

- DD Form 149 (Application for Correction of Military Record)
- Cover letter, The Veterans Consortium, dated 18 September 2023
- Legal services agreement, The Veterans Consortium, dated 7 December 2022
- Legal Brief (23 pages), dated 18 September 2023
- Exhibit A, Self-authored statement
- Exhibit B, Service Treatment Records and Department of Veterans Affairs documents (11pages), dated 20 June 1968 to 24 January 2011
- Exhibit C, excerpt, Medical Opinion (11 Page), S.G.K., Ph.D., Licensed Clinical Psychologist, dated 12 June 2023
- Exhibit D, Medical Opinion (29 Pages), S.G.K., Ph.D., Licensed Clinical Psychologist, dated 12 June 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. He proudly enlisted in the Army to serve his country and provide for his wife and child. He planned to use the educational benefits to earn a college degree and enter a profession to help the underprivileged. A few months after enlisting, he received orders to Vietnam.

b. He experienced severe racism from other service members, including commanders, from the outset. His sergeant told him he wished he would not return from Vietnam. From the context, it was clear that it was because of his skin color. He was referred to as “militant” even though he was never a member of any gang or militant organization. Black Soldiers were often put on latrine duty, burning feces, while white Soldiers were assigned kitchen duty or unloading trucks. He was singled out to low crawl, perform extra physical activities, and do calisthenics. It seemed a disproportionate percentage of frontline combat Soldiers were Black, and his life was perceived as less valuable. The intense trauma he experienced was compounded by the racist treatment.

c. He endured intense combat trauma as a direct fire crewman. He remembers lying in rice paddies, in the line of fire, witnessing bloody scenes, where he watched his fellow Soldiers die without being able to help. As part of his job, he had to pick up human body parts and put them into bags. Some belonged to young men he considered close friends. His mind was not developed enough to handle these terrifying events. He developed debilitating mental health symptoms, such as severe anxiety, a racing heart, violent nightmares, agitation, panic attacks, and hypervigilance.

d. His mental state deteriorated to the point his judgement was impaired. He was paranoid of being killed and experienced unbearable nervousness. During the time leading to his period of absence without leave (AWOL), he experienced symptoms which would later be diagnosed as post-traumatic stress disorder (PTSD). He is deeply sorry for his AWOL. He was not himself.

e. He was medically evacuated to a hospital in Japan. The doctors put him on Thorazine, a potent antipsychotic medication. He suffered from side effects, including drowsiness, dizziness, lightheadedness, dry mouth, blurred vision, nausea, insomnia, and constipation. He does not recollect much of his time in Japan. However, he remembers feeling like a zombie and slobbering on himself. Eventually, he was sent to Fort Campbell, KY.

f. Regrettably, he was involved in an altercation with another patient, who tried to snatch the telephone out of his hand while he was talking to his family. He automatically reacted by hitting the other patient. The patient’s friends later came to his room and accused him of stealing the patient’s watch, which he did not do. The patient and his friends were white. He does not condone violence and regrets his actions. He was in a traumatized state and was anxious, hypervigilant, and easily agitated. He was put in a

small, concrete stockade and told by his psychiatrist that he would receive a medical discharge.

g. Four or five days later, a lieutenant came to his cell and told him he could get out of the military the next day if he signed some papers. No one explained the document or the consequences of signing it. He did not realize he would receive a less than honorable discharge. He was told he could go home and was left with the clear impression he would receive a medical discharge. He signed the papers, he was discharged from the hospital, and told never to return to the military base.

h. Since his discharge, he is in treatment for PTSD. He has also been diagnosed with generalized anxiety disorder and major depressive disorder. He is committed to serving his community. It brings joy and helps him cope. He has volunteered with several nonprofit Vietnam Veterans programs. He was elected director of the resident association at a senior living facility. Although he no longer lives there, he still does his best to help the residents. He volunteers at his local food pantry and participates in food drives with the Black Student Union at his local community college. He is devoted to his family.

i. He regrets the actions leading to his discharge and accepts full responsibility. He has worked hard to mitigate and cope with his PTSD. He is proud of his service in the Army as an Infantryman in Vietnam. He wants to know his family can put him to rest proudly and with honor as a war Veteran.

3. Counsel states:

a. The applicant served in a military environment rife with racial animosity and was subjected to unspeakable trauma, serving in combat from November 1968 to May 1969. Eventually he found himself confined to the stockade, suffering from psychosis, a shell of his former self. Military healthcare provided him significant amounts of Thorazine, further clouding his judgment and failing to alleviate his PTSD symptoms. Under these conditions, he agreed to end his traumatic military experience without understanding the consequences.

b. Society has radically improved its appreciation of the acute and chronic mental effects on Soldiers with combat-induced PTSD. His symptoms of service-connected PTSD and the military's inadequate treatment of them should be recognized as substantial mitigating factors in the circumstances surrounding his discharge. He has exhibited upstanding character since his discharge, despite continuing to struggle with PTSD. An upgrade of his discharge would allow him to regain the honor he felt as a Soldier.

4. The applicant underwent a medical examination on 20 June 1968, for the purpose of enlistment. A Standard Form (SF) 89 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) show he reported being in excellent health, had no noted medical history or abnormalities, and was determined qualified for enlistment.

5. Also on 20 June 1968, the applicant enlisted in the Regular Army.

6. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on 2 October 1968, for treating his superior noncommissioned officer (NCO) with contempt, on or about 1 October 1968.

7. The applicant served in the Republic of Vietnam from 17 November 1968 to 22 November 1969.

8. On 4 March 1969, the applicant's commander referred the applicant for a psychiatric evaluation. As the specific reason for the referral the commander noted [the applicant] had a temporary profile for his ears. After being returned to duty, his ears continued to be painful around weapon fire. His attitude was a little below average, but once referred to medical, he began performing his duties in an outstanding manner. He was very happy performing a job in the battalion mess hall prior to his profile being lifted. He had no disciplinary actions since being assigned to the unit and his combat record was excellent.

9. Before a special court-martial on 28 March 1969, the applicant pled guilty to and was found guilty of willfully disobeying a lawful command from his superior commissioned officer to join his platoon, on or about 20 March 1969. His sentence consisted of reduction to private first class/E-3 and forfeiture of \$70 pay per month for six months. The sentence was approved and ordered duly executed on 30 March 1969.

10. The applicant's DA Form 20 (Enlisted Qualification Record) shows he was absent without leave (AWOL) from his unit from 2 May 1969 to 12 August 1969.

11. A Report of Sanity Board Evaluation, dated 3 November 1969, shows:

a. The applicant was evaluated at the U.S. Army Republic of Vietnam Stockade on 1 November 1969. He was in Vietnam for 11 months and was referred for evaluation by his defense counsel. He was presently in pre-trial confinement pending charges which included AWOL, disrespect, assaulting an officer, and writing bad checks. In response to the charges, the applicant reported, in effect, living with a Vietnamese girl during his AWOL and "staying high" on various drugs, writing checks to pay for drugs and food, not considering his overdrawn checking account, and being picked up by Military Police. He further reported that upon returning to his unit, he got into a struggle with a lieutenant, after getting his .45 caliber pistol to retrieve his valuables from supply.

b. Pertinent history revealed he never knew his father and was raised by his grandparents in early childhood until his mother remarried. His mother drank a lot, and he never “got along” with his stepfather. He quit school in eleventh grade because he could not “get along” with anyone and wanted to be by himself. Prior to entering the Army, he started drinking a lot. He was convicted for car theft and spent four months in confinement.

c. During his time in the stockade, he was placed in psychiatric observation on several occasions and was continually on anti-depressant and anti-psychotic medication. He had occasions of severe nervousness and overt agitation with crying and tearfulness. The main symptom of his condition was marked depression, and he experienced auditory and visual hallucinations.

d. The evaluating provider noted the following diagnosis: depressive reaction, chronic, severe, manifested by mood, affect, psychomotor retardation and a life history of loneliness and preference to be alone; severe predisposition, history of desire to be alone and lack of parental presence; moderate impairment. The provider considered the condition not in the line of duty, not due to own misconduct, existed prior to service, and felt the condition was of longstanding duration (since early childhood).

e. The provider found that at the time of the alleged offenses [the applicant] was not so far free from mental defect to distinguish right from wrong or to adhere to the right. He did not possess sufficient mental capacity to understand the nature and seriousness of the charges and proceedings against him or to intelligently conduct or cooperate in his own defense. The provider recommended that the charges be dropped to facilitate an expeditious disposition through medical channels.

12. An SF 502 (Clinical Record – Narrative Summary), dated 9 November 1969, shows the applicant was transferred to the hospital from the stockade psychiatric evaluation area. He was admitted to the ward and continued on Thorazine and changed from Elavil to Tofranil. While on the ward, he continued to be depressed and remained to himself. His condition upon discharge on 11 November 1969, was unchanged.

13. On 13 November 1969, the applicant was medically evacuated to the 106th General Hospital, Japan, enroute to Fort Campbell, KY.

14. The applicant underwent a psychiatric evaluation at the U.S. Army Hospital, Fort Campbell, KY, on 25 November 1969. The evaluating provider diagnosed the applicant with anti-social personality manifested by a long history of anti-social behavior, including abuse of drugs, juvenile delinquency, and inability to conform to established regulations. The provider concluded that while in confinement, [the applicant] fell into a psychosis from which he had fully recovered. His disorder fell into the realm of character and behavior disorders which were not amenable to psychiatric treatment in a military

setting. The provider further advised an expeditious separation from service by reason of unsuitability.

15. The applicant was re-evaluated by the same provider on 13 January 1970, for the purpose of determining his mental competency to stand trial. After reviewing the psychiatric evaluation which took place in the RVN, on 3 November 1969, the provider opined that [the applicant] was probably transiently psychotic and unable to stand trial at that time. However, he felt that at the present time, [the applicant] was both mentally competent to stand trial for the recent and past offenses and also mentally responsible for the charges.

16. Court-martial charges were preferred against the applicant, on 13 February 1970, for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL from 2 May 1969 to 8 August 1969, willfully disobeying an order from his superior NCO, communicating a threat to injure and behaving himself with disrespect towards his superior NCO and superior commissioned officer, on or about 28 November 1969, stealing a wristwatch from Private (PV1) D.T, and unlawfully striking PV1 D.T. with a fist, on or about 9 February 1970.

17. The applicant underwent a psychiatric evaluation on 19 February 1970. The provider noted that on 16 February 1970, [the applicant] was admitted to the psychiatric ward after claiming he was experiencing auditory and visual hallucinations which resulted in him tearing up a commode. During a 3-day period of observation, he did not show any symptoms of psychosis and was not found psychotic on re-examination. The provider concluded he was mentally responsible to stand trial and cleared him for administrative disposition.

18. The applicant consulted with legal counsel on 25 February 1970.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a under other than honorable conditions discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were 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.

c. He was advised he could submit any statements he desired in his own behalf. He elected not to submit a statement.

19. The applicant's immediate and intermediate commanders recommended approval of his request for discharge and further recommended the issuance of a DD Form 258A (Undesirable Discharge Certificate).

20. On 3 March 1970, the separation authority approved the applicant's request for discharge under the provisions of AR 635-200, paragraph 10-5, with separation program number (SPN) 246, directed the applicant be reduced to the lowest enlisted grade, and the issuance of a DD Form 258A.

21. The applicant underwent a medical examination on 4 March 1970. An SF 89 and corresponding SF 88 showed a history of drug usage and psychosis. However, a psychiatric evaluation was not deemed to be appropriate as "there was no reasonable grounds for belief that this individual is or ever has been mentally defective, deranged, or abnormal." He was deemed qualified for separation.

22. The applicant was discharged on 9 March 1970, under the provisions of AR 635-200, Chapter 10, for the good of the service. His DD Form 214 shows his service was characterized as under other than honorable conditions, with SPN 246 and reenlistment code RE-B, 4. He completed 1 year, 5 months, and 7 days of active service, with 103 days of lost time.

23. On 31 May 1977, the Army Discharge Review Board (ADRB) upgraded the applicant's under other than honorable conditions characterization of service to under honorable conditions (General), under the Department of Defense, Special Discharge Review Program (DOD-SDRP). A new DD Form 214 was issued to the applicant with the following corrections:

- Item 9c (Authority and Reason): PARA 10, AR 635-200, SPN 246, DOD DISCHARGE REVIEW PROGRAM (SPECIAL) SPD KGR
- Item 9e (Character of Service): UNDER HONORABLE CONDITIONS
- Item 9f ((Type of Certificate Issued): DD Form 257A
- Item 10 (Reenlistment Code) RE-3 & 3B
- Item 27 (Remarks): UPGRADED UNDER THE DOD DISCHARGE REVIEW PROGRAM (SPECIAL); DATE APPLIED FOR DISCHARGE UPGRADE: 14 APR 77; DATE DISCHARGE WAS UPGRADED: 31 MAY 77; CHARACTER OF SERVICE PRIOR TO UPGRADE: UNDER OTHER THAN HONORABLE CONDITIONS

24. On 21 November 1978, the ADRB reviewed the applicant's discharge upgrade and determined the Board was unable to affirm the DOD-SDRP upgraded discharge under the provisions of Public Law (PL) 95-126.

a. The applicant was issued a DD Form 215 (Correction to DD Form 214) on 21 November 1978, which added the following statement in Item 27 (Remarks): "DISCH REVIEWED UP PL 95-126 AND A DETERMINATION MADE THAT CHARACTERIZATION OF SERVICE WAS WARRANTED UP DOD SDRP 4 APR 77".

b. On 29 November 1978, the applicant was sent a letter from the Office of the Adjutant General, Washington, D.C., wherein it was explained to him that the previous upgrading of his discharge was re-reviewed by the ADRB as required by PL 95-126. As a result of this review, the Board determined that he do not qualify for an upgrade under the new uniform standards for discharge review. Accordingly, his upgraded discharge was not affirmed. The DD Form 215 he was issued in no way changed or modified the upgraded discharge he previously received. However, because of a new law, he would not be able to use that discharge to qualify for benefits from the VA.

25. An official statement of awards, dated 8 June 1992 shows the applicant was eligible for the Vietnam Service Medal with one bronze service star for his service in the Republic of Vietnam from 20 June 1968 to 6 March 1970.

26. A letter from the National Personnel Records Center (NPRC), dated 25 November 2003, verified the applicant was also entitled to the following awards:

- National Defense Service Medal
- Vietnam Service Medal with one bronze service star (see above)
- Combat Infantryman Badge (1st award)

27. On 23 August 2005, the ABCMR reviewed the applicant's petition for correction of his record to show he was separated due to a physical disability. After careful consideration, the Board determined the available evidence indicated the applicant's discharge met the procedural requirements for separation processing and that his rights were protected throughout the discharge process. Furthermore, the available evidence did not demonstrate he had a medical unfitting disability which required physical disability processing. The available evidence showed the applicant's mental condition existed prior to enlistment, and there was no evidence he was mentally or physically wounded as a result of hostile action or that he was suffering from PTSD at the time of separation. The Board denied his request.

28. Counsel provides the following:

a. An acknowledgement of engagement and release of information was signed by the applicant on 7 December 2022 and subsequently signed by his attorney on 3 January 2023.

b. The service treatment records provided in Exhibit B are included in chronological order, in pertinent part, throughout this ROP. Exhibit B also includes:

- a signed Form 79R (Remains of Deceased U.S. Military Personnel), wherein the applicant acknowledged his duty to safeguard the remains of deceased personnel until the responsibility was passed on to his immediate superior
- a letter from the VA, dated 24 January 2011, which shows the applicant's service from 20 June 1968 to 9 March 1970 was issued under dishonorable conditions for VA purposes

c. Exhibits C and D, consist of a medical opinion, provided by Steven G. Kohlstrom, Ph.D., Licensed Clinical Psychologist, dated 12 June 2023, which will be reviewed and outlined in the "MEDICAL REVIEW" portion of this ROP.

29. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. A UOTHC characterization of service is normally considered appropriate. The appropriate SPN and narrative reason, in effect at the time, were SPN 246 and narrative reason "discharge for the good of the service."

30. The DD Form 214 is a summary of a Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

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

32. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable and to correct his DD Form 214 to show his narrative reason for separation as Secretarial Authority or Disability and appropriate corrections to the corresponding separation and reentry codes. He contends he experienced Posttraumatic Stress Disorder (PTSD) that mitigates his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted in the Regular Army (RA) on 20 June 1968 as an 11H (Infantry/Direct Fire Crewman).
- The applicant received an Article 15 on 02 October 1968 for treating his superior noncommissioned officer with contempt.
- The applicant served in the Republic of Vietnam from 17 November 1968 to 22 November 1969.
- On 28 March 1969, the applicant was found guilty during a special court-martial of willfully disobeying a lawful command from his superior commissioned officer to join his platoon on or about 20 March 1969.
- The applicant was absent without leave (AWOL) from 02 May 1969 to 12 August 1969.
- On 13 February 1970 court-martial charges were preferred against the applicant for being AWOL, willfully disobeying an order from his superior NCO, communicating a threat to injure and behaving himself with disrespect towards his superior NCO and superior commissioned officer, stealing a wristwatch from another patient and unlawfully striking that same individual with a fist. Review of the charge sheet documents the allegations of disrespect to an NCO and officer revealed the applicant felt he was being treated poorly because of his race. His charges of communicating a threat were directed towards the same individuals and documented that the applicant in effect said he would fight them.
- The applicant was discharged on 09 March 1970 under the provisions of AR 635-200, Chapter 10, for the good of the service.
- On 31 May 1977 the Army Discharge Review Board (ADRB) upgraded the applicant's UOTHC character of service to under honorable conditions (general) under the Department of Defense, Special Discharge Review Program (DOD-SDRP). However, on 21 November 1978, the ADRB reviewed the applicant's discharge upgrade and determined the Board was unable to affirm the upgraded discharge under the provisions of public law. He was issued a new DD 215 that did not change or modify the upgrade he previously received, and because of a new law, he would not be able to use that discharge to qualify for VA benefits.
- On 23 August 2005, the ABCMR reviewed the applicant's petition for correction of his record to show he was separated due to physical disability. The Board determined the medical evidence did not show that he had a medically unfitting disability, that his mental condition existed prior to enlistment, and that there was no evidence he was mentally or physically wounded because of hostile action or that he was suffering from PTSD at the time of his separation. The Board denied his request.

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 were reviewed. A report of Medical History dated 20 June 1968 for the purposes of enlistment documented the applicant reported he was in 'excellent' health. He marked 'no' to any prior physical or mental health-related issues on the form. The Report of Medical Examination dated 20 June 1968 documented item number 42, psychiatric, as 'normal' on clinical evaluation. Review of in-service BH records show he was psychiatrically evaluated several times between 04 March 1969 and 19 February 1970.

- The applicant was first referred for a psychiatric evaluation by his commander while serving in Vietnam on 04 March 1969 due to having a temporary profile for his ears. It was documented that the applicant's ears continued to be painful when around weapon fire and that this would impact the applicant's performance as a combat infantryman. The applicant's attitude was noted as 'below average' prior to referral to medical; however, the commander noted his attitude and performance changed after counseling and proper referral to medical authorities. Furthermore, it was documented that despite the applicant having low motivation for future military service he had an outstanding attitude toward completing his current military obligation provided he could do so without further pain or damage to his ears. On the referral form, the applicant's combat record, conduct, and efficiency were documented as 'excellent.' It was noted that the applicant's duties had been moved to the mess hall when on profile due to his ears which 'he was very happy with.' However, upon expiration of the profile, the applicant could no longer remain in the mess hall with a combat MOS.
- The applicant's next in-service behavioral health encounter occurred on 01 November 1969 when he was referred to the U.S. Army RVN Stockade by his counsel for a Sanity Board Evaluation. The applicant was in pre-trial confinement pending charges for AWOL, disrespect, assaulting an officer, and writing bad checks. The Report of Sanity Board Evaluation dated 03 November 1969 documented that the applicant reported that he had been "living with a Vietnamese girl during his AWOL and staying high on various drugs, writing checks to pay for drugs and food, not considering his overdrawn checking account." The provider documented that although the applicant was unable to describe his feelings during most of the incidents from AWOL to the time of the evaluation, he described a consistent feeling and desire to "be alone." It was documented in the record that the applicant reported he quit school in the 11th grade due to a preference to be by himself, not wanting to be around, and that he "couldn't get along with anyone." It was also documented that he reported drinking alcohol at age 19 prior to joining the Army and had a history of one prior conviction at age 17 for car theft to which he served 4 months in confinement. The provider noted the applicant had been followed by mental hygiene

throughout his time in the stockade since 26 August [1969]. The applicant had been placed on psychiatric observation on several occasions and treated with anti-depressant and anti-psychotic medications. The provider noted the applicant's condition came to their attention due to his 'severe nervousness and overt agitation with crying and tearfulness' and that the main symptom the applicant had presented with was 'marked depression.' It was also noted the applicant endorsed auditory and visual hallucinations on at least three occasions while in the stockade. However, the provider documented that there was no evidence of a disorder of 'thought process, no looseness of association, etc.' The provider diagnosed the applicant with Depressive reaction, chronic, severe, manifested by mood, affect, psychomotor retardation and life history of loneliness and preference to be alone; severe predisposition, history of desire to be alone and lack of parental presence; moderate impairment [illegible words], not due to own misconduct. EPTS. The provider opined that the applicant's depression started in childhood and that his long-standing depression was the basis for 'his early drinking, drug use, and more recent hallucinations.' Furthermore, the provider determined that at the time of the alleged offense the applicant was not able to distinguish between right from wrong, adhere to the right, was unable to understand the seriousness of the charges and proceedings against him, and was unable to conduct or cooperate in his own defense. The provider recommended the charges be dropped to facilitate 'expeditious disposition through medical channels.'

- The applicant was psychiatrically admitted from 09 to 11 November 1969 [reason unknown]. It was documented the applicant had been treated since late August 1969 for depression, anxiety, and agitation. The applicant had been taking Thorazine (100mg TID) and Elavil (25mg TID) for the past month. Elavil was changed to Tofranil (50mg TID). The applicant was diagnosed with Depressive Reaction, Chronic, Severe manifested by depress[ed] mood flat, constricted affect and hallucinations. Stress: internal (life pattern) and confinement. Predisposition: Marked, early history of parental neglect. Impairment: At present, marked for further duty in combat zone. His condition was documented to be unchanged at the time of discharge.
- The applicant was psychiatrically evaluated on 25 November 1969 at U.S. Army Hospital, Ft. Campbell Kentucky. He was diagnosed with Antisocial Personality manifested by long history of antisocial behavior including abuse of drugs, juvenile delinquency, and inability to conform to established regulations. The provider opined that the applicant's 'disorder falls into the realm of character and behavior disorders which are not amenable to psychiatry treatment in a military setting.' Expeditious separation was recommended as the provider indicated 'retention may precipitate another psychotic episode' and was recommended the applicant be separated under the provisions of AR 635-212 as unsuitable.
- The applicant was re-evaluated on 13 January 1970 to determine his competency to stand trial. The provider opined that the applicant likely transiently

psychotic during his previous evaluation on 03 November 1969; however, determined at the present time the applicant was mentally competent to stand trial for the recent and past offenses and was also mentally responsible for the charges.

- The applicant underwent a psychiatric evaluation on 19 February 1970. It was documented he was psychiatrically admitted on 16 February 1970 and while admitted reported auditory and visual hallucinations. It was also noted the day he was admitted he 'tore up a commode.' The provider documented that the applicant had recently 'allegedly assaulted a patient, stole a watch and then was put in the stockade.' After three days of observation, it was determined that the applicant did not show symptoms of psychosis and was found to be not psychotic on re-examination. The provider documented the applicant was likely transiently psychotic prior to admission due to being in the seclusion cell previously and likely led to his actions regarding tearing up the commode. The applicant was determined to be mentally responsible to stand trial and cleared him for administrative disposition.
- On 04 March 1970, the applicant underwent a medical examination. It was determined a psychiatric evaluation was not deemed appropriate as "there were no reasonable grounds for belief that the applicant had ever been 'mentally defective, deranged, or abnormal.'" As such, he was cleared for separation.

d. The applicant's VA records were available for review via JLV and through the VBMS. As of this writing, the applicant is not service-connected for any conditions.

- The applicant underwent a Compensation and Pension (C&P) Examination through the VA on 13 December 2023. It was documented the applicant met criteria for PTSD with the identified stressors identified as 'being exposed to combat, people were killed in front of him, and rockets were shot near them.' A Medical Opinion Disability Benefits Questionnaire (DBQ) was also completed on 13 December 2023. The provider documented that "it is at least as likely as not that his PTSD was caused by his time in-service." A non-standard medical opinion was requested on 21 April 2010 for compensation and pension purposes. The evaluating provider concluded that the applicant has not had a disorder indicative of psychosis and the psychosis experienced while on active duty occurred after the incidents that led to his discharge.
- Limited records were available in JLV as the applicant's discharge renders him ineligible for VA services. His first BH contact through the VA was on 13 November 2003 for tobacco cessation. He was evaluated as a Mental Health Triage on 09 December 2003 (credentials of evaluating staff member are MHA, BSN, RNC and note is acknowledged by LCSW and MD). Per the note, the applicant had been released from the correctional center on the grounds he would get into a residential program. He was diagnosed with Alcohol Dependence, Cocaine Dependence, Antisocial Personality Disorder and

psychosocial stressors were noted as legal, homeless and unemployed (though noted the applicant reported being sober since 14 November 2003). Later documentation by the attending provider did not diagnose the applicant with a personality disorder, Axis II (personality disorders) was deferred. The applicant was evaluated for admission to ARU for cocaine and alcohol abuse on 20 January 2004 and was admitted into the program. On 21 January 2004, the applicant was disenrolled from the program as he was found to be ineligible based on his discharge status. It was also documented that after being told he was ineligible for services he had presented a DD 214 'that appeared to have been altered to Admissions.' After his discharge from the substance abuse program, the applicant continued to have periodic contact with a VA social worker through the homeless veteran's services with last note in the record dated 14 November 2016.

e. Civilian BH records were available for review as part of the applicant's records in JLV. Records were available from 07 November 2006 to 14 July 2011 for treatment through Vera French Community Mental Health for treatment of Major Depressive Disorder and PTSD for both medication management and psychotherapy. Diagnosis on Axis II (personality disorders) was deferred. The provider documented the applicant's treatment goal was to cope with the anxiety and depression that he believes are rooted in his experiences in Vietnam and how he has been treated by the US government since then. A psychiatry note dated 08 April 2011 indicated that the applicant has a mood disorder, PTSD and provider noted they 'suspect' there is a personality disorder as well; however, the provider did not diagnose the applicant with a personality disorder. It was documented the applicant has been trialed on a number of psychotropic medications throughout his time in treatment.

f. As part of his application packet, an expert opinion rendered by a clinical psychologist based on a review of the applicant's medical records was submitted for review. The report is dated 12 June 2023 and the psychologist did not interview the applicant. The psychologist noted they did not find any objective evidence in the records provided that the applicant suffered from any mental health condition, to include a personality disorder, at the time of the applicant's U.S. Army entrance physical. The provider asserted the applicant's PTSD was caused by his wartime service to Vietnam and that other documented mental health symptoms were best understood by his diagnosis of PTSD. Finally, the provider opined that the applicant's PTSD contributed to the misconduct that led to his discharge.

g. The applicant is applying to the ABCMR requesting an upgrade of his UOTHC characterization of service to honorable and to correct his DD Form 214 to show his narrative reason for separation as Secretarial Authority or Disability and appropriate corrections to the corresponding separation code and reentry code. He contends he experienced PTSD that mitigates his misconduct. In-service BH records demonstrate

the applicant was diagnosed with Depressive Reaction, Chronic, Severe, Antisocial Personality and had episodes of psychosis with psychiatric hospitalizations. The available documentation indicates the in-service treating providers opined that the applicant's condition(s) existed prior to service. Records also indicate the applicant was psychiatrically hospitalized on at least two occasions while in-service and experienced at least two episodes of psychosis, which was documented to have occurred following the misconduct that led to his discharge. Since his discharge from the military, the applicant has been diagnosed and treated for Major Depressive Disorder (MDD) and PTSD through community providers with possible personality traits, though not formally diagnosed by his treating providers. Although the applicant is not service-connected through the VA as of this writing, he was diagnosed with PTSD through the VA during a C&P examination in December 2023. The corresponding medical opinion documented that it was at least likely as not that the applicant's condition was due to his military service.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant was diagnosed with Depressive Reaction, Chronic, Severe, Antisocial Personality, and had episodes of psychosis in-service. Post-military, the applicant was diagnosed with PTSD through the VA and by a civilian BH provider.

(2) Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed with Depressive Reaction, Chronic, Severe, Antisocial Personality and had episodes of psychosis in-service. Post-military, the applicant was diagnosed with PTSD through the VA via a C&P examination as well as through a civilian BH provider.

(3) Does the condition experience actually excuse or mitigate the discharge? Partially. The applicant was diagnosed with Depressive Reaction, Chronic, Severe, Antisocial Personality and had episodes of psychosis in-service which were treated with antipsychotic and antidepressant medications. The applicant's final psychiatric evaluation opined that the applicant's diagnosed condition(s) of depression and antisocial personality existed prior to service; however, there is no indication or evidence in the record that the applicant was diagnosed with a BH condition prior to service, was ever psychiatrically hospitalized nor that he experienced a psychotic episode prior to service. In keeping with Liberal Guidance, if the applicant's depression was pre-existing, it may still be considered as a potentially mitigating condition as there is an indication that his condition was likely aggravated by service as evidenced by at least two psychotic episodes and two inpatient psychiatric hospitalizations in-service. Post-discharge, the applicant was diagnosed with PTSD through a VA C&P examination and through a civilian BH provider. The VA medical opinion documented the applicant's

PTSD to be at least as likely as not that the applicant's condition was due to his military service.

i. The misconduct that led to the applicant's discharge include AWOL, willfully disobeying an order from his superior NCO, communicating a threat to injure and behaving himself with disrespect towards his superior NCO and superior commissioned officer, stealing a wristwatch from another patient and unlawfully striking another patient. Although the records indicate the applicant's diagnosed in-service BH conditions were determined to exist prior to service and that he exhibited some behaviors consistent with misconduct prior to his deployment to Vietnam (i.e., one incident of disrespect in-service, one episode of car theft prior to joining the Army), the applicant's documented in-service history of at least two psychotic episodes and psychiatric hospitalizations indicates there was likely an exacerbation of his symptoms during his service to Vietnam. Furthermore, the lack of documentation of PTSD symptoms in the applicant's military records does not necessarily indicate he did not have in-service PTSD. In the era of the applicant's military service, PTSD symptoms were frequently not recognized as PTSD was not a diagnosable condition until 1980, 10 years after the applicant's discharge. As PTSD and depressive symptoms such as avoidance, irritability, and lack of motivation are associated with disrespect of his superiors and AWOL, there is a nexus between his diagnosed BH conditions and some of the circumstances that led to his discharge. However, communicating a threat, assault and theft are inconsistent with the natural history and sequelae of PTSD and depression and these behaviors were not documented to have occurred during one of the applicant's psychotic episodes. As such, BH mitigation is partially supported for AWOL and disrespect.

j. The applicant's history of depression and psychotic episodes necessitating inpatient psychiatric treatment with antipsychotic medications demonstrates evidence of significant impairment while on active duty suggestive of a level of impairment that would not have met psychiatric retention standards. Per AR 40-501, Soldiers who are pending administrative separation IAW AR 635-200 with the characterization of service as under other than honorable and who do not meet medical retention standards 'will be referred to a DES.' Furthermore, the provider who evaluated the applicant on 01 November 1969 recommended that the applicant be dispositioned through medical channels. Given that depression and disorders with psychotic features that fall below retention standards require disposition through medical channels, it is recommended that the applicant's case be referred to IDES for further disposition.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board

carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the medical review, the Board concurred with the advising official finding that the applicant had a history of post-traumatic stress disorder while on active service requiring inpatient psychiatric treatment. Based on this, the Board granted relief of referral of his case to the Disability Evaluation System (DES) as recommended by the medical advising official.

2. The Board considered the applicant's request for an upgrade of his discharge from other than honorable conditions to honorable and determined, based on the totality of the facts and circumstances, including the severity of the misconduct, a discharge upgrade was not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

■ ■ ■ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

a. Directing the applicant be entered into the Disability Evaluation System (DES) and a medical evaluation board convened to determine whether the applicant's condition(s) met medical retention standards at the time of service separation.

b. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned may be issued invitational travel orders to prepare for and participate in consideration of his case by a formal PEB if requested by or agreed to by the PEB president. All required reviews and approvals will be made subsequent to completion of the formal PEB.

c. Should a determination be made that the applicant should have been separated under the DES, these proceedings will serve as the authority to void his administrative separation and to issue him the appropriate separation retroactive to his original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to changing his type of discharge without evaluation under the DES and upgrading his characterization of service to honorable.

■ [REDACTED]

[REDACTED] ■

[REDACTED]
[REDACTED]

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, USC, 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. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent (%).

3. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

a. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career.

b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

4. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.

5. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of physical unfitness is

made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 2, provides physical standards for enlistment, appointment, and induction with the purpose to ensure members medically qualified are medically capable of completing required to training, adapt to a military environment without geographical limitations, perform duties without aggravation of existing physical defects or medical conditions.

b. The standards in Chapter 2 are applicable to individuals who enlist in the Regular Army - for medical conditions or physical defects pre-dating original enlistment, standards are applicable for enlistee's first 6 months of active duty. It states that enlisted Soldiers identified within the first 6 months of active duty with a condition that existed prior to service that does not meet the physical standards may be separated following an evaluation by an Entrance Physical Standards Board, under the provisions of AR 635-200, Chapter 5.

6. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from their last period of service with a non-waivable disqualification

7. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. It states, in part:

a. Only the unfitting conditions or defects and those that contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. The mere presence of impairment does not, in and of itself, justify a finding of unfitness because of physical disability.

b. The PEB-appointed counsel advises the Soldier of the Informal PEB (IPEB) findings and recommendations and ensures the Soldier knows and understands his or her rights. The Soldier records his or her election to the PEB on the DA Form 199 and has 10 calendar days from the date of receiving the PEB determination to make the election, submit a rebuttal, or request an extension.

8. Army Regulation 635-5 (Separation Documents), in effect at the time, established policies and procedures for completion and distribution of the DD Form 214. The regulation states:

a. The DD Form 214 is a vital record for interested Government Agencies which assist the Veteran in obtaining the rights and benefits to which he is entitled. It is important that information entered thereon is complete and accurate.

b. Appendix A (SPN and Authority Governing Separations), provided for SPNs and their corresponding reason for separation/discharge. The SPN (later renamed Separation Program Designator (SPD) codes) are three-character alphabetic combinations that identify reasons for and types of separation from active duty. SPN "246" was the correct code for Soldiers separating under the provisions of AR 635-200 for the good of the service.

9. AR 635-5-1 (Personnel Separations – Separation Program Designators) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. This regulation identifies the following separation codes, authority, and narrative reasons for separation pertaining to Secretarial Authority:

SPD Code	Narrative Reason	Regulatory Authority
MFF	Secretarial Authority (voluntary release/transfer)	Army Regulation 635-200, Ch 5
JFF	Secretarial Authority (involuntary release/transfer)	Army Regulation 635-200, Ch 5

10. AR 635-200, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. Separations under paragraph 5-3 (Secretarial Plenary Authority) are the prerogative of the Secretary of the Army. This authority is exercised sparingly and seldom delegated. It is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army.

c. 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.

d. 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.

11. On 4 April 1977, the DOD directed the Services to review all less than fully honorable administrative discharges issued between 4 August 1964 and 28 March 1973. This program, entitled the DOD SDRP, required, in the absence of compelling reasons to the contrary, that a discharge upgrade be either honorable or general in the case of any individual who had either completed a normal tour of duty in Southeast Asia, been wounded in action, 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.

12. In October 1978, Public Law 95-126 was enacted. This legislation required that Service Departments establish historically consistent, uniform standards for discharge reviews. Previously upgraded discharges under the SDRP and other programs were reconsidered using the uniform standards. Those individuals whose SDRP upgrades were not affirmed upon review under the historically consistent uniform standards were not entitled to Veterans Administration benefits, unless they had been entitled to such benefits before their SDRP review.

13. On 25 August 2017, the Office of the Under Secretary 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. Standards for review should rightly

consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on 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.

14. 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//