

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230014033

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- a video and/or telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 effective 16 November 1971

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 he would like his under other than honorable discharge amended to reflect honorable. During his time in Vietnam, he contends that he was not allowed to do his job and instead cleaned the Vietnamese camp. Additionally, the applicant states he has had 31 surgeries and loves his country. The applicant marked post-traumatic stress disorder and other mental health as conditions related to his request on the DD Form 149.

3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 25 February 1971.
- b. He served in Vietnam from 6 September 1971 to 15 November 1971.
- c. A Report of Psychiatric Evaluation dated 28 October 1971 indicates the applicant was command referred for psychiatric evaluation. The mental status examination

revealed there was no evidence of psychosis or neurosis. From a psychiatric point, there was no psychiatric contraindication to the applicant's retention on active duty.

d. The service record includes the applicant's medical examinations, dated 6 November 1971, for the purpose of separation which indicated he was generally in good health. The applicant was marked qualified for service and separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 89 (Report of Medical History)

e. On 11 November 1971, a DD Form 458 (Charge Sheet) shows court-martial charges were preferred on the applicant for:

- one specification of wrongfully communicating to Major General K.J., a threat to do bodily harm to Captain F.W.O., his superior commissioned officer, by "hitting him or killing him", or words to that effect on or about 1 November 1971
- one specification of wrongfully communicating to Major General K.J., a threat to do bodily harm to First Sergeant R.D.L., his superior noncommissioned officer, by "hitting him or killing him", or words to that effect on or about 1 November 1971

f. On 11 November 1971, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- maximum punishment
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration
- he may be deprived of her rights and benefits as a Veteran under both Federal and State Law
- he may expect to encounter substantial prejudice in civilian life

g. On 11 November 1971, consistent with the chain of command recommendations, the separation authority approved discharge for separation under the provisions of AR 635-200, Chapter 10, for the good of the service. He was issued an Undesirable Discharge Certificate and reduced to the lowest enlisted grade.

h. He was discharged from active duty on 16 November 1971 with an under other than honorable conditions characterization of service under the provisions of AR 635-

200, Chapter 10. His DD Form 214 shows he completed 8 months and 22 days of active service with no lost time. He was assigned separation program number (SPN) code 246 with reentry code 4.

4. On 5 October 1972, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

5. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

6. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Undesirable Discharge Certificate will normally be furnished an individual who is discharged for the good of the service.

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

#### 8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ABCMR requesting an upgrade of his 16 November 1971 discharge characterized as under conditions other than honorable. He has indicated on his DD Form 149 that PTSD and other mental health conditions are issues related to his request.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 25 February 1971 and was discharged on 16 November 1971 under the provisions provided in chapter 10 of AR 635-200, Personnel

Management – Enlisted Personnel: Discharge for the Good of the Service. His separation program number of 246 denotes “Discharge for the good of the service.”

d. The applicant underwent a psychiatric evaluation on 28 October 1971 after which the provider conclude he had an “Inadequate personality manifested by social incompatibility and situational maladjustment and this impaired the applicant from further service:

“PERTINENT HISTORY: the subject relates a lifelong pattern of social incompatibility characterized by the quitting of school and three jobs. Quit after two months each. His present maladjustment to military life is yet another extension of this problem. He voices uniform distrust of people and relates only to automobiles which he feels offer no threat to him.

MENTAL STATUS: Mental status examination reveals a fully oriented, alert, anxious, sullen individual with retarded motor behavior. His speech is coherent but guarded. His mood is flat. There is no evidence of thought disorder. Memory is intact; judgement is impaired; and insight is minimal. Intelligence is considered to be within normal limits. No evidence of drugs or alcohol is present. It. there is no evidence of psychosis or neurosis.”

e. He underwent a pre-separation physical examination on 6 November 1971. The provider documented a normal examination except for a left inguinal hernia scar, no defects or diagnoses, and found qualified for separation.

f. An 11 November 1971 Charge Sheet (DD Form 458) shows the applicant was charged with two specifications of communicating threats of bodily harm.

g. On 11 November 1971, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial.

h. The Commanding General of the 101st Airborne Division (Airmobile) approved the chapter 10 discharge with an “Undesirable Discharge Certificate” and that he be immediately reduced to the grade of Private (E1).

i. No medical documentation was submitted with the application and there are no encounters in AHLTA as the period of service under consideration.

j. JLV shows he is not registered with the VA.

k. It is the opinion of the ARBA medical advisor that a discharge upgrade based upon a medical condition is not warranted.

I. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts he has PTSD other mental health conditions.

(2) Did the condition exist or experience occur during military service? Applicant asserts the PTSD is due to his Service in the Republic of Vietnam.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant has submitted no medical documentation indicating a diagnosis of PTSD and/or other mental health conditions. There was no probative evidence found in AHLTA, other electronic records, or in JLV (to include VA endorsement), for a diagnosis of PTSD or a behavioral health disorder of any kind.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding that a discharge upgrade based upon a medical condition is not warranted.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of communicating a threat to do bodily harm to your commander and first sergeant. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to an honorable discharge. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
  
2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets for the authority for separation of enlisted personnel and the criteria governing the issuance of Honorable, General, and Undesirable Discharge Certificates.

a. An honorable is a separation with honor. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

b. A general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge. A general discharge may be issued if an individual has been convicted of an offense by general-court-martial or has been convicted by more than one special court-martial in the current enlistment period or obligated service or any extension thereof.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Undesirable Discharge Certificate will normally be furnished an individual who is discharged for the good of the service.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (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.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their

discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses



or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//