

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 August 2024

DOCKET NUMBER: AR20230014871

APPLICANT REQUESTS: reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Statement
- Three-character letters
- DD form 214 (Report of Separation from Active Duty)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20140000845 on 9 September 2014.

2. The applicant states:

a. He was sent to Long Bien Vietnam and a Soldier he befriended was shot in the head and died instantly next to him. He went into shock, feeling fear and anger, as it could have been him. He remembers returning fire and Soldiers yelling to get down while he stared at the blood splattered from his friend's head, which led to nightmares. Days later, before a convoy, a Soldier noticed his nervousness and offered him heroin, which he accepted. From that day forward he became addicted to drugs. Upon receiving orders to leave Vietnam, he barely passed a drug test. After arriving back to Memphis, TN, people called him a baby killer and spit at him, which was heartbreaking.

b. He met his eight-month-old daughter at home but learned his wife had been unfaithful. He opted to work things out with his wife. During that time, he was overwhelmed by the nightmares, confusion, and he was self-medicating with drugs and alcohol. His wife soon kicked him out, leaving him homeless and in trouble with the law, in and out of rehab until 1978. He takes full responsibility for his actions but believes he

would have made better decisions if he had known what to do. Despite everything, he believes his service was honorable until leaving Vietnam.

3. The applicant provides:

a. A character letter from Pastor W.A.A. states the applicant served as the director of the church's security team with great character and integrity. The applicant was dedicated, professional, courteous, and charismatic, consistently contributing and participating in church activities. Pastor W.A.A. has known the applicant for over 25 years since the applicant first sought spiritual guidance from the church. The applicant was a loving husband and father with high moral standards and admired by the congregation.

b. A character letter from retired Sergeant First Class I.W. indicated he has known the applicant since childhood. Before the applicant served in Vietnam, the applicant was a fun-loving uncle who enjoyed music, storytelling, and sports. After returning from Vietnam, the applicant was not the same. The applicant became forgetful, easily upset, suspicious, isolated, and addicted to alcohol and drugs. The applicant got into legal trouble and became a domestic abuser. They often wondered what happened to him, as if a different person returned from Vietnam. His condition worsened over the years. He is hopeful the applicant will be forgiven and receives treatment for conditions from his service in Vietnam and agent orange exposure.

c. A character letter from Ms. L.P. wherein she noted she worked with the applicant for 12 years. During that time the applicant showed his technical skill and attention to detail which placed his work performance above other workers. She found that the applicant was trustworthy and a valuable person whose thoughts and opinions were respected. The applicant was a very positive influence.

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

a. He enlisted in the Regular Army on 25 May 1970

b. On 12 June 1971, he was convicted of one specification of possession of 1 vial of a habit-forming narcotic, to wit: heroin. He was sentenced to 3 months confinement, forfeiture of \$35.00 pay for 4 months, and reduction to the grade of private, E-1.

c. Special Court Martial Order #44 shows on 16 July 1971 the convening authority approved the sentence and ordered it duly executed, but the execution of that portion adjudging confinement in excess of one month was suspended until 9 September 1971.

d. A DA Form 3835 (Notice of Unauthorized Absence from United States Army) shows, the applicant went Absence Without Leave (AWOL) on 2 January 1972 and was Dropped from Rolls (DFR) 1 February 1972.

e. Two DD Form 4187 (Personnel Action) dated 6 February 1978 shows, the applicant was apprehended by civilian authorities on 3 February 1978, status changed from DFR to attached. The applicant's status was changed from confined civil authorities to present for duty.

t. The service record includes the applicant's medical examination, dated 10 February 1978, for the purpose of separation which indicated he was generally in good health. He was marked qualified for separation.

- Standard Form (SF) 88 (Report of Medical Examination)
- SF 93 (Report of Medical History)

g. On 22 February 1978, the applicant consulted with counsel, and he was advised of his rights and advantages of remaining in an active duty status in the Army beyond his scheduled date of expiration of term of service (ETS) for the purpose of continued medical care or hospitalization and, if eligible, subsequent separation or retirement for physical disability under the provisions of Title 10, U.S. Code, chapter 61. The applicant elected to not remain on active duty beyond his scheduled ETS date.

h. On 23 February 1978, the applicant consulted with legal counsel who advised him that the government had not received the necessary documentation and/or records with which to obtain a conviction at court-martial at the time. He was further advised that his counsel could not completely advise him without the records. Nevertheless, having knowledge of this, the applicant waived all defenses that may have become known had his defense counsel been able to review his records. He willingly and voluntarily declared that:

- he was AWOL from 2 January 1972 to 6 February 1978
- he made the admission for administrative purposes only to process out of the Army and he acknowledged he understood he could receive a discharge under other than honorable conditions
- his military defense counsel had explained to his complete understanding and satisfaction all legal and social ramifications of the type of discharge and what it meant in the future
- the agreement only pertained to his AWOL and he realized the Army could prefer charges any time prior to his discharge for any other military crimes that may be pending against him

i. On 14 June 1978, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Report of Separation from Active Duty) shows he completed 1 year, 10 months, and 11 days of active service with 2,861 days of lost time.

5. On 7 April 1986, 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.

6. On 9 September 2014, the ABCMR rendered a decision in Docket Number AR20140000845. The Board determined although his record was void of preferred charges, he voluntarily admitted to being AWOL and elected to be discharged. Further, he elected to be discharged on his ETS date rather than voluntarily remaining on active duty beyond his ETS date for the purpose of continuing medical care or hospitalization. His record shows he was well advised and fully aware of the consequences of his decisions. Due to his lengthy period of AWOL, his conduct and performance were not satisfactory. His characterization of service was properly determined solely based on his military record. The Board determined the character of service the applicant received upon separation and the reason for his separation were not in error or unjust.

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:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests change in characterization of service from Under Other Than Honorable Conditions. This is a request for reconsideration.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered the Regular Army 28May1970. His MOS was 63B10, Wheel Vehicle Mechanic. He served in Vietnam 19701209 to 19711207. While in Vietnam, he was charged with being in possession of one vial of heroin on 01Apr1971 and was found guilty by court-martial. However, he was discharged on 14Jun1978 for conduct triable by court-martial under AR 635-200 chapter 10 due to being absent without leave from 19720102 to 19780206. His service was characterized as Under Other Than Honorable Conditions.

3. In his ABCMR application, he reported seeing a buddy who was standing next to him get shot in the head and die instantly at Long Biên Vietnam. He described onset of some symptoms that are characteristic of PTSD after this traumatic event: Nightmares related to the event and nervousness. Afterward, he began use of heroin to calm himself down and became addicted. When he returned from deployment, he arrived in Memphis to people shouting obscenities and being called a baby killer and being spat upon. He continued to self-medicate with drugs and alcohol after going AWOL.

4. The applicant underwent Report of Medical History and Examination on 10Feb1978 which did not reveal any significant medical history or exam abnormalities. Of note, he did not endorse any behavioral health symptoms. He did endorse being in good health. He was deemed qualified for separation with PULHES 111111.

5. There were no service treatment records available for review. An in-service mental status evaluation was not found. JLV search revealed that the applicant has not been service connected by the VA for any disabilities. There are sparse records in JLV and the record showed that he has not been diagnosed with a mental health condition or even evaluated by behavioral health. The applicant was not diagnosed with PTSD, nor did he overtly assert PTSD. However, in the ARBA Medical Reviewer's opinion, the applicant's description of the traumatic combat stressor, subsequent onset of symptoms characteristic of PTSD, attempts to self-treat, as well as the statement from a niece describing changes in his behavior at the time, all reasonably support evidence of probable PTSD. Under Liberal Consideration, although PTSD has not been officially diagnosed, the evidence reasonably supports its existence and is sufficient to merit consideration of upgrade by the Board and change in narrative reason for separation.

#### 6. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The evidence reasonably supports PTSD diagnosis under Liberal Consideration.

(2) Did the condition exist, or did the experience occur during military service? Yes. Evidence reasonably supports PTSD diagnosis under Liberal Consideration with combat stressor corroborating its existence while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There is a nexus between PTSD and his AWOL offense as avoidance behaviors are part of the natural history of PTSD. Though the applicant was not discharged for the drug related offense, it is noted that substance abuse for self-treatment is a common sequela of PTSD providing further corroborating evidence of the condition's existence while in service.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged an offense, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board reviewed and concurred with the medical advisor's review finding the applicant's assertion, supporting family member's statement, symptoms, and behavior, all to be corresponding with probable post-traumatic stress disorder. The Board found the evidence reasonably supports the applicant's contention and is sufficient to warrant a discharge upgrade to honorable.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20140000845 on 9 September 2014. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 14 June 1978 to show an honorable characterization of service.

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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 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the 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.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
  - a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member 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.

7. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (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.

//NOTHING FOLLOWS//