

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20240001212

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his under other than honorable conditions discharge (UOTHC) and change the narrative reason for separation.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States) Correction of Military Record)

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 AR20160014087, on 9 August 2018.
2. The applicant states in effect, the narrative reason should be changed upgraded due to the way they were treated. He lists post-traumatic stress disorder (PTSD) as related to his request.
3. The applicant does not provide any supporting documentation regarding his claim of PTSD.
4. The applicant's service record shows the following information:
  - a. DD Form 47 (Record of Induction) reflects he was inducted into the Army of the United States on 7 July 1970.
  - b. DA Form 20 (Enlisted Qualification Record) show in item 31 (Foreign Service) he served in Vietnam from 28 January 1971 to 24 August 1971 and in item 38 (Record of Assignments) he was assigned to the Battery C, 3rd Battalion, 319th Field Artillery Regiment, 173rd Airborne Brigade.
  - c. The Deserter Wanted by the Armed Forces Form, 20 December 1971 reflects the applicant departed his unit in an absent without leave (AWOL) status and on 16 September 1971, and was dropped from Army rolls as a deserter on 17 October 1971.

d. Court-martial charges were preferred against the applicant on 25 May 1972. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from 16 September 1971 to 24 May 1972.

e. On 30 May 1972, the applicant voluntarily requested a discharge under the provision of Army Regulation 635-200 (Personnel Separations-Enlisted Separations), Chapter 10, in lieu of trial by court-martial. The applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an undesirable discharge; the procedures and rights that were available to him.

(1) He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Department of Veteran Affairs, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life if discharged under a UOTHC discharge and furnished an Undesirable Discharge Certificate.

(2) He elected to submit statements in his own behalf. In his statement, the applicant indicated that he had completed 9th grade and had not had any trouble with his education. He also completed basic combat and advanced individual training and he served in Vietnam. He had never had an Article 15 or a court-martial; he simply wanted out of the Army as he tried to like the Army but could not do it. He went AWOL because there was so much harassment, due to too many losses, and due to his own financial problems.

f. On 2 June 1972, the applicant's commander recommended trial by special court martial.

g. On 13 June 1972, his immediate commander recommended approval of the applicant's voluntary request for discharge with the issuance of an Undesirable Discharge Certificate.

h. The separation authority approved the discharge action on 22 June 1972 under the provisions of Army Regulation 635-200, Chapter 10, and ordered the applicant reduced to the lowest enlisted pay grade and be issued an Undesirable Discharge Certificate.

i. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service-in lieu of trial by court-martial on 22 June 1972. He had a separation program number (SPN) of 246 and reenlistment code 3. His service was characterized as UOTHC. He completed 1 year, 2 months, and 9 days of

net active service. He had lost time from 16 September 1971 to 21 June 1972. He was awarded or authorized the:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with 1960 device
- Overseas Service Bar (one)
- Parachutist Badge

5. In a prior ABCMR Docket Number AR20164087, boarded on 9 August 2018, the Board noted 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 for correction of the applicant's records and denied his request for upgrade.

6. On 9 May 2024, a staff member at ARBA, requested the applicant to provide medical documents that support his issue of PTSD. As of 6 June 2024, no response was provided.

7. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

8. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade of his Under Other than Honorable characterization of service and change in narrative reason for separation. He contends the change is supported due to "the way we was treated." The applicant marked PTSD on the DD Form 293.

b. 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:

- The applicant enlisted into the Regular Army on 07 July 1970.
- The applicant served in Vietnam from 28 January 1971 to 24 August 1971.
- On 25 May 1972 Court-Martial charges were preferred against them for AWOL between 16 September 1971 and 24 May 1972.
- On 30 May 1972, the applicant requested voluntary discharge under AR 635-200, Chapter 10, in lieu of trial by Court-Martial.
- On 13 June 19732, the immediate Commander recommended approval of the Chapter 10 discharge.
- The applicant was discharged on 22 June 1972.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant's separation file contains a 27 May 1972 statement by the applicant. The applicant outlines education through the 9<sup>th</sup> grade without "very much trouble with my educational problems," academic not conduct related. Given the applicant's GT score and this statement, it is likely the applicant's cognitive abilities were low with potential of a learning or developmental disability. The applicant further noted a lack of legal issues in the civilian or military world until the AWOL. Additionally, he reported attempts to adjust to the Army, but went AWOL due to "much harassment and to(o) many losses."

d. The separation file is void of a separation Mental Status Exam. Although not routine procedure for a Chapter 10, these can be requested upon return from AWOL especially after combat service. However, at that time this current practice often did not occur. Accordingly, an absence of a Mental Status Exam or related behavioral health appointment/s does not equate to a lack of behavioral health symptoms, difficulties, or conditions.

e. The VA's Joint Legacy Viewer (JLV) was also reviewed. The applicant attempted contact in June 2016, but deemed ineligible for services due to his discharge. While he could seek services with recent VA eligibility changes, it is more likely than not the applicant is unaware of this. Accordingly, a lack of VA records or service connection does not equate to a lack of behavioral health symptoms, difficulties, or conditions.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant more likely than not had a condition mitigating the misconduct. The applicant had no prior disciplinary issues, pre- or in-service; the AWOL occurred in isolation after a combat deployment. Moreover, in the applicant's statement upon return from AWOL, he references the combat losses as well as experiences of harassment as the basis for leaving. Lastly, the applicant's GT score, in combination with his educational history, suggest the applicant's intellectual abilities were below average with more concrete and action-oriented problem solving. Specifically, he would not have engaged in higher order thinking and decision-making processes, weighing all options and consequences. Rather, he would have reacted in a tangible manner to his anxiety and/or distress; he went AWOL. Accordingly, while the applicant does not have a diagnosis on record, the available documentation does support the applicant was experiencing distress after Vietnam service, and possible harassment, leading him to go AWOL in an attempt to resolve symptoms. As such, it is more likely than not the applicant had an undiagnosed trauma/anxiety condition while serving driving the misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. It is more likely than not the applicant had an undiagnosed trauma/anxiety condition which, combined with lower cognitive abilities, influenced his decision to go AWOL.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Based on liberal consideration, the likelihood of an undiagnosed trauma/anxiety condition, and nexus between trauma and avoidance, the AWOL is mitigated.

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 fourteen months of honorable service completed prior to any misconduct, the misconduct leading to the applicant's separation and the mitigation for that misconduct found by the medical review, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to General, Under Honorable Conditions and changing the narrative reason for separation to Secretarial Authority.

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:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: AR 635-200
- Separation Code: JFF
- Reentry Code: No change
- Narrative Reason for Separation: Secretarial Authority

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. Section 1556 of Title 10, U.S. Code (USC), 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.

2. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

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 Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. 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.

3. Army Regulation 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for:

a. Block 11c, (Reason and Authority), is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635-5-1 and the narrative reason for separation will be entered as provided in Army Regulation 635-5-1

b. Block 13a (Character of Service) characterization or description of service is determined by directives authorizing separation. Proper completion of this block is vital since it affects the Soldier's eligibility for post-service benefits. Only six standard characterizations in this block are authorized: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable and uncharacterized.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from

Active Duty). The SPN 246 (is to be used for RA Soldiers discharged for the good of the service-in lieu of trial by court martial).

5. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPN code 246 has a corresponding RE Code of "3."

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

7. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

8. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional



processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

9. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

10. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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 UOTHC 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.

11. 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 to 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.

12. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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 on the basis of equity, injustice, or clemency grounds, Boards 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.

//NOTHING FOLLOWS//