

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 October 2024

DOCKET NUMBER: AR20240001763

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 4 (Enlistment Record – Armed Forces of the United States)
- DA Form 20 (Enlisted Qualification Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) dated 22 May 69
- Special Orders Number 334, dated 29 November 1972
- DD Form 214, dated 29 November 1972

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 in July 1972, while on leave for the christening of his first child, his family's only privately owned vehicle (POV) broke down, preventing their return to [REDACTED]. He called the Company Executive Officer (XO) to request a one-week extension, which was approved verbally over the phone but not recorded on the morning Personnel Status (PERSTAT) report. Consequently, he was marked as absent without leave (AWOL), and the Company initiated a Court-Martial for missing a unit movement. After consulting with a JAG attorney, they agreed he would accept a discharge in lieu of a Court-Martial. He feels he was never informed that his Character of Service could be changed or requested. As a two-year Vietnam veteran and former member of the U.S. Army, he believes he is entitled to services from the Veterans Administration to improve his mental and physical health. Due to declining health, he respectfully requests that his Character of Service be

changed from "Under Conditions Other Than Honorable" to "Honorable" to enhance his quality of life.

3. A review of the applicant's service record shows:

- a. He enlisted in the Regular Army on 25 October 1966.
- b. A DA Form 20 shows:
  - Item 31 (Foreign Service)
    - United States Army Europe (USAREUR) Germany 10 August 1967 to 30 January 1968
    - United States Army Pacific (USARPAC)- Vietnam 29 March 1968 to 28 March 1969
    - USAREUR – Germany 28 July 1969 to 13 August 1970
    - USARPAC – Vietnam 18 September 1970 to 17 September 1971
  - Item 38 (Record of Assignment)
    - B Battery (Btry), 1st Battalion (BN), 8th Artillery (Arty), 25th Infantry (INF) Division (DIV) 29 March 1968 to 8 November 1968
    - Headquarters and Headquarters Battalion (HHB) I Field Force Vietnam (FFORCEV) Arty USARPAC – Vietnam 9 November 1968 to 28 March 1969
    - A Btry, 2nd BN, 35th Arty, USARPAC, 18 September 1970 to 31 January 1971
    - C Btry, 6th BN, 27th Arty, USAPAC, 1 February 1971 to 20 February 1971
    - Service Btry, 6th BN, 27th Arty, USARPAC – Vietnam, 21 February 1971 to 17 September 1971
    - Conduct shows excellent from 7 November 1966 to 13 December 1971
  - Item 44 (Time Lost Under Section 972, Title 10, United States Code and Subsequent to Normal Date ETS)
    - absent without leave (AWOL), 6 September 1972 to 12 September 1972
    - AWOL, 13 September 1972 to 9 October 1972
- c. A Commander's Letter of Inquiry dated 6 September 1972 shows, the applicant went AWOL on 6 September 1972.

d. A DA Form 268 (Report for Suspension of Favorable Personnel Action) dated 13 October 1972 shows, the applicant returned and was removed from Dropped from Rolls (DFR) on 10 October 1972. He was pending court-martial actions.

e. Special Orders Number 319 dated 14 November 1972 shows, the applicant was reduced to private (E-1) on 13 November 1972.

f. Special Orders Number 334, dated 29 November 1972, discharged the applicant from active duty with an effective date of 29 November 1972.

g. On 29 November 1972, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 6 years and 2 days of active service with 33 days lost time. It also shows he was awarded or authorized:

- Vietnam Service Medal with 6 bronze service stars
- Republic of Vietnam Campaign Medal with Device (1960)
- 2 Overseas Bars
- Good Conduct Medal

h. The record is void of documentations surrounding the applicant's discharge are unavailable for the Board to review.

4. Department of the Army General Orders (DAGO) Number 36, dated 1970, awarded the Valorous Unit Award to 8th Artillery, 1st Battalion, Forward Observe Sec, B Battery, for service in Vietnam for the period of 15 – 16 June 1968.

5. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

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

7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA

and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 29 November 1972 discharge characterized as under conditions other than honorable. He has indicated on his DD form 149 that PTSD and Other Mental Health conditions are issues related to his request. He states:

“As a two-year Vietnam Veteran and a former member of the U.S. Army, I believe I am entitled to all services provided by the Veterans Administration for the improvement of both my mental and physical health.

In July 1972, I was on leave for the Christening of our first-born child. And towards the end of the approved leave my family's only Privately Owned Vehicle (POV) suffered significant mechanical problems, which prevented us being able to drive back to [REDACTED]. I then called the Company Executive Officer (XO) and requested a one-week extension (verbally via telephone) to get our POV back to working order. The request was approved but was not annotated on the morning Personnel Status (PERSTAT) report. I was then considered Absent Without Leave (AWOL).

The Company moved forward with a Court-Martial for missing a unit movement. Then I requested to speak to counsel/JAG. And after a long and exhausting meeting(s) with the counsel we both came to the agreement that I would take the discharge in lieu of a Court-Martial.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 23 May 1969 and was discharged on 29 November 1972 under the provisions provided in AR 635-200, Personnel Management – Enlisted Personnel. His separation program number of 246 denotes “Discharge for the Good of the Service.” It shows Service in Vietnam from 18 September 1970 thru 17 September 1971 where he served as a 13B – Field Artillery Crewman

d. His Enlisted Qualification Record (DA Form 20) shows a prior tour in Vietnam from 29 March 1968 thru 28 March 1969. It shows two periods of absence without leave: 6–

12 September 1972 and 13 September thru 9 October 1972 (34 days total). It also shows he was diagnosed with alcoholism on 25 April 1972.

e. No medical documentation was submitted with the application and the applicant is not in JLV. His period of service predates the EMR.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: PTSD

(2) Did the condition exist or experience occur during military service? YES: The applicant asserts this condition was due to his two years of Service in Vietnam. There is no documentation to support his assertion. However, PTSD is strongly associated with self-medication with alcohol, and his diagnosis of alcoholism after his second tour makes it more likely than not that the applicant had PTSD following his second tour.

(3) Does the condition or experience actually excuse or mitigate the discharge? YES: As this condition is associated with self-medication with alcohol, the condition fully mitigates the two short periods of absence without leave which led to his discharge with what appears to be an unduly harsh characterization of Service for this Veteran with 2 years of combat in Vietnam.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record and published Department of Defense guidance or consideration of discharge upgrade requests, the Board found that relief was warranted.

2. The Board carefully considered the applicant's contentions, his record of service to include two tours in Vietnam, the frequency and nature of his misconduct, the length of his absences, his request for separation in lieu of court martial and the character of service he received upon discharge. The Board considered the review and conclusions of the medical advisor and the applicant's statement regarding undiagnosed PTSD.

The Board found: (1) the applicant states that he had undiagnosed PTSD resulting from his service in Vietnam; (2) that this condition was present during his time in service; (3) there is nexus between PTSD and alcohol use and avoidant behaviors. Based on a preponderance of evidence, that Board determined that an upgrade of the applicant's discharge was warranted as a matter of liberal consideration. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended

the correction be completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1   Mbr 2   Mbr 3

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, in addition to the corrections in the Administrative Notes that follow, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 29 November 1972 to show in item 24 (Character of Service): Honorable

6/10/2025

X

CHAIRPERSON

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

ADMINISTRATIVE NOTE(S):

A review of the applicant's service records show he is authorized additional campaign credit not annotated on his DD Form 214. As a result, amend his DD Form 214 to show the following:

- Republic of Vietnam Gallantry Cross with Palm

- Valorous Unit Award

**REFERENCES:**

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 635-5 (Separation Documents, in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
  - a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.
  - d. Paragraph 10-6. Medical and mental examination provides that a medical examination is not required but may be requested by the Soldier under AR 40-501, chapter 8.
4. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) assist commanders and personnel officers in determining or establishing the eligibility of individual members for campaign participation credit, assault landing credit, and unit citation badges awarded during the Vietnam Conflict.

- a. Department of the Army General Orders (DAGO) Number 36, dated 1970, awarded the Valorous Unit Award to 8th Artillery, 1st Battalion, Forward Observe Sec, B Battery, for service in Vietnam for the period of 15 – 16 June 1968.
- b. Department of the Army Pamphlet 672-3 (Unit Citations and Campaign Participation Credit Register) assist commanders and personnel officers in determining or establishing the eligibility of individual members for campaign participation credit, assault landing credit, and unit citation badges awarded during the Vietnam Conflict. Department of the Army General Orders (DAGO) Number 8, dated 1974, awarded the Republic of Vietnam Gallantry Cross Unit Citation with Palm to Headquarters, United States Army Vietnam, for service in Vietnam for the period of 20 July 1965 to 28 March 1973.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.
6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, 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, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.
7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

- 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 based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.
- 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.

8. Section 1556 of Title 10, United States Code, 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.

//NOTHING FOLLOWS//