

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 October 2024

DOCKET NUMBER: AR20240001510

APPLICANT REQUESTS: his under other than honorable conditions (UOTHC) discharge be upgraded to under honorable conditions (general) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Statement in Support of Claim
- Self-Authored Statement
- Service Documents
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) (two)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 believes his discharge to be unjust as he was not provided an opportunity to seek mental health counseling or even access a Chaplain to address potential mental health issues related to his service in Vietnam. His commander had determined that there was "no evidence or mental deficiency or underlying emotional disturbance" without an exam to determine this. Additionally, it was his opinion that he would "never complete service and that any attempt at rehabilitation would be ineffective". He was not afforded an opportunity to "rehabilitate". To include basic, advanced individual training, and one year in Vietnam, and up until March or 1972, he served honorably (from June 1970 to February 1972). He returned "messed up", not knowing how to deal with whatever was happening inside and he just wanted to get as far from the military as possible, he needed help then. He is seeking help now. He attempted to apply for VA benefits and discovered that he is barred from receiving VA disability benefits due to his character of service.

a. He provides a VA Statement in Support of Claim, dated 31 October 2023 that shows due to being deployed to Vietnam he was exposed to a combat environment and earned a Combat Infantryman's Badge. He did daily patrols and was engaged by the enemy, and he engaged back. He saw several of his fellow brothers killed either by hand grenades, satchel charges, or by land mines. "Leave no man behind" meant he assisted in recovering those bodies. If he saw something, he would shoot in that direction, nor really knowing if there was someone or something staring back at him. He was just 19 years old and turned 20 there. He returned to the states a different man. Vietnam changed him. He returned with a bad attitude. He couldn't deal with the required military regulations of day-to-day life back in the states. In Vietnam, the number one rule was to stay alive. He couldn't conform back to the regiment of military life.

b. In his statement he reiterated the above and stated he just didn't care. He started going absent without leave (AWOL). His commander gave his opinion that he would never "complete...service and that any attempt at rehabilitation would be ineffective and there was evidence of mental deficiency or underlying emotional disturbance".

c. Life after the military shows he became a recluse and had difficulty getting out into society due to having issues with loud noises like cars back-firing, firecrackers, loud aircraft, and machinery. He worked some jobs. His parents noticed he was quiet, withdrawn and didn't want to socialize with their friends. He is married. He never sought mental health treatment. The attitude of "just suck it up" was prevalent and he didn't do well with that.

3. The applicant enlisted in the Regular Army on 9 June 1970. His military occupational specialty was 11B (Light Weapons Infantryman). He was honorably discharged on 9 February 1971 for immediate reenlistment. His DD Form 214 shows he completed 8 months and 1 day of net service this period. He was awarded or authorized the National Defense Service Medal and the Vietnam Service Medal.

4. The applicant served in Vietnam from 11 November 1970 through 10 November 1971.

5. The applicant reenlisted on 10 February 1971, for 3 years, in Vietnam.

6. On 29 February 1972, at Fort Carson, CO, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) for failing to go at the time prescribed to his appointed place of duty (Post Correctional Facility) on or about 26 February 1972; and willfully disobeying a lawful order on or about 26 February 1972. His punishment consisted of reduction to private first class/E-3 (suspended), extra duty and forfeiture of \$45.00 pay for two months (suspended).

7. The applicant was AWOL on 26 February 1972 and returned from AWOL on 29 February 1972. On 5 March 1972 he was again AWOL and apprehended on 20 March 1970. He was AWOL on 23 March 1972 and apprehended by the military police on 10 April 1972. He was AWOL again and did not return and dropped from the rolls on 11 April 1972.

8. On 28 April 1972 the applicant was pending special court martial.

9. The applicant was apprehended by civilian authorities and returned to military control on 15 June 1972. He departed AWOL on 5 July 1972 and was dropped from the rolls.

10. Court martial charges were preferred against the applicant on 16 June 1972. His DD Form 458 (Charge Sheet) shows he was charged with AWOL from on or about 23 March 1972 until 10 April 1972, on or about 10 April 1972 until 18 April 1972, and on or about 28 April 1972 until on or about 15 June 1972.

11. The applicant consulted with legal counsel on 23 June 1972 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 a UOTHC discharge and the procedures and rights that were available to him.

a. After consulting with legal counsel, he voluntarily requested discharge under the provision of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, in for the good of the service, lieu of trial by court-martial. 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 VA, 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 because of a dishonorable discharge.

b. He elected to submit statements in his own behalf. On 23 June 1972, the applicant stated he did not like the Army at all because of stupid hours and too much discipline. He stated he had no rehabilitation potential concerning the Army. His attitude toward his discharge is good because he had a good job waiting.

12. DA Form 3822-R (Report of Mental Status Evaluation), dated 26 June 1972 shows there was no significant mental illness, he was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in bord proceedings and met retention standards.

13. On 29 June 1972 his commander's statement shows the applicant was aware of the seriousness of an undesirable discharge, loss of VA benefits and he wanted out of the unit and the commander would not let him transfer. He kept going AWOL to secure

a transfer and the processing was too slow. The applicant stated he had no desire to serve honorably and would go AWOL if returned to duty. His poor attitude towards continued military service prohibits rehabilitation in the Army. The commander recommended approval of his request and that he be given an undesirable discharge certificate.

14. The separation authority approved the request for discharge on 12 July 1972 and directed the applicant be reduced to the lowest enlisted grade and furnished an undesirable discharge certificate.

15. The applicant was discharged on 22 November 1972. His DD Form 214 shows he was discharged under the provisions of AR 635-200, with Separation Program Number 246 [for the good of the service-in lieu of trial by court-martial] and Reenlistment Code 3B. He completed 1 year, 1 month, and 24 days of net active service. His service was characterized as UOTHC. He lost time from 5 July 1972 to 29 October 1972. He was awarded or authorized the:

- National Defense Service Medal
- Vietnam Service Medal with one bronze service star
- Vietnam Campaign Medal with 1960 device
- Combat Infantryman Badge
- Overseas Bar (one)

16. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

17. The applicant provides service documents and two copies his DD Form 214 as discussed above.

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

19. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general). He contends he experienced an undiagnosed mental health condition, including 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 9 June 1970 and reenlisted on 10 February 1971.
- The applicant received NJP on 29 February 1972 for failing to be at his appointed place of duty, and he was AWOL in February and again in March 1972. He was dropped from the rolls on 11 April 1972. Court martial charges were preferred against him for being AWOL, and he requested discharge for the good of the service, in lieu of trial by court-martial.
- The applicant was discharged on 22 November 1972 and completed 1 year, 1 month, and 24 days of net active service.

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 he served in Vietnam, and he returned "messed up" and was not provided with an opportunity to seek mental health counseling or access a chaplain. He discussed trauma exposure while in Vietnam and difficulty with readjustment when he returned. A Report of Mental Status Evaluation dated 26 June 1972 showed the applicant had no significant mental illness, was mentally responsible, and met retention standards. 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 has utilized the VA for various physical health conditions, but he has not engaged in mental health treatment.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that 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 discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There is insufficient evidence, beyond self-report, that he experienced a mental health condition.

(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 there is evidence that he deployed to Vietnam.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health symptoms or condition(s) while on active service or after discharge.

There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. The applicant did report experiencing traumatic events during his deployment to Vietnam. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Yet, the presence of misconduct alone is not sufficient evidence of a mitigating mental health condition during active service. However, the applicant contends he was experiencing a mental health condition 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 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 charged with commission of offenses (multiple AWOLs) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in the applicant's separation processing. 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 insufficient evidence of a behavioral health condition that partially mitigates his misconduct.

b. The Board also noted that the applicant completed a combat tour in Vietnam from November 1970 to November 1971. He also reenlisted in Vietnam, and he was awarded the Combat Infantryman Badge. In view of such achievements, the Board determined that while his service did not rise to the level required for an honorable characterization (given the multiple AWOLs were often terminated by apprehension); however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

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 amending the DD Form 214 for the period of service ending 22 November 1972 as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code (USC), 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, USC, 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.

3. 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.

4. 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 Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

5. 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//