

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 August 2024

DOCKET NUMBER: AR20230015082

APPLICANT REQUESTS:

- reconsideration of his earlier request for upgrade of his undesirable discharge
- as a new issue, correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show his year of birth as 1951 vice 1949
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record), 23 October 2023
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-Authored Statement, 18 October 2023
- Two DD Forms 214, 24 October 1970 and 13 July 1971

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 AR2002078456 on 8 April 2003.

2. The applicant annotated post-traumatic stress disorder (PTSD) and other mental health as issues/conditions related to his request. He further indicated reprisal or whistleblower issues are related to his request. He states:

a. After he reenlisted in 1970 to make the Army a career, he received a call that his girlfriend was pregnant. He wanted to take care of his future family because he felt the Army was a good place to raise his family. He received another call that she was having problems with the baby.

b. His commander gave him leave to go to Korea to visit her. The truck he was in was hit by gunfire and rocket-propelled grenades. The driver died in his arms when he

tried to help him. Another Soldier from Military Assistance Command-Vietnam took over. He was hit in his knee but it was not bad so he went on leave to Korea.

c. When he arrived in Korea, he was told the mother and child had died. He lost it after hearing this. He finally got himself together to return to his unit in Duc Pho, his commanding officer called the chaplain and he spoke to him a few times but was still lost.

d. His new first sergeant kept telling he and the others that the baby was not his and the only thing in Korea was thieves whenever he got drunk. He started using heroin and drugs to recover. The first sergeant would not let up on him and kept pushing on him. He left for Korea and was lost in grief until the military police picked him up and took him to Seoul Korea.

e. When he returned his unit was at Chu Lai and he had a new commanding officer who was referring him to court-martial. So he was back on drugs and heroin and no one would talk to him anymore and left him in his hootch. He was lost all over again and he couldn't handle it anymore.

f. He was reduced to private and told they wanted him to resign and they gave him a discharge and sent him to Fort Lewis. He was a good Soldier until all this happened. He knows he was wrong and knows he should have had a lot more respect for the Army.

g. The main reason for his request is to try to understand the situation he was in. He needs help as the Veterans Administration will not give him a disability rating and he has been trying since 1998. They cannot help him because of his discharge. He has many medical problems because of his time in Vietnam, including Agent Orange exposure, heart and blood problems, neuropathy, hypothyroidism, PTSD, coronary artery disease, chronic pain, and many others.

h. He asks for forgiveness for what happened over 50 years ago. He would have done this a long time ago if he had known of the review process.

3. A review of the applicant's service records show:

a. On 18 November 1968, he enlisted in the Regular Army. Item 21 (Date of Birth) of his DD Form 4 (Enlistment Contract) shows the contested year of birth as 1951.

b. He served in Korea from 2 July 1969 to 13 August 1970.

c. On 9 April 1970, he was promoted to private first class (PFC)/E-3.

d. On 2 September 1970, he deployed to Vietnam.

e. On 24 October 1970, he was honorably discharged in order to reenlist. His DD Form 214 for this period shows in:

(1) item 9 (Date of Birth) – shows the contested year of birth as 1949.

(2) item 22a (Net Service This Period) – 1 year 11 months, and 6 days;

(3) item 24 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – he was awarded or authorized:

- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)

f. On 25 October 1970, he reenlisted while he was assigned to Headquarters, Americal Division, Vietnam. The DD Form 4 for this reenlistment is not contained in the available records.

g. A DA Form 458 (Charge Sheet), his subsequent request for discharge and understanding of his rights memorandum under the provisions of Army Regulation 635-200 (Enlisted Separations – Enlisted Personnel), Chapter 10, his commander's approval memoranda, and the separation approval authority memorandum approving his request for discharge for the good of the service are unavailable for the Board to review.

h. On 12 July 1971, he returned from Vietnam to Fort Lewis.

i. On 13 July 1971, he was discharged. His DD Form 214 for this period shows in:

(1) item 9 – the contested year of birth as 1951.

(2) item 13a (Character of Service) – Under Other Than Honorable Conditions;

(3) item 22a (Net Service This Period) – 5 months and 8 days;

(4) item 24 – he was awarded or authorized:

- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with device (1960)

- Expert Marksmanship Qualification Badge with Rifle Bar (M-14)

(5) item 26a (Non-Pay Periods Time Lost (Preceding Two Years)):

- 9 February 1971 to 19 February 1971, 11 days
- 20 March 1971 to 5 June 1971, 66 days

j. On 24 July 1974, the applicant reenlisted. His DD Form 4 for this period is not contained in his available records.

k. On 21 November 1974 he was discharged under honorable conditions by reason of fraudulent enlistment after having served 3 months and 28 days. The DD Form 214 for this period shows in item 4 (Date of Birth) the requested year of birth as 1951.

l. On 31 May 1975, he again reenlisted. The DD Form 4 for this period shows the requested year of birth as 1951.

m. On 23 July 1975, he was discharged under honorable conditions by reason of fraudulent enlistment after having served 1 month and 23 days. The DD Form 214 for this period shows in item 4 (Date of Birth) the requested year of birth as 1951.

5. On 8 April 2003 and in ABCMR Docket Number AR2002078456, the Board found there was no basis to grant the applicant's request for upgrade of his discharge for the period ending 13 July 1971.

6. On 15 March 2024, the Case Management Division, ARBA requested the applicant provide medical documents supporting his request for PTSD and mental health issues; he did not respond.

7. On 8 May 2024, the Department of the Army Inspector General Agency (DAIG) responded by memorandum to the Deputy Legal Advisor, ARBA request for Army Inspector General Records pertaining to the applicant's issues, noting there were no DAIG database records responsive to his request.

8. The applicant did not provide a birth certificate or a federal document verifying his date of birth.

9. 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.

10. 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/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a discharge upgrade. On the DD 149, he has indicated that PTSD, Other Mental Health Conditions, and Reprisal/Whistleblower status are related to his request.

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The supporting documents for the period of Service under consideration shows he entered the regular Army for his final period of service on 31 May 1975 and was discharged with an under honorable conditions (general) characterization of service on 23 July 1975 under the provisions provided in chapter 14 of AR 635-200, Personnel Management – Enlisted Personnel (6 August 1974): Concealment of prior service.

d. A DD 214 shows the applicant entered the regular Army on 18 November 1968 and received an honorable discharge on 24 October 1970 and had served in Vietnam during this period.

e. A second DD 214 shows the applicant had previously entered the regular Army on 25 October 1970 and received an under other than honorable conditions discharge on 13 July 1971 under chapter 10 of AR 635-200. It shows the applicant had 101 days lost under 10 USC 972 3 period of absence without leave (AWOL).

f. On 25 June 1975, the applicant was informed by his company commander of the initiation of action to separate him from the Army for concealment of his prior service.

Review of his records in JLV shows the applicant was granted multiple VA service-connected disability ratings, none of which are for a mental health condition. Though he has been diagnosed with PTSD, it has not been service connected by the VA.

g. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? His PTSD has not been service connected by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the Board made the following findings and recommendations related to the requested relief:

- Discharge upgrade: DENY, based upon the misconduct leading to the applicant's separation and the lack of mitigation for such misconduct found in the medical review.
- Change Date of Birth: GRANT, based upon the DOB reflected on the applicant's enlistment contract, as well as other DD Form 214s in the record.

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 Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the periods ending 24 October 1970 and 13 July 1971 (two DD Forms 214), by changing the applicant's DOB to reflect the birth year of 1951.
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 upgrading the characterization of his discharge.

2/13/2025

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.

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 (Army Board for Correction of Military Records (ABCMR) prescribes policies and procedures for the ABCMR. It states, in pertinent part, the ABCMR considers individual applications that are properly brought before it.
 - a. Paragraph 2-9 contains guidance on the burden of proof. It states, in pertinent part, that the ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
 - b. 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.

c. The ABCMR may, in its discretion, hold a hearing or request additional supporting documentation or opinions. It states further, 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 (14 December 1973), provided the authority for separation of enlisted personnel upon expiration of term of service (ETS); the authority and general provisions governing the separation of enlisted personnel prior to ETS; the procedures for implementation of laws and policies governing voluntary retirement of enlisted personnel of the Regular Army by reason of length of service; and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. Chapter 10. Discharge For the Good of the Service. 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, United States, 1969 (Revised Edition), includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The request for discharge may be submitted at any time after court-martial charges are preferred against him, regardless of whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. The request for discharge may be submitted at any stage in the processing of the charges until final action on the case by the court-martial convening authority. An individual who is under a suspended sentence of a punitive discharge may likewise 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.

b. Chapter 14 Purpose. This chapter establishes policy and prescribes procedures for processing fraudulent entry cases and provides for the administrative disposition of enlisted personnel for misconduct by reason of fraudulent entry into the Service.

c. Paragraph 15-5. Incident of Fraudulent Entry. Fraudulent entry is the procurement of an enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment which, if known, might have resulted in rejection. Any incident which meets the foregoing may be cause for discharge for fraudulent entry. Some examples of fraudulent entry are--Concealment of prior service, concealment of true citizenship status, concealment of conviction by civil court, concealment of record as a juvenile offender, concealment of medical defects, and concealment of absence without leave or desertion from prior service. The establishment of the identity of Army personnel and verification of prior service in any of the US Armed Forces normally requires only comparison of fingerprints and examination of records. Accordingly, commanders will not request field investigations to establish evidence of prior military service.

4. Army Regulation 635-5 (Separation Documents), Effective 1 February 1967, prescribed the separation documents that would be furnished each individual who was separated from the Army including Active Duty Training personnel and established standardized procedures for the preparation and distribution of these documents. All available records would be used as a basis for the preparation of the DD Form 214, including DA Form 20, DA Form 66, and orders.

a. In item 9 (Date of Birth), self-explanatory, i.e., enter DOB, day, month, and year (DD-MMM-YY).

b. In item 11c (Authority and Reason), enter the authority for transfer or discharge by reference to the appropriate regulation, circular, bulleting, special separation directive, statute, etc., followed by the SPN and descriptive reason for transfer or discharge. Examples: 'Section III, Army Regulation 135-173, SPN 513, Essentiality to National Interest,' "10 U.S.C. 1201 or 1204, SPN 271, Retirement (Permanent Disability)," or "10 U.S.C. 3917, SPN 231, Retirement (30 years' Service)."

c. Appendix A-Separation Program Number (SPN) and Authority Governing Separations listed SPN 246 as designating the authority Army Regulation 5-200, Chapter 10 and the narrative reason, "Discharge for Good of the Service." 5 Department of Defense Directive 7050.06 (Military Whistleblower Protection), implemented the provisions of the MWPA as codified in Title 10, U.S. Code, section 1034.

a. The directive established policy that:

(1) Members of the Military Services (referred to in this directive as "Service members") are free to make protected communications.

(2) No person will restrict a Service member from making lawful communications to a member of Congress or an inspector general (IG).

(3) Service members will be free from reprisal for making or preparing to make or being perceived as making or preparing to make a protected communication.

(4) No person may take or threaten to take an unfavorable personnel action or withhold or threaten to withhold a favorable personnel action in reprisal against any Service member for making or preparing to make or being perceived as making or preparing to make a protected communication.

b. Protected communications are defined as:

(1) Any lawful communication to a Member of Congress or an IG.

(2) A communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including:

- a law or regulation prohibiting sexual harassment or unlawful discrimination
- gross mismanagement
- gross waste of funds or other resources
- an abuse of authority
- a substantial and specific danger to public health or safety

c. Reprisal is defined as "taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication."

d. A "personnel action" is any action taken that affects, or has the potential to affect, the military member's current position or career. Personnel actions include promotions; disciplinary or other corrective actions; transfers or reassignments; performance evaluations; and any other significant changes in duties or responsibilities inconsistent with the military member's grade.

6. 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 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 acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. 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. 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. 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.

9. 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//