

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 July 2024

DOCKET NUMBER: AR20230013778

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions (UOTHC) discharge to honorable based on disability
- a different, presumably more favorable, narrative reason for separation
- a favorable change of his separation and reentry eligibility (RE) codes

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

- DD Form 149 (Application for Correction of Military Record)
- legal brief on behalf of applicant
  - Exhibit 1: applicant's personal statement
  - Exhibit 2: DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge)
  - Exhibit 3: Veteran Affairs (VA) decision letter
  - Exhibit 4: medical documents
  - Exhibit 5: in-service medical documents
  - Exhibit 6: Army Discharge Review Board (ADRB) decision letter with applicant's personal statement

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. Counsel states, in pertinent part:

a. The applicant has suffered with undiagnosed and untreated post-traumatic stress disorder (PTSD) for decades. He was turned away from VA healthcare his whole life until January 2023, when he was just granted service-connection for PTSD and bipolar for VA healthcare purposes only.

b. The applicant's personal statement describes his mental breakdown when he got back from Vietnam, and he was newly married to a wife with health issues. He went absent without leave (AWOL) several times when he was denied leave to be with his ailing wife. While it is understandable that the Army needed to discharge him to preserve good order, it was unjust to discharge him UOTHC when he had a mental breakdown as a result of combat and family stressors. The Uniform Code of Military Justice (UCMJ) acknowledges that severe mental illness is a mitigating factor in misconduct. The UCMJ is primarily focused on insanity as a defense at a court-martial trial, but it is relevant in this case because the applicant was discharged for misconduct that, in retrospect, was clearly attributable to his declining mental health.

c. The applicant's insanity made it impossible for him to meaningfully participate in the administrative separation process and consent to or waive his rights therein. He was never offered mental health treatment. If his insanity had been addressed and treated, there is substantial doubt that he would have received a less than honorable discharge. Vietnam draft dodgers received Presidential pardons, but this Veteran who voluntarily enlisted during wartime was painted with a scarlet letter his entire life due to his bad discharge. Even though he was rejected by the VA over and over again for healthcare, he remained proud of his military service.

3. The applicant states:

a. He served with the 101st Airborne Division in Vietnam. He served as a forward observer to locate enemy positions so that the military could shell that specific area. He was at Dong Ha, Vietnam, and what he experienced there, would affect the rest of his life. His unit was constantly having mortar rounds shot at them inside the landing zone, as well as constant bombing and small arms firing. He always feared for his life and was scared most of the time. His friend was killed in action there and that had a bad impact on his mental health. He was transferred to other locations in Vietnam; however the same types of attacks would occur.

b. Upon his return to the U.S., he was transferred to a unit in Fort Riley, KS, where he was the only Vietnam Veteran assigned. He really did not have a job there, nor was he issued any new uniforms. He was an outcast and nobody really cared about him nor knew what he had just went through. He had just gotten married, and his wife was having medical issues. He requested leave but was denied. That's when he decided that his wife's health was more important than the Army. He took matters into his own hands and decided to go AWOL. Mentally, he just lost it because of all the experiences he had in Vietnam. The fact that his wife needed him, and he couldn't be there for her, attributed to his decision to leave. He wanted to live the American Dream and be proud that he served in the Army. He feels the Army treated him like an unwanted dog. His actions were not his fault, his time in Vietnam and what he experienced was pure hell.

4. On 28 January 1971, the applicant enlisted in the Regular Army for 2 years. Upon completion of initial entry training, he was awarded the military occupational specialty 82C (Artillery Surveyor). The highest grade he attained was E-4.
5. On 28 April 1971, the applicant accepted non-judicial punishment (NJP) under Article 15 of the UCMJ, for sleeping on his post on or about 26 April 1971. His punishment included forfeiture of \$20.00.
6. On 8 August 1971, the applicant was reported as AWOL and remained absent until he returned to military authorities on 15 August 1971.
7. On 16 August 1971, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL. His punishment included forfeiture of \$24.00 per month for one month and 14 days restriction.
8. The applicant served in the Republic of Vietnam from 20 August 1971 through 16 April 1972.
9. On 21 June 1972, the applicant was reported as AWOL a second time, and remained absent until he returned to military authorities on 17 July 1972.
10. On 17 July 1972, the applicant received formal counseling to discuss his recent period of AWOL. The commander noted the applicant stated he went AWOL because his wife had tumors and he had to take her to an out of state clinic to be seen immediately. The applicant claimed he would have had to wait two weeks for an appointment at the installation hospital.
11. Before a summary court-martial on 7 August 1972, at Fort Riley, KS, the applicant was found guilty of one specification of going AWOL. The court sentenced him to reduction in grade to E-2, forfeiture of \$150.00 for one month, and 45 days hard labor without confinement. The sentence was approved and ordered to be duly executed.
12. On 15 August 1972, the applicant was reported as AWOL a third time, and remained absent until he returned to military authorities on 16 August 1972.
13. On 16 August 1972, the applicant underwent a psychiatric evaluation. He was diagnosed with a passive-aggressive personality. However, he was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
14. On 17 August 1972, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL. His punishment included reduction in grade to E-1, forfeiture of \$57.00 per month for one month, and seven days extra duty.

15. On 29 August 1972, the applicant was reported as AWOL a fourth time, and remained absent until he returned to military authorities on 16 September 1972.

16. On 16 September 1972, the applicant received formal counseling to discuss his recent period of going AWOL. The commander notified the applicant that he had no choice but to initiate separation actions against him under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability).

17. Before a summary court-martial on 28 September 1972, at Fort Riley, KS, the applicant was found guilty of one specification of going AWOL. The court sentenced him to reduction in grade to E-1, forfeiture of \$164.00 per month for one month and confinement at hard labor for 45 days. The sentence was approved, and the record of trial was forwarded for appellate review.

18. On 11 October 1972, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

19. On 4 November 1972, the applicant's commander formally recommended the applicant's discharge, under the provisions of Army Regulation 635-212, for unsuitability with issuance of an undesirable discharge certificate. As the specific reasons, the commander cited the applicant's periods of AWOL, summary court-martial conviction, and his established pattern of shirking and frequent incidents of misconduct.

20. Summary Court-Martial Order 153, issued by Headquarters, 1st Infantry Division (Mechanized) and Fort Riley, Fort Riley, KS, on 9 November 1972, noted the applicant's court-martial conviction adjudged on 7 August 1972 was set aside. All his rights, privileges, and property of which the applicant had been deprived by virtue of that portion of the sentence was restored.

21. On 17 November 1972, the applicant consulted with legal counsel and affirmed he had been advised of the basis for the contemplated separation action. Following his consultation, he waived his right to personally appear before, to have his case considered by a board of officers and his right to further representation by military counsel. He acknowledged he could expect to encounter substantial prejudice in civilian life, if given either a general discharge (under honorable conditions) or an undesirable discharge. The applicant submitted a statement in his own behalf, stating he thought he should get a general discharge because he had served in Vietnam and had a nervous breakdown over there. That was when everything changed for him. He used to like the Army a lot, now he could not adjust to the military any longer. He had been taking Librium to calm himself down; he had personal and family problems.

22. Consistent with the chain of command's recommendations, the separation authority approved the recommended discharge on 27 November 1972, and directed the issuance of an Undesirable Discharge Certificate.

23. The applicant was discharged on 7 December 1972, in rank/grade of private/E-1. He was credited with 1 year, 7 months, and 13 days of net active service this period with 87 days of lost time. His DD Form 214 contains the following entries in:

- Item 11c (Reason and Authority) – Paragraph 6a(4), AR [Army Regulation] 635-212, Separation Program Number (SPN) 386, for unfitness – an established pattern for shirking
- Item 13a (Character of Service) – UOTHC
- Item 15 (Reenlistment Code) – 1B, 3, 3B

24. 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
- One Overseas Service Bar
- Sharpshooter (Rifle) M16 Badge

25. The applicant petitioned the ADRB requesting upgrade of his UOTHC discharge. On 8 September 1981, the Board voted to deny relief and determined he was properly discharged.

26. The applicant provides a VA decision letter with supporting medical documents that show he was granted service connection for treatment purposes only, for PTSD with bipolar disorder and anxious distress. These documents are provided in their entirety for the Board's review within the supporting documents.

27. 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.

## 28. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR for an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends he experienced 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: 1) The applicant enlisted in the Regular Army on 28 January 1971; 2) On 16 August 1971, the applicant accepted NJP for going AWOL from 8-15 August 1971; 3)

The applicant served in the Republic of Vietnam from 20 August 1971-16 April 1972; 4) Before a summary court-martial on 7 August 1972, the applicant was found guilty of going AWOL; 5) On 17 August 1972, the applicant accepted NJP for going AWOL a third time; 6) Before a summary court-martial on 28 September 1972, the applicant was found guilty of one specification of going AWOL again; 7) The applicant was discharged on 7 December 1972 for unfitness. He was credited with 1 year, 7 months, and 13 days of net active service this period with 87 days of lost time.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and military and civilian medical documents provided by the applicant were also reviewed.

c. The applicant asserts he was experiencing PTSD as a result of his deployment while on active service, which mitigates his misconduct. There is evidence the applicant underwent two behavioral health evaluations while on active service (16 August 1972 and 11 October 1972). He was not diagnosed with any mental health condition including PTSD, and he was cleared for administrative action by Command. On 17 November 1972, the applicant reported that while he was deployed to Vietnam, he experienced a "nervous breakdown", and he had been taking "Librium" to assist him with managing his anxiety.

d. A review of JLV provided evidence the applicant began to engage with the VA intermittently mostly for emergency service starting in 2021. The applicant provided documentation that he has been diagnosed by the VA with service-connected PTSD in January 2023. He also provided a letter from a Psychiatric Nurse Practitioner, dated 28 July 2023, that the applicant has been diagnosed with PTSD, Bipolar Disorder, and Anxiety, which the provider attributed to his deployment during Vietnam. The applicant provided additional documentation from more recent behavioral health providers/facilities. There was consistent evidence the applicant has been diagnosed with Anxiety, Depression, Bipolar Disorder, and PTSD with a history of suicidal ideation and attempts.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD. He also been consistently diagnosed with PTSD by other behavioral health providers, which was attributed to his deployment to Vietnam.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD. He also been consistently diagnosed with PTSD by other behavioral health providers, which was attributed to his deployment to Vietnam.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did engage in multiple incidents of going AWOL. This type of avoidant behavior can be a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the applicant's Vietnam service, the misconduct involved and the mitigation for the misconduct leading to the applicant's separation found in the medical review, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to Under Honorable Conditions (General); however, the Board found insufficient evidence warranting a change to the applicant's narrative reason for separation and/or separation and reentry code.

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 the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

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 changing the narrative reason for separation, separation code and/or reentry code.

1/7/2025

X [REDACTED]

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CHAIRPERSON

[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, 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. 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 601-210 (Regular Army and Army Reserve 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 3-6 provides a list of RE codes.

- RE code "1" applies to Soldiers completing an initial 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 last period of service with a non-waivable disqualification

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 "386" was the correct code for Soldiers separating under the provisions of Army Regulation 635-200 for unfitness – an established pattern for shirking.

5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. Paragraph 1-9d provided that 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. Paragraph 1-9e provided that 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.

c. Paragraph 1-9f provided that an undesirable discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for unfitness, misconduct, homosexuality, or for security reasons.

6. Army Regulation 635-212, then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided 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. This regulation also prescribed that an undesirable discharge was normally issued.

7. 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.

8. 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.

9. 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//