

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 October 2024

DOCKET NUMBER: AR20240001408

APPLICANT REQUESTS: reconsideration of his previously denied requests for an upgrade of his under other than honorable conditions (UOTHC) discharge.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Department of Veterans Affairs (VA) letter, 10 August 2023
- Letter from VA Southwest Vet Center to VA Regional Office, 17 August 2023
- Character reference letters (seven)

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:

- Dockets Number AC04-05933 on 4 May 1994
- Docket Number AR20190003979 on 8 November 2022.

2. The applicant states, as a new argument that his undiagnosed condition of post-traumatic stress disorder (PTSD) stemming from his combat service in Vietnam and racial discrimination he endured both in Vietnam and at Fort Hood, TX was a significant contributing factor for the misconduct that resulted in his involuntary discharge from the Army.

a. His military journey started in high school when a friend of his enlisted in the Army and was sent to Vietnam. That became the moment he realized that he wanted to serve his country as an infantry Soldier in the U.S. Army. Upon completion of training, he was deployed to Vietnam. Fighting in the Vietnam War was an event that he was not mentally or emotionally prepared for. On a daily basis, they were engaged in multiple firefights with the Vietcong and even some of the Vietnamese civilians who pledged allegiance to them. They were shot at by not only men, but also women and children.

b. As someone with deeply rooted Christian beliefs, it became a daily moral struggle to have to engage in such firefighting with kids, who were being used as innocent pawns in an effort to advance the Vietcong's own self-interests. Knowing he had to do what he had to do because if he did not it could mean one of his fellow Soldiers might become a casualty was a tough reality. Watching his fellow Soldiers get killed in battle made him wonder if he could be next. There were times when enemy bullets just barely missed him.

c. During this timeframe, racial tensions were aggressive. Despite his military service, he was still subjected to discrimination. He was forced to be placed at the front lines in the more stressful areas without being properly rotated around, in an effort to prevent one Soldier from enduring the brunt of it all the time. He was singled out simply because of the color of his skin. He was called all sorts of horrible names and subjected to disparate treatment. It is bad enough dealing with the stress of the Vietnam War, but the fear that his own unit may not have his back during the firefights, became incredibly troubling. He constantly thought to himself, "Will today be the day?"

d. Mental anguish caused him to carry the horrific memories of those events with him when he finally left Vietnam and returned to his home of record at Fort Hood, TX. The flash backs and nightmares caused him to develop anxiety and depression. He became acquainted with a group of Soldiers, who looked like him and shared the very same experience in Vietnam. This group introduced him to marijuana as a way to temporarily relieve the anxiety and depression he was experiencing. Associating with this group of friends allowed him to feel like his negative racial discrimination experiences were in the past and he started to be able to trust others again.

e. Then one night, while returning to Fort Hood from liberty, he was attacked and severely beaten by Sergeant (SGT) P, who was a Military Policeman at Fort Hood, TX. SGT P repeatedly used his baton in an unprovoked and unreasonable manner while bashing the applicant's head. One of the swings contacted the left side of his face, broke his nose, split his lip, knocked out a couple of teeth, and damaged his skull. The applicant believes this attack was racially provoked because SGT P had animosity towards non-Caucasian races. He waited until the applicant was by himself and defenseless, as he used a baton as a weapon to inflict serious bodily injuries, which have physically and mentally affected him to this day. He thought the days of someone trying to kill him were over until this incident caused him to relive the nightmares, anxiety, and depression. Multiple surgeries later, and he has still not recovered.

f. The incident that was the basis for his discharge from the Army occurred one weekend when he was with the same group of Soldiers on liberty. During a night of partaking in marijuana, the driver of the vehicle, unbeknownst to him, decided to stop at a convenience store and rob the place. The applicant was passed out in the back seat of the vehicle when all of this was taking place and had no idea that this could or would

take place. He is not a violent person and has always had a pacifist personality. He was not afforded counsel or advised of his rights and was forced to accept a plea deal.

3. The applicant enlisted in the Regular Army for a period of 3 years in the rank/grade of private (PV1)/E-1 on 5 January 1967.

4. On 4 April 1967, while attending Advanced Individual Training, the applicant accepted non-judicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for, without proper authority, failing to go at the time prescribed to his appointed place of duty. His punishment included forfeiture of \$21.00, 14 days of extra duty; and 14 days of restriction (suspended).

5. Upon completion of initial entry training, the applicant was awarded the military occupational specialty 11B (Light Weapons Infantryman) and was assigned to a unit at Fort Lewis, WA. He served in the Republic of Vietnam from 30 June 1967 until 1 July 1968. He was advanced to the rank/grade of private first class (PFC)/E-3 on 22 July 1967.

6. On 25 August 1967, while serving in Vietnam, the applicant accepted NJP under the provisions of Article 15, of the UCMJ for, without proper authority, absenting himself from his unit for approximately three and one-half hours on 22 August 1967. His punishment included reduction from PFC to private (PV2)/E-2 and forfeiture of \$50.00, suspended; and probation for 2 months.

7. The applicant was advanced to the rank/grade of specialist fourth class (SP4)/E-4 on 22 October 1967, the highest rank he held while serving.

8. On 10 August 1968, the applicant was assigned to a unit at Fort Hood, TX.

9. On 30 August 1968, the applicant accepted NJP under the provisions of Article 15, of the UCMJ for, failing to obey a lawful order issued to him by a noncommissioned officer (NCO) and threatening to injure an NCO. His punishment included restriction for 14 days; extra duty for 14 days; and reduction from SP4 to PFC, suspended for 60 days.

10. Special Court-Martial Order Number 18 issued by Headquarters, 2d Battalion (Mechanized, 46th Infantry Regiment, 1st Armored Division (Old Ironsides), Fort Hood, TX on 31 January 1969 and the applicant's DA Form 20B (Insert Sheet to DA Form 20 - Record of Court-Martial Conviction) show he was convicted by Special Court-Martial for being absent without leave (AWOL) from on or about 25 November 1968 until on or about 3 January 1969. His punishment included reduction to PV1; forfeiture of \$50.00 per month for 6 months; and confinement at hard labor for 6 months (suspended for 6 months). The sentence was approved on 31 January 1969.

11. District Court, Wichita County, State of Texas court documents show the applicant was tried and convicted on 17 June 1969 for the offense of robbery of a laundromat on 25 December 1968 and armed robbery of a food store on 16 February 1969. He was sentenced to a combined 40 years in prison.

12. On 30 July 1969, the applicant's immediate commander informed him that action was initiated for his discharge from service under the provisions of Army Regulation 635-206 (Discharge: Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence Without Leave or Desertion), Section VI, for conviction by civil court. The commander advised the applicant that he could be furnished an Undesirable Discharge Certificate as a result of this action. He further advised the applicant of the rights available to him.

13. The applicant acknowledged receipt of the commander's intent and indicated he had been counseled and advised of the basis for the action taken against him under the provisions of Army Regulation 635-206. He requested consideration of his case by a board of officers and representation by counsel but declined his rights to appear in person before the board and to submit statements in his own behalf.

14. The applicant's immediate commander formally recommended his separation from service on 19 September 1969, under the provisions of Army Regulation 635-206, paragraph 33a.

15. On 24 November 1969, an administrative separation board was appointed to consider the applicant's discharge recommendation.

16. On 8 January 1970, the board found the applicant should be eliminated from the service under the provisions of Army Regulation 635-206 due to misconduct (conviction by civil court) with issuance of an Undesirable Discharge Certificate. The separation authority's approval memorandum is not available for review.

17. The applicant's DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) shows the applicant was discharged on 6 February 1970, under the provisions of Army Regulation 635-206, with Separation Program Number "284" by reason of "Misconduct - Convicted by a Civil Court During Current Term of Active Military Service" and Reenlistment code "RE-4." His service was characterized as UOTHC. He was credited with completion of 1 year, 11 months, and 18 days of net service this period. He had lost time due to AWOL from 14 October 1968 until 23 October 1968 and from 24 November 1968 until 8 January 1968, and due to confinement from 16 February 1969 to 6 February 1970.

18. The applicant petitioned the Army Discharge Review Board (ADRB) for relief. On 7 April 1982, the applicant was informed that after careful review of his application,

military records, and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his request.

19. The applicant petitioned the ABCMR for relief on two previous occasions. His requests were considered in Dockets Number AC04-05933 on 4 May 1994 and AR20190003979 on 8 November 2022. His petitions were considered under procedures established by the Secretary of the Army and denied.

20. In addition to the previously discussed documents, the applicant provides:

a. A letter from the VA, dated 10 August 2023, which shows, in part, he was granted service connection for treatment purposes only for PTSD and prostate cancer residuals to include voiding dysfunction.

b. A letter from a Licensed Clinical Social Worker at the VA Southwest Vet Center dated 17 August 2023, which provides details on treatment the applicant received for symptoms congruent with PTSD, Anxiety disorder, and Major Depressive Disorder with past Substance Abuse symptoms since May 1998. The social worker opined the applicant's behavioral health conditions were contributing factors to the misconduct which led to the applicant's involuntary discharge.

c. Seven character reference letters rendered by three of the applicant's children, two friends, a pastor, and a Registered Nurse, wherein the authors express favorable comments about the applicant's work ethic, dedication to family, caring, moral values, and involvement in his church and community. They also emphasize the point that he served his country and deserves a second chance.

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

22. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service: under other than honorable conditions (UOTHC). He contends he experienced undiagnosed PTSD that mitigates his misconduct.

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 5 January 1967.

- The applicant received NJP while in AIT for failing to be at his place of duty, and he received NJP while serving in Vietnam for being AWOL for three and one-half hours. On 30 August 1968, the applicant accepted NJP for failing to obey a lawful order issued to him by a noncommissioned officer (NCO) and threatening to injure an NCO. He was convicted by Special Court-Martial for being absent without leave (AWOL) from 25 November 1968 until 3 January 1969, and the applicant was tried and convicted on 17 June 1969 for the offense of robbery of a laundromat on 25 December 1968 and armed robbery of a food store on 16 February 1969. He was sentenced to a combined 40 years in prison. On 8 January 1970, a board of officers found the applicant should be eliminated from the service under the provisions of Army Regulation 635-206 due to misconduct (conviction by civil court) with issuance of an Undesirable Discharge Certificate.
- The applicant was discharged on 6 February 1970 and was credited with completion of 1 year, 11 months, and 18 days of net service this period.

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 asserts racial discrimination and PTSD were contributing factors in his discharge. A VA decision letter dated 10 August 2023 showed that the applicant is service connected for treatment purposes only for PTSD. A letter by James Baily, PhD, LCSW, Readjustment Counselor, dated 17 August 2023 stated the applicant had been receiving care at the Vet Center for three months and had symptoms congruent with PTSD, Anxiety Disorder, Major Depressive Disorder, and past substance abuse. The letter articulates his mental health symptoms, diagnoses, and treatment, and the author attributes the applicant's misconduct to his PTSD and substance use. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant was initially seen at the VA for mental health treatment on 1 October 2019, and he reported symptoms of depression, anxiety, and PTSD related to his time in Vietnam. He indicated he had received mental health treatment starting three years prior, and he was currently engaged in therapy and medication management. He expressed a desire to utilize VA for mental health treatment, and he was scheduled for a PTSD Orientation group. On 26 November 2019 he completed a medication management evaluation, and expanded on his combat related trauma exposure, including firefights, rockets, mortars, bombings, and witnessing the loss of life of other soldiers. He expressed having survivor's guilt, avoidance of large groups, hypervigilance, and being easily startled. He related a history of substance abuse and incarceration for armed robbery, and he discussed his mental health treatment history, which began in 2017. He was diagnosed with PTSD, Alcohol Use Disorder in sustained remission, and Marijuana Use Disorder in early remission, and he was continued on a medication for mood and sleep. He completed

the Orientation group and was referred to another group treatment planning session, but he did not attend.

e. 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 had a condition or experience that partially mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had undiagnosed PTSD at the time of the misconduct. He was evaluated by a VA behavioral health provider and diagnosed with PTSD in 2019, and he is service connected for treatment purposes for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service, and he reported trauma exposure during his time in Vietnam.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. The applicant has a diagnosis of PTSD, which is associated with his service in Vietnam. Hyperarousal symptoms, such as feeling on edge, keyed up, or irritable, can create a more reactive response to threatening situations, and impulsive or aggressive behaviors are not uncommon for those suffering with PTSD. Substance use is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. However, there is no nexus between PTSD and his misconduct related to armed robbery: 1) these types of misconduct are not part of the natural history or sequelae of PTSD; 2) his asserted mental health condition does not affect one's ability to distinguish right from wrong and act in accordance with the right.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. The evidence shows the applicant was tried and convicted by civil court on 17 June 1969 for the offense of robbery of a laundromat and armed robbery of a food store. He was sentenced to a combined 40 years in prison. As a result, his chain of command initiated separation action against him. He was accordingly discharged with an under other than honorable conditions characterization of service.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official, and agreed with the medical reviewer's determination that there is no nexus between PTSD and his misconduct related to armed robbery. First, these types of misconduct are not part of the natural history or sequelae of PTSD; and second his asserted mental health condition does not affect one's ability to distinguish right from wrong and act in accordance with the right. Additionally, the Board also considered the applicant's service in Vietnam as well as the multiple character reference letters wherein the authors express favorable comments about the applicant's work ethic, dedication to family, caring, moral values, and involvement in his church and community. although the applicant provided some letters in support of a clemency determination, the Board did not find such letters outweigh the serious misconduct of robbery/armed robbery. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Dockets Number

- Dockets Number AC04-05933 on 4 May 1994
- Docket Number AR20190003979 on 8 November 2022.



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 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

2. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body.

3. Army Regulation 635-206 (Discharge: Misconduct (Fraudulent Entry, Conviction by Civil Court, and Absence Without Leave or Desertion), in effect at that time, set forth the basic authority for the separation of enlisted personnel due to misconduct (fraudulent entry, conviction by civil court, and absence without leave or desertion).

a. Section IV provided members would be considered for discharge when it was determined that one or more of the following applied: (a) when the Soldier was initially convicted by civil authorities, or action taken against the Soldier which was tantamount to a finding of guilty, of an offense for which the maximum penalty under the Uniform Code of Military Justice was death or confinement in excess of 6 months; (b) when initially convicted by civil authorities of an offense which involved moral turpitude, regardless of the sentence received or maximum punishment permissible under any code; or (c) when initially adjudged a juvenile offender for an offense involving moral turpitude. An undesirable discharge was normally considered appropriate. For discharge of members of Reserve components see section VII.

b. Section VII provided that the administrative discharge of a member of the Reserve components for cause, under conditions other than honorable, may be effected only pursuant to the approved findings of a board of officers convened by competent authority, except in those instances wherein the individual concerned consents to such discharge with waiver of board proceedings. If discharge under these regulations is contemplated, an effort will be made to obtain the written consent of the reservist for waiver of board action, prior to complying with paragraph 34 (Appointment of Board of Officers), except in those cases where the individual is not under military control. A board of officers will not be convened in any case wherein such written consent is obtained.

c. Upon determination a Soldier is to be discharged from the service as undesirable under these regulations, the authority accomplishing the discharge will, if the Soldier concerned is in a grade above private/E-1, reduce such Soldier to that grade without further administrative procedure and discharge the Soldier as an E-1.

4. Army Regulation 635-200 (Active Duty Enlisted Separations), currently in effect, sets forth the basic authority for the separation of enlisted personnel. It states in a case in which a discharge UOTHC is authorized by regulation, a member may be awarded an

honorable or general discharge, if during the current enlistment period of obligated service, he has been awarded a personal decoration or if warranted by the particular circumstances of a specific case.

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.

c. A discharge UOTHC is an administrative separation from the Service under conditions other than honorable.

5. 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.

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; 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.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//