

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230013776

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions (UOTHC) discharge to honorable
- modification of his narrative reason for separation to reflect "Convenience of the Government"
- award of the Air Medal with "V" Device, Basic Aviation Badge (formerly Aircraft Crew Member Badge) and the Cambodia Campaign Medal
- removal of "31 Mar 70 thru 2 Apr 70" from non-pay periods of time lost
- removal of erroneous documents from his in-service records

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- In-service records
- Affidavits on behalf of the applicant (three)

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:

a. He enlisted in the Army and went willingly to Vietnam for two reasons. His family had a long history of military service and he suffered from naivete and small-town patriotism. He believed in our government, he believed it does what is right, he believed he was doing something noble and good. Those lofty beliefs, along with his ambition and hopes, crashed around his head during his tour in Vietnam.

b. He arrived in Vietnam and immediately was assigned to the 271st Assault Support Helicopter Company. He was assigned as the gunner on a flight crew. On at least 75 percent of their flights, they took enemy fire of some kind. On the outside of the aircraft, he marked off a one foot square block area. Every time they got hit with a round, he painted a small purple heart in the block. After six months of flying, he was pretty well burned out. He asked for a break and was reassigned to a job that involved running around the camp all day and night in a jeep getting the flight crews out to the flight line. After about three weeks, he drove the jeep into a metal Conex; he had blacked out. He was grounded while medical checked him out and he slept for a week. He was declared healed and sent back to flight status.

c. He left Vietnam and arrived in Oakland, CA, where he and other Soldiers were met by protesters. They were screamed at, called vulgar names, had objects thrown at them and were spit on. The irony was that he agreed with them to a point. He was confused, when he left for Vietnam people patted him on the back and told him to stay safe and come home. But upon returning home, he was a pig. His arrival home was not much better. It was distant and awkward, at best. He spent the next few weeks in a fog, trying to disappear. In time, he did. He does not remember much of what he did or where he was. Eventually he ended up in a barracks at Fort Meade, MD, with a lot of other Vietnam Vets who were outcasts like him. After about a month the Army gave him a less than honorable discharge and sent him on his way.

d. About a year after returning from Vietnam, he began having dreams. Some were horrible and frightening. He woke up sweating; he was exhausted emotionally and physically. Many of the dreams were recurring and frequent. Over the years many have slowed in frequency, but some persist, even today. He has many pop-up thoughts and images of events in Vietnam. The memories are brought back by something he hears, smells, or sees on television. Other times they seem to show up for no particular reason. The feeling of alienation is also permanent. It's here to stay. Because of it he often feels he missed out on life. He has no family, no children, nothing to be proud of. He paints murals in order to stay away from people. He no longer has friends. In a group setting, he is completely dysfunctional. In other words, healing from the trauma of Vietnam has been less than successful.

3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) is related to his request.

4. On 15 August 1969, the applicant enlisted in the Regular Army for 3 years. Upon completion of initial entry training, he was awarded the military occupational specialty 67U (Helicopter Repairman). The highest grade he attained was E-4.

5. On 5 February 1970, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 10 February 1970.

6. On 10 February 1970, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL. His punishment included reduction in grade to E-1, forfeiture of \$26.00 pay for two months, and 14 days restriction and extra duty.

7. On 6 March 1970, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 27 February 1970. His punishment included forfeiture of \$26.00 pay for two months, and five days restriction and extra duty.

8. On 30 March 1970, the applicant began service in the Republic of Vietnam.

9. A Standard Form 513 (Clinical Record – Consultation Sheet) dated 26 October 1970, notes the applicant was diagnosed with “blackout spells” seizure disorder. The attending physician notes the applicant was driving a military vehicle and crashed into a Conex.

10. The applicant departed the Republic of Vietnam, on 29 March 1971.

11. A DA Form 759 (Individual Flight Record and Flight Certificates) notes the applicant accumulated 471 hours of flying time throughout his tour in the Republic of Vietnam.

12. General Orders Number 4634, issued by Headquarters, 1st Aviation Brigade, on 1 June 1971, awarded the applicant the Air Medal with “V” Device for heroism in the Republic of Vietnam.

13. On 9 April 1971, the applicant was reported as AWOL a second time, and remained absent until he returned to military authorities 17 March 1972.

14. On 27 March 1972, the applicant was reported as AWOL a third time, and remained absent until he returned to military authorities 16 May 1972.

15. Court-martial charges were preferred against the applicant on 22 May 1972 for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with two specifications of being AWOL.

16. The applicant consulted with legal counsel on 22 May 1972, and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an undesirable discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-

martial. In his request for discharge, he acknowledged he understood that if his request for discharge was accepted, he may be discharged UOTHC. He understood that, as a result of the issuance of such a discharge, 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 law.

b. The applicant declined to submit a statement in his own behalf.

17. On 24 May 1972, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

18. The applicant's commander recommended approval of the applicant's request for discharge with issuance of an Undesirable Discharge Certificate.

19. The applicant was discharged on 16 June 1972, in rank/grade of private/E-1. He was credited with 1 year, 6 months, and 21 days of net active service this period with 456 days of lost time. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) contains the following entries in:

- Item 11c (Reason and Authority) – Chapter 10, AR [Army Regulation] 635-200, Separation Program Number (SPN) 246, for the good of the service
- Item 13a (Character of Service) – UOTHC
- Item 15 (Reenlistment Code) – 3

20. Additionally his DD Form 214 shows he was awarded or authorized the:

- National Defense Service Medal
- Vietnam Service Medal
- Vietnam Campaign Medal with 60 Device
- 2 Overseas Service Bars
- Sharpshooter Badge Rifle M16

21. The applicant provides three affidavits from Veterans detailing their personal experiences while serving in Vietnam, in parallel with the applicant's recollection of his exposure to combat operations. These letters are provided in their entirety for the Board's review within the supporting documents.

22. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

23. Army Regulation 600-8-22 (Military Awards) does not provide that Cambodia is recognized with a distinct campaign medal. Additionally, there is no evidence in the applicant's available military record that indicates he was awarded the Aircraft Crew Member Badge.

24. Review of the available record failed to reveal any documents pertaining to another Soldier other than the applicant.

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

26. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. In addition, other corrections and awards that will not be addressed in this opine. He contends PTSD mitigates his discharge.

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 enlisted into the Regular Army on 15 August 1969.
- On 5 February 1970, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 10 February 1970.
- On 10 February 1970, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL.
- On 6 March 1970, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 27 February 1970.
- On 30 March 1970, the applicant began service in the Republic of Vietnam.
- The applicant departed the Republic of Vietnam, on 29 March 1971.
- On 9 April 1971, the applicant was reported as AWOL a second time, and remained absent until he returned to military authorities 17 March 1972.
- Court-martial charges were preferred against the applicant on 22 May 1972, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with two specifications of being AWOL.
- The applicant consulted with legal counsel on 22 May 1972. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial.

In his request for discharge, he acknowledged he understood that if his request for discharge was accepted, he may be discharged UOTHC.

- The applicant was discharged on 16 June 1972, in rank/grade of private/E-1. He was credited with 1 year, 6 months, and 21 days of net active service this period with 456 days of lost time. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, with an under other than honorable conditions discharge (Separation Code 246 and Reenlistment Code 3).

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "he enlisted in the Army and went willingly to Vietnam for two reasons. His family had a long history of military service and he suffered from naivete and small-town patriotism. He believed in our government, he believed it does what is right, he believed he was doing something noble and good. Those lofty beliefs, along with his ambition and hopes, crashed around his head during his tour in Vietnam. He arrived in Vietnam and immediately was assigned to the 271st Assault Support Helicopter Company. He was assigned as the gunner on a flight crew. On at least 75 percent of their flights, they took enemy fire of some kind. On the outside of the aircraft, he marked off a one-foot square block area. Every time they got hit with a round, he painted a small purple heart in the block. After six months of flying, he was pretty well burned out. He asked for a break and was reassigned to a job that involved running around the camp all day and night in a jeep, getting the flight crews out to the flight line. After about three weeks, he drove the jeep into a metal Conex, he had blacked out. He was grounded while medical checked him out and he slept for a week. He was declared healed and sent back to flight status. He left Vietnam and arrived in Oakland, CA, where him and other Soldiers were met by protesters... He spent the next few weeks in a fog, trying to disappear. In time, he did. He does not remember much of what he did or where he was. Eventually he ended up in a barracks at Fort Meade, MD, with a lot of other Vietnam Vets who were outcasts like him. After about a month the Army gave him a less than honorable discharge and sent him on his way. About a year after returning from Vietnam, he began having dreams. Some were horrible and frightening. He woke up sweating; he was exhausted emotionally and physically. Many of the dreams were recurring and frequent. Over the years many have slowed in frequency, but some persist, even today. He has many pop-up thoughts and images of events in Vietnam. The memories are brought back by something he hears, smells, or sees on television. Other times they seem to show up for no particular reason. The feeling of alienation is also permanent. It's here to stay. Because of it he often feels he missed out on life. He has no family, no children, nothing to be proud of. He paints murals in order to stay away from people. He no longer has friends. In a group setting, he is completely dysfunctional. In other words, healing from the trauma of Vietnam has been less than successful."

d. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy documentation shows on a Standard Form 513 (Clinical Record – Consultation Sheet) dated 26 October 1970, the applicant was assessed to rule-out a seizure disorder since he had a “blackout spell”. The attending physician notes the applicant was driving a military vehicle and crashed into a Conex. No evidence of seizure disorder was found. On 24 May 1972, the applicant underwent a medical examination for the purpose of separation. He was deemed medically qualified for administrative separation.

e. The VA’s Joint Legacy Viewer (JLV) does not have a record of the applicant and there is no evidence that he is service connected, likely due to the characterization of his service. No behavioral health medical records were available for review and the applicant did not submit any medical documentation post-military service substantiating his assertion of PTSD.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is credible evidence to support the applicant had an experience, being deployed to a combat zone, and subsequently developed symptoms that are indicative of trauma.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition, PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant served in Vietnam from 30 March 1970 to 29 March 1971. However, there is no medical documentation indicating the applicant was diagnosed with PTSD during military service or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Per Liberal Consideration guidelines, the applicant’s self-assertion of PTSD merits consideration by the Board. Although, there is no evidence of an in-service BH diagnoses and the applicant is not service-connected, likely due to the characterization of discharge, the applicant describes experiencing symptoms consistent with PTSD, including nightmares, flashbacks, isolation, and feeling of alienation. Given the nexus between PTSD and avoidance, the applicant’s instances of AWOL would be mitigated by his BH condition.

BOARD DISCUSSION:

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

2. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The Board concurred with the conclusion of the medical advising official regarding his misconduct being mitigated by PTSD. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to under honorable conditions (general).
3. The Board found the reason for the applicant's discharge was fully supported by the evidence. He had committed misconduct that could have resulted in a court-martial conviction, and he voluntarily elected to be discharged in lieu of trial by court-martial. The Board determined the reason for his discharge is not in error or unjust.
4. The Board found no evidence indicating the applicant was awarded the Basic Aviation Badge (formerly Aircraft Crew Member Badge) for his service as a gunner and further found insufficient evidence to conclude that he met the criteria for permanent award of this badge. The Board determined the badge should not be added to his record.
5. Army and Department of Defense regulations to not provide for a Cambodia Campaign Medal. The Board determined there is no available relief related to this portion of his request.
6. The Board found insufficient evidence that would preclude the presumption of regularity regarding the entries in the applicant's record documenting lost time for the period "31 Mar 70 thru 2 Apr 70." The Board determined the entry should remain in his record. Likewise, the Board determined there is insufficient evidence to support a conclusion that any other documents in the applicant's record contain errors doing him harm that would be a basis for their removal.
7. The Board concurred with the corrections described in Administrative Note(s) below.

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 the evidence presented is 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 reissuing his DD Form 214 to show his character of service as under honorable conditions (general) and to incorporate the corrections described in Administrative Note(s) below.

2. The Board further determined 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 any relief in excess of that described above.

12/26/2024

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

ADMINISTRATIVE NOTE(S): A review of the applicant's record shows his DD Form 214 is missing entries that affect recognition for his acts of heroism. As a result, amend the DD Form 214 by adding the following:

- Air Medal with "V" Device
- three bronze service stars with the Vietnam Service Medal
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

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. Title 10, U.S. Code, Section 1556, 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 600-8-22 prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. An Air Medal is awarded to any person who, while serving in any capacity in or with the Armed Forces of the United States, who has distinguished himself or herself by meritorious achievement while participating in aerial flight. Awards may be made to recognize single acts of merit or heroism, or for meritorious service. Award of the Air Medal is primarily intended to recognize those personnel who are on current crewmember or non-crewmember flying status which requires them to participate in aerial flight on a regular and frequent basis in the performance of their primary duties.

b. The Basic Aviation Badge (formerly Aircraft Crew Member Badge) may be awarded to individuals who have been incapacitated from further flight duty by reason of being wounded as a result of enemy action, or injured as the result of an aircraft accident for which he or she was not personally responsible, or has participated in at least 15 combat missions, under probable exposure to enemy fire while on flying status.

4. Army Regulation 635-5 (Personnel Separations – Separation Documents), 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. The SPN "246" was the correct code for Soldiers separating under the provisions of Army Regulation 635-200 for the good of the service.

5. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

6. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating 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 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.

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//