

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 August 2024

DOCKET NUMBER: AR20240000642

APPLICANT REQUESTS:

- an upgrade of his under conditions other than honorable discharge to honorable
- reinstate rank to E-5
- a personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Veteran Service Officer letter
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 24 November 1969
- DD Form 214, 22 October 1971
- Spouse support letter, ([REDACTED].)
- Support letter, ([REDACTED].)
- Support letter, ([REDACTED].)
- Support letter, ([REDACTED].)
- Checklist for screening records
- Request for final type Physical examination and mental status evaluation, 13 September 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 was diagnosed with post-traumatic stress disorder (PTSD) related to time in service. If he had not been through a traumatic event and have been diagnosed with PTSD, he would have received an honorable discharge. Veteran has been treated for PTSD and is seeking therapy options. He has been suffering from

PTSD since his return from Vietnam and has been diagnosed with other presumptive conditions related to Agent Orange Exposure.

a. In a self-authored statement, he states he made mistakes when he came home from Vietnam, and he has spent many years trying to correct them. He joined the Army before he turned 18 so that he could fight for his country. He did not know what Vietnam would bring, but he wanted to do the right thing. He had hoped to make the Army a full 20-year career, but he was not prepared for what would happen to him when he shipped off to Vietnam.

b. He had worked so hard to move up in rank and complete as much training as he could. He became a sergeant in just over a year. He thought he was invincible. But then it was his turn to go, and he saw things he could never unsee. His job was to report back and forth from the field to command about intelligence and infantry movements. He watched so many of his friends die or come home damaged. He felt like he was sending his friends to the field to die while he gave commands that put them in harm's way.

c. It broke him and when his tour was over, he turned to drugs to deal with his PTSD. He was not home for very long before he was told he had to go back. He went absent without leave (AWOL) hoping that command would change their minds. When he returned after two months, they said he was still going back. He could not do it and he went AWOL again for almost a year hoping that the war would end, and no one would have to go back.

d. He was so ashamed, and it took him almost 40 years before he would even talk about it. His friend █████ was the first person he told what happened when he was in Vietnam. He never judged him, and he understood what he had gone through. After he died, he did not talk about it until his friend █████ asked him why he was not going to Veterans Affairs (VA) for healthcare.

e. It took him almost a year to tell her the truth, and he was grateful that she did not judge him. Besides his wife, they are the only two people who knows what happened to him and what he went through. █████ encouraged him to complete this process and ask the Army for forgiveness.

f. He has tried hard to be a good member of the community and help others when he can. He has done work with Federal Emergency Management Agency and ran a fundraiser for 9/11 families as well as tattoo work for any firefighters and police officers that served at the towers. He is involved in local veteran groups and tries to support them as much as possible. He hopes that his mistakes can be looked at for what they are, and his accomplishments may outweigh them. He also hopes that the Army will

consider a request for an upgrade of discharge and bring him some peace after all this time.

3. The applicant enlisted in the Regular Army on 2 October 1968. He held military occupational specialty 11B (Light Weapons Infantryman).

4. He received non-judicial punishment on 19 November 1968, for on or about 2000 hours, 16 November 1968, without proper authority go from his appointed place of duty and did remain so absent until on or about 1330 hours, 17 November 1968.

5. His DA Form 20 (Enlisted Qualification Record) shows:

- He was promoted to sergeant (SGT)/E-5 (temporary (T)) on 8 July 1969 by authority of special orders 161
- He served in Vietnam as a Team Leader from 9 November 1969 – 8 November 1970
- He was assigned to Company B, 1st Battalion, 27th Infantry until 3 December 1969, he then became Operations Specialist for Headquarters and Headquarters Company, 3d Brigade, 25th Infantry Division

6. During this deployment he was honorably discharged on 24 November 1969 for immediate reenlistment after 16 days in country. His DD Form 214 shows in item 5a (Grade, Rate, or Rank) and 5b (Pay Grade): SGT (T)/E-5. Item 30 (Remarks): private first class (permanent) appointed 3 March 1969.

7. He received non-judicial punishment on:

a. 18 April 1970, for on or about 15 February 1970, disobeyed 3d Brigade and 25th Infantry Division regulations by willfully carrying on his person an illegal privately owned .45 caliber automatic weapon.

b. 15 May 1970, for on or about 0700 hours, 7 May 1970, absent himself from his unit and did remain so absent until on or about 2100 hours, 13 May 1970.

8. On 7 September 1971, under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, he requested discharge for the good of the service. He understood:

- He may be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate
- As a result of the issuance of such a discharge, he shall be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered

by the Veteran's Administration, and that he may be deprived of his rights and benefits as a veteran under both federal and state law

- He also understood that he may expect to encounter substantial prejudice in civilian life by reasons of an undesirable discharge
- Prior to completing this form, he had been afforded the opportunity to consult with appointed counsel, or military counsel of his own choice, if he is reasonably available, or civilian counsel at his own expense

9. On 8 September 1971, court-martial charges were preferred for the charges of AWOL from on or about 3 June 1970 until on or about 21 August 1970 and on or about 26 August 1970 until on or about 19 August 1971.

10. On 13 September 1971, the applicant underwent a separation physical examination and mental evaluation in which he was qualified for separation. He was found mentally responsible, able to distinguish right from wrong, able to adhere to the right, and has the mental capacity to understand and participate in Board proceedings.

11. On 20 September 1971, his chain of command recommended disapproval. He did not have a previous conviction therefore he does not meet the requirements of Chapter 10, AR 635-200.

12. On 15 October 1971, the separation authority approved the separation request UP of chapter 10, AR 635-200, for the good of the service. He would be given an Undesirable Discharge Certificate. He would also be reduced to the lowest enlisted grade.

13. Accordingly, he was discharged under conditions other than honorable on 22 October 1971, UP AR 635-200. His DD Form 214 shows he completed a total of 1 year, 10 months and 2 days of active service. He was awarded or authorized the National Defense Service Medal, Vietnam Service Medal, and Vietnam Campaign Medal with 60 Device. Items 5a and 5b reflect private/E-1 with a date of rank of 15 October 1971.

14. The applicant provided:

a. Spouse support letter (██████) describing his state of mind from Vietnam. She explained some of his symptoms and mental struggles. (The entire letter is available for the board's review).

b. Support letter (██████) describing the applicant as a reliable, dependable, responsible and faithful person. When he commits to something, he has proven himself trustworthy to carry out his commitments. (The entire letter is available for the board's review).

c. Support letter ( ) describing the applicant as a person of very good moral character. He maintains integrity, and never has a bad word to say about anyone. He is also a hard-working dedicated driver, who works diligently to pick up and deliver his freight on time.

d. Support letter ( ) describing the applicant as a great person and excellent friend. He has given countless hours as well as his own funds helping others. He continued to support Veteran organizations, Toys for Tots, Battered Women's Shelter, as well as collecting goods for Disaster Response Teams which help after a natural disaster such as a hurricane, tornado, or wildfire damage. He has shown to have a generous, kind, and devoted character toward others. He is a person with a lot of integrity and makes a great effort to make sure he is always a respectful person. (The entire letter is available for the board's review).

e. Checklist for screening records which shows his record of lost time, and reason, disciplinary action under Article 15, and conduct and efficiency which were all excellent until 20 August 1971.

15. There is no evidence the applicant applied to the Army Discharge Review Board within the board's 15-year statute of limitations.

16. 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.

17. By regulation, AR 15-185 (ABCMR) 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.

18. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of this regulation provides, in part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may at any time after charges have been preferred submit a request for discharge for the good of the service in lieu of trial by court-martial. A discharge under other than honorable conditions is normally considered appropriate. When a member was to be discharged under other than honorable conditions, the convening authority would direct an immediate reduction to the lowest enlisted grade.

19. Grade: By regulation (AR 635-5), items 5a and 5b of the DD Form 214 list the rank/grade held by the Soldier at the time of separation, indicating whether permanent or temporary.

## 20. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents (including multiple character references), 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 an upgrade in discharge from Under Conditions Other Than Honorable to Honorable. He contends that he would have been discharged honorably were it not for his service related PTSD condition.
2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered Regular Army 02Oct1968. His primary MOS was in Infantry. He served in Vietnam from 09Nov1969 to 08Nov1970. He was discharged honorably and immediately reenlisted 24Nov1969. He was discharged 22Oct1971 under provisions of AR 635-200 chapter 10. The discharge code was SPN 246, for the good of the service. His service was characterized as Under Conditions Other Than Honorable. The charge sheet included two instances of being AWOL 03Jun1970 to 20Aug1970 (79 days) and 26Aug1971 to 19Aug1971 (359 days).
3. The applicant underwent a Mental Status Evaluation on 13Sep1971. No abnormalities were found in his behavior, level of alertness or orientation, mood, thought process or content, or memory. The examiner did not find any significant mental illness. The applicant was assessed to be mentally responsible, and able to distinguish right from wrong and to adhere to the right. He had the mental capacity to understand and participate in Board proceedings. The examiner opined that he met retention standards of AR 40-501 chapter 3. The record also showed 'excellent' conduct and 'excellent' efficiency from 14Oct1968 through 24Nov1969. On 20Aug1971, both were deemed 'unsatisfactory'. The 13Sep1971 Report of Medical Examination (SF 88) for chapter 10 separation listed Drug Abuse under summary of defects and diagnoses. There were no other significant abnormalities. He was deemed qualified for chapter separation. In the accompanying Report of Medical History, the applicant endorsed trouble sleeping and depression. In the 23Sep1971 memorandum to command, it was noted that the applicant reported that upon his return from Vietnam while on reenlistment leave, he received a civilian conviction for possession of marijuana. He went AWOL and upon his return learned he would be sent back to Vietnam to complete his tour and went AWOL again.
4. The 13Sep1971 Report of Medical Examination showed physical profile PULHES 111111. There were no other in-service medical records available for review. Based on records available for review, evidence was insufficient to support that the applicant had a condition which failed medical retention standards of AR 40-501 chapter 3 at the time

of discharge from service. Referral for medical discharge processing was not warranted.

5. Liberal Consideration guidance was considered. JLV search revealed the applicant has been diagnosed PTSD due to his experiences in Vietnam (24May2024 Mental Health Note, VAMC). The applicant also endorsed a prior history of cannabis use to treat symptoms related to his PTSD condition. Under Liberal Consideration, the PTSD condition is mitigating for the AWOL offence which led to the applicant's 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 has been diagnosed with PTSD with the stressor being combat deployment in Vietnam.




(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. PTSD can be manifested by avoidant behavior (AWOL offence). Substance use (self-treatment with marijuana) is also a common sequela of PTSD.

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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the period of honorable service completed prior to any misconduct, to include service in Vietnam; the misconduct leading to the applicant's separation; and the mitigation found in the medical review, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to Honorable and to restore his rank to Sergeant/E5.

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 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:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change
- Grade, Rate or Rank (Block 5a): SGT
- Pay Grade (Block 5b): E-5
- Date of Rank (Block 6): 8 Jul 69

2. Prior to closing the case, the Board noted the administrative notes below from the analyst of record and recommended those changes also be completed to more accurately reflect the military service of the applicant.

3/6/2025

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.



ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214, ending 22 October 1971, omitted authorized awards in item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): Therefore add:

- 4 bronze service stars to previously awarded Vietnam Service Medal
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Republic of Vietnam Civil Actions Honor Medal First Class Unit Citation
- Parachutist Badge

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 (AR) 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 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. AR 635-200 (Personnel Separation – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of the version in effect at the time provided that a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could submit a request for discharge for the good of the service at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration

benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An undesirable discharge certificate would normally be furnished an individual who was discharged for the good of the Service.

a. Paragraph 1-28 provides that when a member is to be issued a discharge under other than honorable conditions, the convening authority will direct his immediate reduction to the lowest enlisted grade.

b. Paragraph 3-7a provides that 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.

c. Paragraph 3-7b provides that 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.

4. AR 635-5(Personnel Separations – Separation Documents), prescribes the separation documents that will be furnished each individual who is separated from the Army. Items 5a and 5b of the DD Form 214 list the rank/grade held by the Soldier at the time of separation, indicating whether permanent or temporary.

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. 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; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

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. 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.

//NOTHING FOLLOWS//