

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20230015026

APPLICANT REQUESTS: reconsideration of his prior request for affirmation of the general discharge (GD) he received from the Army Discharge Review Board (ADRB) under the Department of Defense (DoD) Special Discharge Review Program (SDRP).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty)
- Department of Veterans Affairs (VA) Medical Document, April 2012

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 AR20160002756 on 16 January 2018.

2. The applicant states he was upgraded to honorable conditions in 1977 but his upgrade has not been recognized. He has been judged by today's standard. He has a benefits card from 1970 that outlines different guidelines. He has had many problems since serving in the military and remains under the care of the VA mental health clinic. He has flashback over the smallest things and his dreams are sometimes violent.

3. The applicant provides a VA medical document which shows the applicant has been treated in April 2012 for major depressive disorder and post-traumatic stress disorder (PTSD).

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

a. He enlisted in the Regular Army on 12 August 1968.

b. He was honorably discharged on 16 June 1969 for immediate reenlistment. His DD Form 214 shows he completed 10 months and 4 days of active service with no lost time. It also shows he served 4 months and 16 days in Korea.

c. The applicant reenlisted on 17 June 1969 for a period of 3 years. He was listed in the rank of private first class (PFC), E-3.

d. His DA Form 20 (Enlisted Qualification Record) shows he completed foreign service in Korea from 31 January 1969 through 16 March 1970.

e. He accepted nonjudicial punishment on two occasions:

- 20 August 1969 – for one specification of being absent without leave (AWOL) from on or about 31 July 1969 to on or about 13 August 1969
- 15 May 1970 – for one specification of being AWOL from on or about 4 May 1970 to on or about 14 May 1970; his punishment included reduction to private (PV2), E-2

f. On 30 June 1982, a DD Form 458 (Charge Sheet) shows court-martial charges were preferred on the applicant for five specifications of being absent without leave (AWOL):

- 4 May 1970 to 14 May 1970 (11 days)
- 17 May 1970 to 22 May 1970 (6 days)
- 18 Jun 1970 to 10 September 1970 (85 days)
- 19 October 1970 to 27 January 1971 (101 days)
- 21 October 1971 to 2 November 1971 (13 days)

g. After consulting with legal counsel, the applicant requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate
- 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 his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life
- he elected to submit a statement on his behalf

h. He submitted a statement to the separation authority on his own behalf which stated:

- while he was assigned in Korea, his wife was expecting a baby and he was unable to receive emergency leave
- he reenlisted for 6 years in order to be granted 30 days leave

- shortly after returning to Korea, he received notice that his wife was filing for divorce and the divorce was finalized before he returned stateside
- after returning from Korea, he was still carrying the emotional burden from his divorce and his emotionally charged state caused confusion
- he went AWOL hoping to reconcile his differences with his wife
- he would like a favorable discharge to attend school and get a great job

i. On 18 December 1971, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the good of the service. He would be issued an Undesirable Discharge Certificate and reduced to the lowest enlisted pay grade.

j. On 19 January 1972, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 1 year, 9 months, and 10 days of active service with approximately 345 days of lost time. He was assigned separation number 246 in accordance with AR 635-200, Chapter 10.

5. On 13 May 1977, the applicant applied to the Army Discharge Review Board (ADRB) for an upgrade of his discharge under the DoD SDRP. On 21 July 1977, he was notified that after reviewing the findings and conclusion of the ADRB, the Secretary of the Army directed that he be informed his discharge had been upgraded to under honorable conditions (general).

6. On 24 January 1979, the applicant was notified by the Military Review Boards Agency the ADRB could not affirm his DoD SDRP upgraded discharge under standards required by Public Law 95-126. He was also informed this action did not change the discharge he at the time, but it could impact his ability to acquire benefits from the Department of Veterans Affairs (VA).

7. On 5 March 1979, the applicant was notified by The Adjutant General the previous upgrade of his discharge had been reviewed as required by Public Law 95-126, and as a result of the review, the board determined his discharge did not qualify for upgrading under the new uniform standards for discharge review. He was further informed the upgraded discharge under the DoD SDRP was not affirmed. The applicant was issued a DD Form 215 (Correction to DD Form 214) reflecting the decision. He was advised the DD Form 215 he was issued in no way changed or modified the upgraded discharge he previously received. As a result of the new law, he would not be able to use the discharge to qualify for VA benefits.

8. On 23 June 2004, the ABCMR notified the applicant Presidential Proclamation 4313 (the Amnesty Program) was issued on September 16, 1974, by President Ford. It identified three categories of persons and permitted them to apply for a clemency

discharge. Those categories were civilian fugitives who were draft evaders, members of the military who were still absent without leave (AWOL), and former military members who had been discharged for desertion, AWOL, or missing movement. Those individuals who were AWOL were afforded the opportunity to return to military control and accept an undesirable discharge or stand trial. For those who elected to earn a clemency discharge (AWOL's and discharged members) they could be required to perform up to 24 months of alternate service. Upon successful completion a clemency discharge would be issued. The clemency discharge did not affect the individual's underlying discharge and did not entitle him to any VA benefits.

9. On 16 January 2018, the ABCMR rendered a decision in Docket Number AR20160002756. The Board found the applicant accepted nonjudicial punishment on two separate occasions for being AWOL and was subsequently pending court-martial charges for being AWOL. The applicant requested a discharge for the good of the service in lieu of trial by court-martial. The applicant applied to the DOD SDRP for an upgrade of his discharge under Public Law 95-126. His discharge was upgraded to general, under honorable conditions. His case was reviewed as required by law, and his discharge upgrade was not affirmed because his case did not meet uniform standards. The available records indicate this Board has all of the evidence that would have been available for review at the time it was determined his discharge upgrade would not be affirmed.

10. By regulation (AR 635-200), 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 conditions discharge normally is appropriate for a member who is discharged for the good of the service.

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

## 12. 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 discharge upgrade from Under Other Than Honorable Conditions. He stated that his discharge was previously upgraded in 1977. He indicated that PTSD and Other Mental Health conditions were related to his request.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the Army 12Aug1968. His MOS was 63B Wheel Vehicle Mechanic. He was deployed in Korea from 31Jan1969 to 16Mar1970. He was discharged on 19Jan1972 under provisions of AR 635-200 chapter 10 for the good of the service in lieu of trial by court-martial. The charge sheet included multiple instances of being AWOL: 04May1970 to 14May1970; 17May1970 to 22May1970; 18Jun1970 to 10Sep1970; 19Oct1970 to 27Jan1971; and 21Oct1971 to 02Nov1971. His service was characterized as Under Other Than Honorable Conditions. In June 1977, the ADRB upgraded his Under Other Than Honorable Conditions discharge to Under Honorable Conditions (General) effective 20Jun1977. However, this decision was subsequently overturned during a review in January 1979.

3. The applicant's statement at the time indicated family issues were the reason for his going AWOL. He stated his wife was expecting, she subsequently filed for divorce and completed divorce proceedings while he was deployed in Korea. The applicant went AWOL in unsuccessful pursuit of reconciling the marital relationship.

4. The applicant submitted 2012 VA records corroborating that he had been diagnosed with PTSD and Major Depressive Disorder. In a 25Jan2012 Mental Health Outpatient Note, he described that in Korea 1968 (as part of 2nd Div 74th Battalion C Co), his duties included assisting an orphanage for "disfigured kids". These children were the subject of his dreams. He also recalled seeing a prostitute try to kill her newborn by throwing the baby in front of a wrecker. He described feeling horrified about the way children were treated and how little they were valued in Korea; he reported these thoughts/images continue to bother him (30Mar2012 Psychology Note). He also had a personal history of childhood abuse.

5. There were no service treatment records available for review. An in-service mental status evaluation was not found. After discharge, VA records showed the applicant was diagnosed with PTSD. Under Liberal Consideration, the PTSD condition is mitigating for the AWOL offences which led to his discharge.

#### 6. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant has been diagnosed with PTSD.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant's in-service stressor for PTSD was due to exposure to horrific events in Korea.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Under Liberal Consideration, the applicant's PTSD condition is mitigating for the AWOL offences. Avoidant behavior, such as going AWOL, is a common sequela of PTSD.

**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 counsel's statement, 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 the applicant's records are absent any in-service mental status evaluation was not found. The opine noted, since the applicant's discharge, he has been diagnosed with PTSD by veteran affairs.

2. The Board determined the applicant did not meet the criteria for SDRP and the Army Discharge Review Board (ADRD) upgrade of his Under Other Than Honorable Conditions discharge to Under Honorable Conditions (General) effective 20Jun1977 was in error and the decision was subsequently overturned during a review in January 1979. Based on the preponderance of evidence, the Board agreed there is insufficient evidence that warrants reversal of the previous Board determination. Therefore, the Board denied relief.

**BOARD VOTE:**

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20160002756 on 16 January 2018.

■ [REDACTED]

[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. Public Law 95-126 enacted on 8 October 1977, provided generally, that no VA benefits could be granted based on any discharge upgraded under the DoD SDRP. It required the establishment of uniform published standards which did not provide for automatically granting or denying a discharge upgrade for any case or class of cases. The services were required to individually compare each discharge previously upgraded under one of the SDRPs to the uniform standards and to affirm only those cases which met those standards.
2. 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 and/or in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. 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.

4. 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.

5. 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.

6. 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//