

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 November 2024

DOCKET NUMBER: AR20240002503

APPLICANT REQUESTS:

- reconsideration of his previous request for an upgrade of his under conditions other than honorable to under honorable conditions (general)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

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 AC96-05011 on 21 May 1996, Docket Number AR2002075880 on 7 November 2002, Docket Number AR20090014433 on 10 December 2009, and in Docket Number AR20100000184 on 21 May 2010.

2. The applicant states:

a. He would like access to full benefits for health care, access to the post exchange, and all facilities that other service veterans are afforded. Due to exposure of chemical weapons (Agent Orange) being used against them while deployed in Vietnam his mind was affected which caused him to act out of character during his active duty service. Due to the discharge status, he suffered the inability to find work and receive adequate pay.

b. Since leaving the Army, he has had no criminal behavior, acts of violence, to kill or attempt to kill anyone. He has had to work through depression and overcome that to become a Deacon at his church. He is truly remorseful for his mistakes and choices made during his time in the Army and has been an upstanding citizen ever since.

c. He annotates post-traumatic stress disorder as an issue/condition related to his request.

3. A review of the applicant's service records show:

a. On 17 February 1971, he enlisted in the Regular Army.

b. DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was honorably discharged for immediate reenlistment on 16 November 1972. He completed 1 year and 9 months of active service.. Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized) shows:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with 60 Device
- 1 Oversea Service Bar

c. On 17 November 1972, he enlisted in the Regular Army

d. DA Form 20 (Enlisted Qualification Record) shows in Block 44 (Time Lost Under Section 972, Title 10, United States Code and Subsequent to Normal Date Expiration Term of Service (ETS)):

- 9 March 1973 – 13 March 1973, 5 days, absent without leave (AWOL)
- 16 March 1973 – 21 March 1973, 6 days, AWOL
- 7 May 1973 – 10 June 1973, 35 days, AWOL
- 2 July 1973 – 21 August 1973, 51 days, imprisonment

e. On 4 October 1972, the applicant accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for absenting himself from his appointed place of duty from on or about 2000 hours on 29 September 1972 to on or about 2305 on 29 September 1972.

f. On 4 April 1973, the applicant accepted nonjudicial punishment under the provisions of Article 15, UCMJ for absenting himself from his appointed place of duty from on or about 9 March 1973 to on or about 13 March 1973.

g. On 28 June 1974, the applicant accepted nonjudicial punishment under the provisions of Article 15 UCMJ for dereliction of duty for negligent failure to perform maintenance on a 1.5-ton ambulance on or about 10 June 1974.

h. Special Court-Martial Order Number 3, dated 31 July 1973 shows he was found

Guilty of violating Article 86, UCMJ, for being AWOL on or about 23 April 1973, 24 April 1973, and from on or about 7 May 1973 to on or about 11 June 1973, and was reduced in rank to the grade of private/E-1 and to be confined to hard labor for 2 months.

i. Special Court-Martial Order Number 59, dated 5 September 1974 shows he was found guilty of violating Article 86, UCMJ, for being AWOL from on or about 16 August 1974 to on or about 20 August 1974, and was reduced in rank to the grade of private/E-1, hard labor for 10 days, and forfeiture of \$150.00.

j. On 4 October 1974, after review of his request, his chain of command denied the request for discharge in lieu of trial by courts-martial due to his long record of misconduct and authorized a Trial by Special Court-Martial to adjudge a bad conduct discharge.

k. Special Court-Martial Order Number 93, dated 14 November 1974 shows he was found guilty by a Special Court-Martial of violating Article 86, UCMJ, for being AWOL from on or about 3 September 1974 to on or about 25 September 1974, and was to be confined to hard labor for 2 months, forfeit \$200.00 pay per month for 2 months, and to be discharged with a bad conduct discharge.

l. DA Form 268 (Report for Suspension of Favorable Personnel Actions) shows he was flagged for being AWOL on 10 December 1974.

m. DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence) shows he surrendered to military authorities on 20 February 1975.

n. On 21 February 1975, he waived his rights to counsel.

o. DA Form 3082-1 (Statement of Medical Condition (When examined more than 3 days Prior to Separation)) shows no change to his medical condition since enlistment.

p. DD Form 214 (Report of Separation from Active Duty), ending 27 March 1975 reflects discharge under the provisions of Army Regulation 635-200, chapter 11, as a result of a court-martial with an under other than honorable conditions character of service and a net service this period of 1 year, 9 months, and 26 days. Block 26 (Decorations Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded the following:

- National Defense Service Medal
- Vietnam Campaign Medal with 60 Device

4. On 21 June 1976 and on 28 October 1981, the Army Discharge Review Board denied the applicant's request for a discharge upgrade.

5. In ABCMR Docket Number AC96-05011, decided on 21 May 1996, the Board denied his request for the following reasons:

a. In order to justify correction of a military record the applicant must show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the record is in error or unjust. The applicant failed to submit evidence that would satisfy the aforementioned requirement.

b. Trial by court-martial was warranted by the gravity of the offenses charged. Conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes the misconduct for which the applicant was convicted.

c. The applicant submitted neither probative evidence not a convincing argument in support of the request.

d. The applicant failed to provide any basis for the Board to grant clemency in his case.

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 applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under conditions other than honorable discharge. He contends he experienced mental health conditions including 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 17 February 1971; 2) There is evidence the applicant deployed to the Republic of Vietnam; 3) On 4 April 1973, the applicant accepted nonjudicial punishment for absenting himself from his appointed place of duty from 9-13 March 1973; 4) Special Court-Martial Order, dated 31 July 1973, shows the applicant was found Guilty of being AWOL on 23 April 1973, 24 April 1973, and from 7 May-11 June 1973; 5) Special Court-Martial Order, dated 5 September 1974, shows the applicant was found guilty of being AWOL from 16-20 August 1974; 6) The applicant was again found to be AWOL on 10 December 1974, and he returned to military control on 20 February 1975; 7) The applicant was discharged on 27 March 1975, chapter 11, as a result of a court-martial with an under other than honorable conditions.

b. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also reviewed.

c. The applicant asserts he was experiencing mental health conditions including PTSD as a result of his deployment to Vietnam, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA for treatment PTSD and substance abuse in 2004. He was diagnosed and treated by the VA for PTSD related to his experiences during his deployment to Vietnam. The applicant does not receive any service-connected disability at this time.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient 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 discharge? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed with and treated for PTSD related to his reported experiences during his deployment to Vietnam starting in 2004 by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed with and treated for PTSD related to his reported experiences during his deployment to Vietnam starting in 2004 by the VA.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service as a result of his deployment to Vietnam. The applicant did repeatedly go AWOL after his deployment. This type of avoidant behavior can be a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct is mitigatable.

BOARD DISCUSSION:

1. 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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by court-martial. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board majority concluded that the characterization of service the applicant received upon separation was appropriate. The Board minority determined the applicant's statement was sufficient to warrant relief in the form of a discharge upgrade to under honorable conditions (General).

2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a court-martial. The appellate review was completed and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process and the rights of the applicant were fully protected.

3. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board majority determined relief was not warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed with and treated for PTSD related to his reported experiences during his deployment to Vietnam starting in 2004 by the VA.

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2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	■	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 for correction of the records of the individual concerned.

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.

REFERENCES:

1. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Army policy states that an under other than honorable conditions discharge is normally considered appropriate; however, a general, under honorable conditions or an honorable discharge may be granted. Chapter 11-2 sets policy and provides guidance for the separation of Soldiers because of unsatisfactory performance or conduct while in entry-level status. Separation of a Soldier in entry-level status may be warranted on the grounds of unsatisfactory performance or unsatisfactory conduct as evidenced by:

- Inability.
- Lack of reasonable effort.
- Failure to adapt to the military environment.
- Minor disciplinary infractions.

2. 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.

3. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army,

acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//