

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: E [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20240000578

APPLICANT REQUESTS: the applicant defers to counsel for submission of his request, statement, and evidence.

COUNSEL'S REQUEST, STATEMENT, AND EVIDENCE:

a. Correction of the applicant's DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 14 April 1971, to show he was discharged with an honorable or a general (under honorable conditions) discharge instead of under other than honorable conditions (UOTHC) discharge.

b. A personal appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- The Veterans consortium pro bono program agreement to engage an attorney
- Legal Brief in support of application
- Self-authored letter
- Medical records
- DA Form 268 (Report for Suspension of Favorable Personnel Actions), 3 March 1970
- FG Form 7072 (Inventory of Personal Property)
- Absent Without Leave letter (AWOL), 23 March 1970, issued by the Department of the Army (DA) to the applicant's spouse
- Deserter Wanted by the Armed Forces Form, 21 April 1970
- DA Form 188 (Extract Copy of Morning Report), 21 April 1970
- Memorandum, Subject: Letter of Inquiry, 22 April 1970
- Commander's Report of Disciplinary Action Taken
- Letter Orders Number 51-7, 23 March 1971
- DA Form 19-32 (Military Police Report), 24 March 1971
- AHBMD-IP-Form 1 (Interview Sheet (partially illegible), 24 March 1971
- AHBPCF-IP-Form 2 (Waiver of Rights to Counsel), 24 March 1971
- Legal Section Worksheet, 24 March 1971

- DA Form 751 (Telephone or Verbal Conversation Record), 25 March 1971
- Memorandum, Subject: Request for Assistance, 29 March 1971
- 1AA Form 515 (Transmittal of Court-Martial Charges), 30 March 1971
- DD Form 493 (Extract of Military Records of Previous Convictions), 30 March 1971
- DD Form 458 (Charge Sheet), 30 March 1971
- Memorandum, Subject: Request for Discharge for the Good of the Service, 31 March 1971
- A partial memorandum subject: Request for Discharge for the Good of the Service Under the Provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), 6 April 1971
- Special Orders Number 75, 9 April 1971
- Special Orders Number 73, 13 April 1971
- Memorandum, Subject: Discharge for the Good of the Service Under the Provisions of Army Regulation 635-200, 14 April 1971
- Two partial DA Forms 20 (Enlisted Qualification Record)
- DD Form 214
- Financial Documents
- Army Regulation 40-501 (Medical Services-Standards of Medical Fitness)
- Hager Memorandum, 3 September 2014
- Carson Memorandum, 24 February 2016
- Kurta Memorandum, 25 August 2017
- Wilkie Memorandum, 25 July 2018
- Research Report 1229: Characteristics of Army Deserters in the Department of Defense (DOD) Special Discharge Review Program, October 1979

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's legal brief has been provided for the Board's review in its entirety; however, counsel states, in effect:

a. The applicant requests the Board to grant liberal consideration of his specific circumstances and upgrade his discharge. He repeatedly sought the help of health care to assist him with his declining mental health concerns, which were documented, but not evaluated during his service. This resulted in him going AWOL, which he does take full responsibility.

b. He volunteered to serve, but after the loss of his brother in Vietnam, he was terrified of leaving behind his wife and infant child. He faced unrelenting racism and racial epithets as an African American Soldier and was often subject to horrible treatment at the hands of fellow servicemembers. Soon after beginning basic combat training, he began suffering from severe depression and anxiety (which has since been diagnosed as post-traumatic stress disorders (PTSD)).

c. He was not medically evaluated or discharged due to his condition, instead he was reassigned, and while tormented by his escalating mental health issues he began to spiral into a deep mental health crisis. In the depths of his depression, he ultimately went AWOL on 25 February 1970.

d. His mental health condition and individual circumstances should be seen as a mitigating factor for his AWOL, which resulted in an UOTHC discharge. The leniency he seeks now is no different than that shown to the many who evaded service altogether. He was discharged to preserve good order; however, it was unjust to do so when he was experiencing such clear and documented mental health issues.

### 3. Counsel provides:

a. A self-authored letter from the applicant that is available in its entirety for the Board's review, in addition to the aforementioned statement, in which he further explains, in effect:

(1) He enlisted with the military occupational specialty of Military Police (MP), just like his brother that passed away while serving in Vietnam. Although he personally did not serve in Vietnam, he was and still is affected by anxiety, fear, anger and is triggered by any military event or celebration, any image of war, and military burials that cause him to shake in fear. He sought care for his stress, fear, and anxiety, and although was prescribed medication, he feels as if medical personnel did not care for his conditions. After his brother's passing, he was scared, could not eat or sleep so he went AWOL.

(2) He is now employed as a school bus driver and serves as an usher while also providing a variety of assistance to his church. He's had a few disorderly conduct charges filed against him in the past, but he has never harmed anyone. He loves his family, and hopes all fears and memories go away.

(3) He cannot apologize for being scared of the war, as this was caused by the passing of his brother, and he felt he would not have been a good Soldier, at the time. He was overwhelmed and his mind was clouded, as he was a newlywed Soldier with a young child and his mother was in distress. His fear should not have caused a UOTHC discharge, and he believes it should be upgraded.

b. Medical records that will be reviewed and discussed by the Behavioral Health staff at the Army Review Boards Agency (ARBA).

c. DA Form 268, 3 March 1970, shows the applicant was flagged and subsequently dropped from rolls (DFR) on 20 April 1970.

d. FG Form 7072, 20 March 1970, shows a detailed inventory of his personal belongings was conducted, after he was reported AWOL.

e. On 23 March 1970, the Department of the Army issued a letter informing his spouse that he was reported AWOL on 20 March 1970. This document further shows she was asked to encourage him to report to the nearest installation as this absence would result in disciplinary action.

f. In a memorandum subject: Letter of Inquiry, 22 April 1970, shows he was eliminated from advanced individual training (AIT) due to his unsuitability to become an MP. After notifications to his spouse and his local law enforcement, it was concluded that the applicant was a disciplinary problem and a continuous potential for AWOL due to his inability to adjust to military life.

g. Letter Orders Number 51-7, 23 March 1971, show the applicant was escorted to the U. S. Army Personnel Correctional Facility (PCF) in Fort George Mead, MD, on 24 March 1971.

h. Memorandum subject: Request for Assistance, 29 March 1971, shows the U. S. Army PCF, Fort George Mead, MD, requested information from the applicant's unit, regarding his duty status.

4. The applicant's service record reflects the following:

a. The service record does not provide his enlistment documents; however, the DD Form 214 shows he enlisted in the Regular Army on 15 October 1969.

b. DA Form 2627 (Record of Proceedings Under Article 15, UCMJ) shows he received non-judicial punishment under the provisions of Article 15, UCMJ, on 2 February 1970, for: having received a lawful order from Sergeant First Class L. E., his superior noncommissioned officer, to "stand at parade rest", did on or about 23 January 1970, willfully disobey the same. His punishment consisted of forfeiture of pay of \$17.00, 14 days extra duty and restriction. He did not appeal.

c. A Deserter Wanted by the Armed Forces form, 21 April 1970, reflects his date of absence as 20 March 1970, with a DFR date 19 April 1970.

d. DA Form 188, 21 April 1970, also shows his date of absence as 20 March 1970, with a DFR date 19 April 1970.

e. In the Commander's Report of Disciplinary Action Taken form, reflects the following:

(1) On 23 March 1971, a relative of the applicant, contacted local law enforcement stating the applicant was returned to MP custody after his release on 8 April 1970 and was instructed to return to his unit no later than 9 April 1970.

(2) Law enforcement officer advised the relative they had no record to substantiate the claim, and they could not adjust his AWOL period.

(3) The applicant was released from the custody of the local authorities on 24 March 1971, and transported to the correctional facility in Fort George Mead, Maryland (MD).

f. DA Form 19-32, 24 March 1971, reflects the applicant surrendered to local authorities on 22 March 1971.

g. AHBMD-IP-Form 1, 24 March 1971, shows he arrived and was processed on 24 March 1971, and the reason for his AWOL was family problems.

h. AHBPCF-IP-Form 2, 24 March 1971, reflects the applicant was informed by the interrogator tasked to question him about the offense of AWOL, which he was accused or suspected, acknowledged and agreed to his rights. He further stated he did not want to consult with a lawyer, answer questions or make a statement.

i. Legal Section Worksheet, shows he was placed in pretrial confinement on 24 March 1971, for the following charges:

(1) Charge I: Violation of the Uniform Code of Military Justice (UCMJ), Article 86. Specification: on or about 25 February 1970, without authority absent himself and remain so absent until on or about 7 March 1970.

(2) Charge II: Violation of the UCMJ, Article 86. Specification: on or about 20 March 1970, without authority absent himself and remain so absent until on or about 22 March 1970.

(3) Charge III: Violation of the UCMJ, Article 86.

(4) Charge IV: Violation of the UCMJ, Article 86.

j. DA Form 751, 25 March 1971, reflects the following changes in the applicants status:

- 25 February 1970: AWOL
- 17 March 1970: returned to military control
- 30 March 1970: AWOL
- 19 April 1970

k. Special Orders Number 61, 26 March 1971, show he was assigned to the U. S. Army PCF, Fort George Mead, MD, after he was returned to military control from an AWOL status, and having been DFR.

l. 1AA Form 515, 30 March 1971, reflects his commanding officer recommended trial by Special Court-Martial, resulting from his non-judicial punishment of two Article 15s.

m. DD Form 493, 30 March 1971, shows he had no prior offences.

n. DD Form 458, 30 March 1971, reflects charges were preferred against him, for two counts of AWOL, a Violation of the UCMJ, Article 86. This document further shows:

(1) Specification I: On or about 25 February 1970, without authority absent himself and remain so absent until on or about 17 March 1970.

(2) Specification II: On or about 20 March 1970, without authority absent himself and remain so absent until on or about 22 March 1970.

o. In a memorandum subject: Request for Discharge for the Good of the Service, 31 March 1971, shows the applicant consulted with counsel and voluntarily requested to be discharged under the provisions of AR 635-200, Chapter 10. He further understood and agreed to the following:

- He may request discharge for the good of the service following charge(s) which had been preferred against him under UCMJ, which authorizes the imposition of a bad conduct or dishonorable discharge
- He might be discharged and given an UOTHC discharge
- He might be deprived of many or all Army benefits and he might be ineligible for many or all benefits as a veteran under both Federal and State laws
- He might expect to encounter substantial prejudice in civilian life because of a UOTHC discharge
- He elected not to make a statement in his own behalf

p. On 6 April 1971, his commanding officer, recommended the applicant be discharged under the provisions of AR 635-200, Chapter 10 (for the good of the service), and that he be issued an UOTHC discharge.

q. Special Orders Number 75, 9 April 1971, show he was to be discharged under the provisions of AR 635-200, Chapter 10 (for the good of the service), this document does not provide an effective date.

r. Special Orders Number 73, 13 April 1971, reflect he was reassigned to the Separation Transfer Station or Transfer Point for separation processing.

s. On 14 April 1971, the separation authority approved the request for the applicant's discharge under the provisions of AR 635-200, for the good of the service. He also directed he be reduced to the lowest possible grade of private (PVT) E-1.

t. DD Form 214 for the period ending 14 April 1971, shows he was discharged with an UOTHC discharge, pursuant to AR 635-200, Chapter 10, for the good of the service. He received a Separation Program Number (SPN) code of "246" and a reentry code of "3". He completed 5 months of active service. Lost time during this period was from 25 February 1970 to 16 March 1970 and from 20 March 1970 to 23 March 1971. His grade at the time of discharge was PVT/E-1.

5. Due to the applicant's claim of PTSD, and other mental health issues, the case is being forwarded to the Behavioral Health staff at ARBA.

6. Army Regulation 15-185 (Army Board for Correction of Military Records), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

## 7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends he experienced mental health conditions including 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 15 October 1969; 2) On March 1971, the applicant's commanding officer recommended a trial by Special Court-Martial, resulting from his non-judicial punishment of two Article 15s for two specifications of going AWOL from 25 February-17 March 1970 and 20 March 1970-22 March 1971; 3) The applicant was discharged on 14 April 1971, Chapter 10, for the good of the service. His service was characterized as UOTHC.

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

c. The applicant asserts he was experiencing mental health conditions including PTSD, which mitigates his misconduct. There is evidence the applicant was reporting depression, nervousness and headaches in January and February 1970. He had been prescribed Valium and referred to mental health services. Later during his separation physical on 30 March 1971, he also reported experiencing depression or excessive worry.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability. The applicant provided civilian medical documentation that he was seen by a clinical psychologist from the Bluestem Behavioral Health Group, dated 07 January 2022. The applicant reported a history of trauma. One incident the applicant reported was related to the death of his brother and seeing his body prior to his enlistment in the Army. The applicant attributes his difficulty with his own enlistment in the military to this experience. The applicant was diagnosed with PTSD, but he was not interested in engaging in treatment at that time.

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 was experiencing difficulty adjusting to the military and experiencing mental health symptoms at the time of his active service. Later in 2022, he was diagnosed by a civilian provider with PTSD related to an experience he had prior to his enlistment in the Army.

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 mental health conditions including PTSD that mitigates his misconduct. There is evidence the applicant was experiencing difficulty adjusting to the military and was reporting with depressive and anxiety symptoms while on active duty. He was later diagnosed with PTSD related to a history of trauma with some traumatic experiencing occurring prior to his enlistment.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct. There is evidence the applicant was experiencing difficulty adjusting to the military and was reporting with depressive and anxiety symptoms while on active duty. He was later diagnosed with PTSD related to a history of trauma with some traumatic experiencing occurring prior to his enlistment.



(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant had been reporting symptoms of a mental health condition while on active service. He was later diagnosed with PTSD related to a history of trauma with some traumatic experiencing occurring prior to his enlistment. The applicant's difficulty adjusting to the military and then going AWOL could be erratic and avoidant behavior, which can be a natural sequelae to some mental health conditions including PTSD. Thus, per Liberal Consideration, there is sufficient evidence the applicant was experiencing a mitigatable mental health condition at the time of his active service.

#### BOARD DISCUSSION:

1. 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 through counsel 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 through counsel of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding sufficient evidence to support the applicant was experiencing difficulty adjusting to the military and experiencing mental health symptoms at the time of his active service. The opine noted the applicant's difficulty adjusting to the military and then going AWOL could be erratic and avoidant behavior, which can be a natural sequelae to some mental health conditions including PTSD.

2. The Board noted, the applicant accepts responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers. The Board applauds the applicant's post service achievements and his community engagement. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL. The Board determined that clemency is warranted based on liberal consideration, how the applicant has changed his life in a positive way as a leader and mentor within his community. As such the Board granted relief to upgrade the applicant's discharge to under honorable (general) conditions.

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 Board determined the evidence presented is sufficient to warrant a recommendation for 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 his characterization of service as general, under honorable conditions.

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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 (Armed Forces), 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), currently in effect, 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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, provided the authority for separation of enlisted personnel upon expiration term of service, prior to ETS, and the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. 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 Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

4. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, states the Separation Program Number (SPN) code is a number used in statistical accounting to represent the specific authority and reason for separation. SPNs are an integral part of the authority for separation shown in orders and on the DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge). SPN-246 is the appropriate code to assign to enlisted Soldiers who are administratively discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, Discharge for the Good of the Service.

5. 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.

6. 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.

7. 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.

8. Title 10 (Armed Forces), U.S. Code, section 1556 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//