

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240002352

APPLICANT REQUESTS: Reconsideration of his request for upgrade of his under other than honorable conditions (UOTHC) discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge)
- Self-authored Statement
- Veterans Affairs (VA) documents
- Witness statement
- Case Management Division letters
- Medical documents
- DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge)

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 AR20100020859 on 16 February 2011.
2. The applicant states he has mental issues due to his experiences in Vietnam. He was exposed to 122mm rocket fire and initially didn't know what to do; someone had to drag him into a bunker. He was given cigarettes that he did know were marijuana laced with opium and heroin. These "cigarettes" took the edge off, and this became the norm. He was involved in several combat-related events during his time in Vietnam.
3. On 17 March 1970, the applicant was inducted in the Army of the United States. Upon completion of training, he was awarded military occupational specialty 11B (Infantryman). The highest grade he attained was E-2.
4. On 30 June 1970, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 7 July 1970.

5. On 11 July 1970, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for being AWOL. His punishment included forfeiture of \$66.00 for one month and 30 days restriction.
6. On 30 July 1970, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful order from his superior noncommissioned officer, on or about 30 July 1970. His punishment included forfeiture of \$20.00 for one month and 14 days restriction.
7. On 31 August 1970, the applicant began service in the Republic of Vietnam.
8. On 2 October 1970, the applicant was reported AWOL a second time, and remained absent until he returned to military authorities on 4 October 1970.
9. Before a special court-martial on 3 December 1970, at Chu Lai, Republic of Vietnam, the applicant was found guilty of one specification of being AWOL; one specification of disobeying a lawful command from his superior commissioned officer, on or about 11 October 1970; one specification of disobeying a lawful order from his superior noncommissioned officer, on or about 5 October 1970; and one specification of being disrespectful in language toward his superior noncommissioned officer, on or about 4 November 1970.
10. The court sentenced the applicant to confinement at hard labor for four months (suspended for four months), forfeiture of \$50.00 per month for four months, and reduction to E-1. The sentence was approved on 23 January 1971, and the record of trial was forwarded for appellate review.
11. On 24 March 1971, the applicant was arrested by military authorities for possession of 100.03 grams of marijuana.
12. Special Court-Martial Order Number 30, issued by Headquarters, 198th Infantry Brigade, Army Post Office San Francisco, on 30 March 1971, noted the applicant's unexecuted portion of the sentence to confinement at hard labor for four months would be duly executed.
13. On 9 April 1971, the applicant underwent a mental status evaluation. He was diagnosed with a passive aggressive personality chronic moderate, manifested by refusal to obey orders and AWOL. However, he was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
14. On 17 May 1971, the applicant departed the Republic of Vietnam.

15. Court-martial charges were preferred against the applicant for violations of the UCMJ; however, the relevant DD Form 458 (Charge Sheet) is not available for review.

16. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.

17. The applicant was discharged on 18 May 1971. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), 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 10 months and 17 days of net active service this period with 105 days of lost time.

18. Additionally, his DD Form 214 shows he was awarded or authorized the National Defense Service Medal and the Vietnam Service Medal.

19. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 16 February 2011, the Board voted to deny relief and determined that the overall merits of the case were insufficient as a basis for correction of the applicant's records.

20. The applicant provides the following (provided in entirety for the Board):

a. A statement from his spouse that details his mindset during his time in service to this present day. She noted that he was traumatized during the time he served. He deals with depression, anger, and post-traumatic stress disorder (PTSD) issues. Additionally, he has issues with his skin from possible Agent Orange exposure. She wants her husband to get the medical help he needs.

b. Medical progress notes show he has been diagnosed and received treatment for various injuries and illnesses, including depression and PTSD.

c. Miscellaneous VA documents in support of his claim for disability benefits.

21. 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.

22. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge. He contends PTSD as related to his request.

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 was inducted into the Army of the United States on 17 March 1970.
- On 30 June 1970, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 7 July 1970.
- On 11 July 1970, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for being AWOL.
- On 30 July 1970, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful order from his superior noncommissioned officer, on or about 30 July 1970.
- On 31 August 1970, the applicant began service in the Republic of Vietnam.
- Before a special court-martial on 3 December 1970, at Chu Lai, Republic of Vietnam, the applicant was found guilty of one specification of being AWOL; one specification of disobeying a lawful command from his superior commissioned officer, on or about 11 October 1970; one specification of disobeying a lawful order from his superior noncommissioned officer, on or about 5 October 1970; and one specification of being disrespectful in language toward his superior noncommissioned officer, on or about 4 November 1970.
- On 24 March 1971, the applicant was arrested by military authorities for possession of 100.03 grams of marijuana.
- On 17 May 1971, the applicant departed the Republic of Vietnam.
- The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
- The applicant was discharged on 18 May 1971. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), with Separation Program Number 28B (unfitness, frequent involvement in incidents of a discreditable nature with civil or military authorities). He was assigned Reenlistment Code 3B. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 10 months and 17 days of net active service this period with 105 days of lost time.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he has mental issues due to his experiences in Vietnam. He was exposed to 122mm rocket fire and initially didn't know what to do; someone had to drag him into a bunker. He was given cigarettes that he did not know were marijuana laced with opium and heroin. These "cigarettes" took the edge off, and this became the norm. Per the applicant, he was involved in several combat-related events during his time in Vietnam.

d. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy documentation submitted by the applicant show, in his record of induction, the applicant was placed in a juvenile detention camp prior to military service in January 1966. In addition, on 5 April 1971, he underwent a medical examination for the purpose of separation. The examination shows he indicated being in good health, did not endorse any psychiatric symptoms, and, contrary to his asserted concussion, he denied suffering a head injury or periods of unconsciousness. On 9 April 1971, the applicant underwent a command referred psychiatric evaluation. He was found to have no psychiatric disorder but was diagnosed with Passive-Aggressive Personality, "manifested by refusal to obey orders and AWOL". He was found to be mentally responsible, able to distinguish right from wrong and to adhere to the right, and mentally capable of understanding and participating in board proceedings.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant participated in a mental health consult via the VA on 5 May 2011, he was found ineligible for services due to the characterization of his discharge. The applicant reported trauma related to his tour in Vietnam. The clinician noted the applicant appeared to have "personality traits that cause him chronic difficulties with authorities, others, and life in general." The report further indicates the applicant's "reliability as a self-reporter is not established". He was not provided a diagnosis from this one-time encounter, but the report indicates, "if his presentation and narrative are consistent with his experiences, he appears to suffer PTSD, depression, and anxiety;" psychosocial stressors were also noted. On 30 March 2012, the applicant participated in a one-time mental health evaluation with a civilian provider for the purpose of having his discharge status upgraded. The evaluation notes "an extensive drug abuse history" as well as "an extensive legal history" including five years on probation for an arrest related to possession of marijuana with intent to sell, arrest for assaulting a police officer in 1976, and a recent arrest, at the time of the evaluation, on a charge of domestic violence, assault, use of a weapon, and harassment. During that assessment he asserted the following unsubstantiated traumas:

- "While patrolling with Vietnamese National Police, they trekked over to a village. Once they arrived, they secured the area. Vietnamese National Police grabbed a girl wearing black pajamas from a hooch. They interrogated her, accused her of being a member of the enemy, and stripped her naked. Frank recalls the police then 'shoved an illuminary round up her bottom and fired it off ... she burned from the inside out'."
- "Frank was the squad leader of this mission. After setting up a defensive perimeter, three members of his squad sat down to play cards. He told them not to do so and headed off to secure his equipment. As Frank was walking away, he heard a loud explosion, turned, and saw his guys 'all blown to shit' dead. He

saw about a 12-year-old child running away from the scene. The 12-year-old dropped a grenade in the middle of the card game. Frank raised his weapon and shot the child in the back of the head.”

- “Frank was enjoying time off duty. He took a short walk. While walking he came across a soldier he knew. The soldier was suicidal, he had a grenade and wanted to kill himself. Frank walked up to the soldier to talk him out of killing himself as the soldier pulled the pin. The blast gave Frank a serious concussion and shrapnel to the leg. “

f. Based on these asserted traumas, he was diagnosed with Posttraumatic Stress Disorder, Major Depressive Disorder, Nicotine Dependence, Cocaine Dependence, Cannabis Dependence, and Amphetamine Abuse during his 30 March 2012 evaluation. On 12 February 2022, the applicant was treated in the emergency room and diagnosed with Cannabis hyperemesis syndrome (CHS) a condition that leads to repeated and severe bouts of vomiting. It is rare and only occurs in daily long-term users of marijuana. On 22 February 2022, the applicant participated in a diagnostic assessment, he reported a history of PTSD, and this is referenced in the list of presenting problems. However, based on this assessment the applicant was diagnosed with Depressive Disorder. The applicant’s Depressive Disorder could potentially be due to his extensive substance abuse history, since long-term substance abuse can lead to substance related depressive disorder.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is inconsistent medical documentation to support the applicant’s assertion of PTSD. However, given his experience of serving in a combat zone, it is likely he was exposed to events that may have contributed to a behavioral health condition that mitigates his discharge.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating condition of PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant served in a combat zone, the Republic of Vietnam, from approximately 31 August 1970 to 17 May 1971.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The record shows the applicant twice accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), as well as one court-martial, and an arrest for possession of 100.03 grams of marijuana. The medical documentation provided by the applicant does not evidence ongoing treatment for PTSD or any

behavioral health condition. The available documentation appears to show one-time encounters for the purpose of obtaining a diagnosis of PTSD, with the available documentation often showing significant inconsistencies, and the various clinicians often noting concerns regarding his credibility. Although there are inconsistencies in the available medical documentation and his accounts appear questionable, his assertion of PTSD will be accepted. Given the association between PTSD and the use of substances as a coping mechanism, the applicant's misconduct of possession of 100.03 grams of marijuana is mitigated by his BH condition.

i. Per Liberal Consideration guidelines, the applicant's assertion of PTSD is sufficient to warrant consideration by the Board.

#### 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 following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating condition of PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant served in a combat zone, the Republic of Vietnam, from approximately 31 August 1970 to 17 May 1971.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes

as well as the applicant's Vietnam service, the misconduct involved and the guidance on liberal consideration, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to General, Under Honorable Conditions.

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: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

  
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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.

REFERENCES:

1. 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.

2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

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//