

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 October 2024

DOCKET NUMBER: AR20240001413

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- in-service documents
- Veterans Affairs (VA) documents

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 his issues did not start until he returned from Vietnam. He suffered from undiagnosed post-traumatic stress disorder (PTSD). Additionally, he was barred from re-enlistment prior to the discharge in question, therefore the re-enlistment should have never happened in the first place.
3. On 29 March 1968, the applicant enlisted in the Regular Army. Upon completion of training, he was awarded military occupational specialty (70A) Clerk. He was honorably discharged for immediate reenlistment on 22 December 1968. His DD Form 214 (Armed Forces to the U.S. Report of Transfer or Discharge) confirms he completed 8 months and 24 days of net active service this period.
4. The applicant reenlisted in the Regular Army on 23 December 1968. He was honorably discharged on 14 May 1969. His DD Form 214 confirms he completed 4 months and 22 days of net active service this period, with 8 months and 23 days of prior active service.
5. The applicant reenlisted in the Regular Army on 15 May 1969.

6. On 17 July 1969, the applicant began service in the Republic of Vietnam.
7. On 19 November 1969, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for disobeying a lawful order from his superior noncommissioned officer, on or about 17 November 1969. His punishment included a verbal reprimand.
8. The applicant was honorably discharged on 14 April 1970. His DD Form 214 confirms he completed 10 months and 49 [sic] days of net active service this period, with 1 year, 1 month, and 15 days of prior active service.
9. The applicant reenlisted in the Regular Army on 15 April 1970.
10. On 28 May 1970, the applicant's commander recommended the applicant be barred from reenlistment for unsatisfactory conduct and efficiency. As the specific reasons, the commander cited the applicant's verbal reprimand, poor duty performance, depressive mood, and a suicide note he left in the platoon sergeant's room.
11. The applicant's bar to reenlistment was approved on 10 June 1970.
12. The applicant departed the Republic of Vietnam on 17 July 1970.
13. A memorandum, dated 2 November 1970, from Headquarters, U.S. Army Support Element, Fort Story, VA, to the Commanding General, U.S. Army Vietnam, noted the available records revealed that the applicant had an unsatisfactory conduct and efficiency rating due to his bar to reenlistment. His records further revealed that the bar was not voided until 8 July 1970. However, the applicant reenlisted during the period the bar was in effect.
14. A memorandum, dated 1 December 1970, from the U.S. Army Support Command, Saigon, to the Commanding Officer, U.S. Army Support Element, Fort Story, VA, noted a files search at that headquarters revealed the applicant's bar to reenlistment was not submitted until 28 May 1970 and approved on 10 June 1970. Therefore, the reenlistment of the applicant in April 1970 was valid.
15. On 9 April 1971, the applicant accepted NJP under Article 15 of the UCMJ, for failing to have his privately owned vehicle registered within 72 hours after arrival to the installation, on or about 2 April 1971. His punishment included forfeiture of \$30.00 for one month and 14 days extra duty.
16. On 2 July 1971, the applicant accepted NJP under Article 15 of the UCMJ, for speeding while operating a vehicle on or about 22 June 1971; and disobeying a lawful

order, on or about 29 June 1971. His punishment included forfeiture of \$50.00, reduction to E-3, and 14 days extra duty.

17. On 6 April 1972, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 5 April 1972. His punishment included forfeiture of \$50.00, reduction to E-3, and 14 days extra duty.

18. On 16 May 1972, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 17 May 1972.

19. On 22 May 1972, the applicant accepted NJP under Article 15 of the UCMJ, for going AWOL. His punishment included reduction to E-3 and 14 days extra duty.

20. On 15 June 1972, the applicant accepted NJP under Article 15 of the UCMJ, for behaving himself with disrespect toward his superior commissioned officer, on or about 12 June 1972. His punishment included reduction to E-2.

21. On 27 July 1972, the applicant accepted NJP under Article 15 of the UCMJ, for violating a lawful general regulation by driving his vehicle in an unsafe manner, on or about 12 July 1972. His punishment included 14 days extra duty.

22. On 1 August 1972, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

23. On 1 August 1972, the applicant underwent a medical examination. He was deemed medically qualified for administrative separation.

24. On 8 August 1972, the applicant's commander notified him of his intent to initiate separation actions against him under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability).

25. On 14 August 1972, the applicant consulted with legal counsel and affirmed he had been advised of the basis for the contemplated separation action. Following his consultation, he waived his right to personally appear before, and to have his case considered by a board of officers. He declined to submit a statement in his own behalf and waived his right to further representation by military counsel. He acknowledged he could expect to encounter substantial prejudice in civilian life, if given either a general discharge (under honorable conditions) or an undesirable discharge.

26. On 21 August 1972, the applicant's commander formally recommended the applicant's discharge under the provisions of Army Regulation 635-212, for unfitness

with an undesirable discharge. As the specific reasons, the commander cited the applicant's frequent incidents of a discreditable nature with military and civil authorities, and multiple NJPs.

27. A DA Form 2173 (Statement of Medical Examination and Duty Status) shows the applicant was treated for a mild concussion with post-traumatic headache, on 22 August 1972. He was injured while checking under a truck, he raised up and hit his head.

28. Consistent with the chain of command's recommendations, the separation authority approved the recommended discharge on 12 September 1972 and directed his reduction to the lowest enlisted grade with issuance of a DD Form 258A (Undesirable Discharge Certificate).

29. The applicant was discharged on 20 September 1972. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-212, with Separation Program Number 28B (unfitness, frequent involvement in incidents of a discreditable nature with civil or military authorities). He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 2 years, 5 months, and 4 days of net active service this period with 2 days of lost time, and 2 years and 16 days of prior active service.

30. On 11 June 2024, the ABCMR staff requested that the applicant provide medical documents to support his issue of PTSD. He was advised that he could contact the doctor that diagnosed him or his VA regional office for assistance. He did not respond.

31. The applicant provides a VA summary of benefits letter that shows he has a service-connected disability, and his combined service-connected evaluation is 90 percent. This letter is provided in its entirety for the Board's review within the supporting documents.

32. 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.

33. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his discharge of under other than honorable conditions (UOTHC). He contends he experienced 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 29 March 1968; 2) The applicant was deployed to Vietnam from 15 April-17 July 1970; 3) The applicant accepted nonjudicial punishments between April 1971-July 1972 for failing to have his

vehicle registered, speeding, disobeying an order, failing to be on time at his place of duty, being AWOL for one day, being disrespectful toward an commissioned officer, and driving his vehicle in an unsafe manner; 4) The applicant was discharged on 20 September 1972, for unfitness, frequent involvement in incidents of a discreditable nature with civil or military authorities. His service was characterized as UOTHC.

b. The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided.

c. The applicant asserts he experienced PTSD, which mitigate his misconduct. There is evidence the applicant was experiencing some depression while deployed to Vietnam. Specifically on 28 May 1970, the applicant's commander recommended the applicant be barred from reenlistment for unsatisfactory conduct and efficiency. As the specific reasons, the commander cited the applicant's verbal reprimand, poor duty performance, depressive mood, and a suicide note he left in the platoon sergeant's room. However, the applicant underwent a mental status evaluation as part of separation proceedings on 01 August 1972, and he was not diagnosed with a mental health condition and psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

d. A review of JLV provided evidence the applicant passed away on 05 April 2024. He began to engage with the VA in 2004 for care for physical concerns. In 2005, he reported a more recent history of experiencing a few PTSD symptoms related to his Vietnam deployment. However, the applicant presented an inconsistent history of his experiences in Vietnam than his military record presented (i.e. he reported being an MP and extensive experience in active combat behind enemy lines for an extensive period of time). The applicant only attended 1-2 sessions with a clinical psychologist before discontinuing, but he did attend medication management appointments with a psychiatrist for a few months, and he was diagnosed with PTSD with delayed onset. The applicant, however, was never awarded service-connected disability for PTSD or any other mental health condition.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced a mental health condition

including PTSD while on active service that mitigates his misconduct. He was diagnosed with delayed onset PTSD by the VA in 2005.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service that mitigates his misconduct.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant experiencing PTSD, while on active service. He did report depressive symptoms while deployed, but he was likely redeployed from Vietnam shortly after arriving. He was diagnosed with PTSD by the VA, but he provided a very inconsistent report of his military experiences in Vietnam, compared to his military record, and the applicant was reported to have a delayed presentation of PTSD when he was diagnosed with PTSD. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service to include deployment, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.

2. A majority of the Board found that his history of minor misconduct did not include any egregious offenses, and further noted the applicant had volunteered for service during a time of war and was deployed. While the reason for his discharge was warranted, a majority of the Board found the final characterization of his service to be too harsh. Based on a preponderance of the evidence, a majority of the Board determined the applicant's character of service should be changed to honorable.

3. The member in the minority found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD. Based on a preponderance of the evidence, the member in the minority determined the character of service the applicant received upon separation was not in error or unjust.

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 his DD Form 214 for the period ending 20 September 1972 to show his character of service as under honorable conditions (general) and incorporate the corrections described in Administrative Note(s) below.

3/29/2025

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):

1. Army Regulation 635-5 (Separation Documents), in effect at the time, stated the DD Form 214 was to list all decorations, service medals, campaign credits, and badges awarded or authorized.
2. Army Regulation 600-8-22 (Military Awards) states a bronze service star will be awarded, for wear on the Vietnam Service Medal, for participation in each campaign. Recognized campaigns for Vietnam include the Vietnam Summer-Fall 1969 (9 June 1969 to 31 October 1969), Vietnam Winter-Spring 1970 (1 November 1969 to 30 April

1970), Sanctuary Counteroffensive (1 May 1970 to 30 June 1970), and Vietnam Counteroffensive-Phase VII (1 July 1970 to 30 June 1971).

3. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) shows DAGO Number 8, dated 1974 awarded the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, United States Army Vietnam, and its subordinate units during the period 20 July 1965 to 28 March 1973.

4. A review of the applicant's record shows his DD Form 214, for the period ending 20 September 1972, is missing important entries that affect recognition for his acts of heroism. As a result, amend the DD Form 214 by adding the following entries in item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized):

- Vietnam Service Medal with four bronze service stars
- Republic of Vietnam Campaign Medal with 60 Device
- Republic of Vietnam Gallantry Cross with Palm
- (1) Overseas Service Bar
- National Defense Service Medal

#### 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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.



a. Paragraph 1-9d provided that an honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel, or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 1-9e provided that a general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

4. Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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 Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. Boards are 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.

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, 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//