

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 November 2024

DOCKET NUMBER: AR20240003309

APPLICANT REQUESTS: Upgrade of his undesirable discharge to under honorable conditions (general), with corresponding changes to his:

- Narrative Reason for Separation
- Separation Code
- Reentry Code

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

- DD Form 149 (Application for Correction of Military Record), 17 January 2024
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 23 April 1970
- DD Form 258A (Undesirable Discharge Certificate), 23 April 1970
- VA Form 21-4138 (Statement in Support of Claim), 21 September 2021
- Applicant letter to Veterans Administration (VA), 21 September 2021
- Letter of support, [REDACTED] 6 December 2021
- Letter of support, [REDACTED] 23 December 2021
- Letter of support, [REDACTED] 31 January 2022
- Email, [REDACTED] 5 February 2022
- Email, [REDACTED] 8 February 2022

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 indicates on his DD Form 149 that post-traumatic stress disorder (PTSD) is an issue or condition related to his request. He states, he completed 18 months of service in Vietnam as an 11B20 clearing mines as a Combat Demolition Specialist. He suffered from the terrors of his actions in Vietnam. He suffered from PTSD which was not diagnosed or treated.

3. The applicant provided copies of:

a. His DD Form 214 and Undesirable Discharge Certificate, dated 23 April 1970

b. Letter to the VA, dated 21 September 2021, wherein he described:

(1) He joined the Army on the Buddy Enlistment Plan at age 17 with an 8th grade education. After basic combat and advanced training, he was sent to Germany and then to Vietnam. He had no problems and got along with all the officers, so he extended his tour to 18 months.

(2) In Cajun he removed bodies from a cemetery so engineers could build a runway. He gathered the bodies and loaded them into body bags to be sent home. His good buddy stepped on a mine. They brought in dead Vietnamese and had to dig holes to burn them in.

(3) In his last 6 months he was in a heavy artillery unit sweeping mines, doing demolition, and sleeping in a tent of a heavy artillery unit. They were flying over spraying chemicals in their area.

(4) When he returned to the States, he was an E-5 and he received orders back to Vietnam with a unit which had never been to Vietnam. He did not want to go with a new unit that had never been to Vietnam. His mother got in touch with the Pentagon to have his orders changed. The orders were changed to Fort Leonard Wood.

(5) On the way to Fort Leonard Wood, he was in a minor wreck causing him to be 1 1/2 hours late reporting in. When the guy came out to meet him, he said we already do not like you here so you might as well get in your car and leave. Since he was late, he got in his car and left. He was gone for 20 days. His thought was he needed to return, or he would never finish his tour. He turned himself in and was placed in confinement for 6 months. He was stripped down in the snow, made to stand by a stove naked, sprayed with bug spray, put in solitary confinement, and then escaped. He went to Fort Riley and turned himself in. His grandfather died and they let him return for the service. He was given an option to reenlist with an honorable discharge or take the undesirable discharge.

(6) He joined the Army with intentions to serve for 20 years. He feels that he deserved to be considered for an honorable discharge, not under other than honorable.

c. Five letters of support from people who know him, dated between December 2021 and February 2022, attesting to his character and integrity.

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

- a. On 31 August 1966, he enlisted in the Regular Army at age 17 for 3 years.
- b. On 3 December 1966, he accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being absent without leave (AWOL) from his unit, 1st Engineer Training Brigade, Fort Leonard Wood, from 16 November 1966 to 21 November 1966. His punishment consisted of forfeiture of \$25.00 per month for 2 months. He did not appeal this punishment.
- c. He served in Vietnam from 2 February 1967 to 29 July 1968 and he attained the rank of specialist 5/E-5 (temporary) on 7 March 1968.
- d. Special Court-Martial Order Number 2005, issued by Headquarters (HQ) Special Processing Company (SPC), Special Troops (ST), U.S. Army Training Center (USATC) Fort Leonard Wood (FLW), dated 18 November 1968, reflects he was arraigned and tried with pleas and findings of guilty of two specifications of AWOL from his unit, SPC, ST, USATC FLW from 9 September 1968 to 17 October 1968 (42 days); and from 27 October 1968 to 30 October 1968 (3 days). He was sentenced to forfeiture of \$70.00 pay for 3 months, and to be reduced to specialist 4 (SP4)/E-4. The sentence was adjudged on 15 November 1968.
- e. On 18 November 1968, the Commanding Officer, SPC, ST, USATC, FLW approved only so much of the sentence as provided for forfeiture of \$40.00 per month for 3 months, and reduction to SP4/E-4.
- f. Special Court-Martial Order Number 702, issued by HQ SPC, ST, USATC, FLW, dated 10 June 1969, reflects he was arraigned and tried with pleas and findings of guilty on all counts of four specifications of AWOL from his unit, SPC, ST, USATC FLW from 25 November 1968 to 6 December 1968 (11 days); 20 December 1968 to 3 April 1969 (104 days); 11 April 1969 to 21 April 1969 (10 days); 6 May 1969 to 13 May 1969 (7 days); and one specification of escape from lawful confinement from the Post Stockade, FLW, on 6 May 1969. He was sentenced to forfeiture of \$73.36 pay for 6 months, and 6 months of confinement at hard labor. The sentence was adjudged on 7 June 1969. This order lists his rank as SP4/E-4.
- g. On 10 June 1969, the Commanding Officer, SPC, ST, USATC, FLW approved his sentence.
- h. Special Court-Martial Order Number 587, issued by U.S. Army Correctional Training Facility, dated 8 July 1969, suspended the portion of his sentence not executed until 21 August 1969, unless sooner vacated. This order lists his rank as private/E-1.
- i. Special Court-Martial Order Number 709, issued by U.S. Army Correctional Training Facility, dated 13 August 1969, remitted the unexecuted portions of his

sentence to confinement at hard labor and his forfeiture of \$73.36 pay for the remainder of his sentence.

j. On 19 February 1970, court-martial charges were preferred against him. A DD Form 458 (Charge Sheet), 19 February 1970 reflects he was charged with one specification of AWOL from Special Processing Detachment (SPD), Fort Riley, from on or about 21 August 1969 to 17 February 1970.

k. A memorandum issued by SPD, Fort Riley, subject: Initial Interview of Returnee, dated 19 February 1969, shows he surrendered to military authorities on 17 February 1970 at Fort Riley.

l. On 10 March 1969, he underwent a psychiatric evaluation. The examining psychiatrist diagnosed inadequate personality, manifested by repeated AWOLs, faulty judgement, poor motivation, non-commitment to productive goals, and lack of response to rehabilitative efforts. The examiner recommended consideration be given for a general discharge under honorable conditions based on his service in Vietnam. He further noted he was mentally responsible, able to distinguish right from wrong and to adhere to the right and had the emotional capacity to understand and participate in board proceedings. There were no disqualifying mental defects sufficient to warrant disposition through medical channels.

j. On 12 March 1969, the Commander, SPD, Fort Riley, requested he be discharged under the provisions of paragraph 6a of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), paragraph 6a by reason of unfitness with an undesirable discharge. His commander noted his offenses met the criteria of separation as per regulation, the result of which was 485 days bad time. He further recommended rehabilitation efforts be waived in his case.

k. On the same date, his intermediate commander recommended his discharge with issuance of an Undesirable Discharge Certificate.

l. On 20 March 1970, he met with counsel and acknowledged receipt of his commander's notification memorandum and his contemplated action to separate him for unfitness under authority of Army Regulation 635-212 and he elected his rights. He understood he may be represented by military counsel of his own selection or by a civilian counsel at his own expense, and he may submit a statement in his own behalf at that time or defer such statement for later submission in the event a board of officers was convened to consider his case. After having been counseled, he:

- waived military counsel
- waived a hearing before a board of officers
- elected not to submit a statement in his own behalf

- acknowledged he received a copy of the Commanding Officer's report and copies of the statements submitted to support the recommendation for discharge
- understood he may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions were issued to him
- he understood that as a result of issuance of an undesirable discharge under conditions other than honorable, he may be ineligible for many or all benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life

m. On 24 March 1970, the Commanding Officer SPD, Fort Riley, approved his discharge from the Army under the provisions of Army Regulation 635-212, because of unfitness and directed issuance of an Undesirable Discharge Certificate.

n. On 23 April 1970, the applicant was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-212, with separation program number (SPN) 28B, and reenlistment codes of 3 and 3B. He completed 2 years, 3 months, and 26 days of active service with 315 days' time lost under Title 10, U.S. Code, and 170 days' time lost subsequent to normal End of Term of Service (31 August 1969 – 16 February 1970). He was awarded or authorized the:

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)
- three overseas bars

5. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

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 an upgrade of his undesirable discharge with corresponding changes to his DD214. 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 31 August 1966; 2) He served in Vietnam from 2 February 1967 to 29 July 1968; 3) Special Court-Martial Order, dated 18 November 1968, reflects he was found of guilty of two specifications of

AWOL from 9 September-17 October 1968 and from 27-30 October 1968; 4) Special Court-Martial Order, dated 10 June 1969, reflects he was found of guilty of four specifications of AWOL from 25 November-6 December 1968; 20 December 1968-3 April 1969; 11-21 April 1969; 6-13 May 1969; and one specification of escape from lawful confinement from the Post Stockade, on 6 May 1969; 5) On 19 February 1970, court-martial charges were preferred against the applicant for going AWOL from Special Processing Detachment from 21 August 1969-17 February 1970; 6) On 23 April 1970, the applicant was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-212, with separation program number (SPN) 28B, and reenlistment codes of 3 and 3B.

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

c. The applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with PTSD, while on active service. On 10 March 1969, he underwent a psychiatric evaluation. The examining psychiatrist did not diagnose the applicant with a mental health condition beyond a personality disorder. The examiner recommended consideration be given for a general discharge under honorable conditions based on his service in Vietnam. He further noted he was mentally responsible, able to distinguish right from wrong and to adhere to the right and had the emotional capacity to understand and participate in board proceedings.

d. A review of JLV was void of medical documentation for the applicant, and the applicant did not provide any medical information beyond his statement of support for a claim to the VA in 2021.

e. Based on the available information, it is the opinion of the Agency Medical 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 PTSD which mitigates his misconduct.

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

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did go AWOL repeatedly, which could be avoidant and a natural sequelae to PTSD related to his combat experiences. However, the presence of repeated misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone 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 not 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. Discharge upgrade: Grant to General Discharge. The evidence shows, following a series of misconduct (multiple AWOLs and multiple court-martial convictions), the applicant's chain of command initiated separation action against him. The applicant was discharged for unfitness/misconduct with an under other than honorable conditions characterization of service. The Board found no error or injustice in his separation processing. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. However, the Board noted the applicant served 18 months in Vietnam and received excellent ratings throughout that service. Additionally, Furthermore, the applicant provided character reference letters in support of a clemency determination. Based on his Vietnam service and clemency submission, the Board determined his service did not rise to the level required for an honorable discharge; 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.

b. Narrative Reason for Separation and associated codes: Deny. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of paragraph 6a of AR 635-212. The narrative reason specified by Army Regulations for a discharge under this paragraph for an enlisted Soldier is "Unfitness," the separation code (formerly known as Separation Program Number) is "28B", and the reenlistment (now called) reentry code is "RE 3/3B (due to lost time)." AR 635-5, Separation Documents, governs preparation of the DD Form 214 and

dictates that entry of the narrative reason for separation, separation code, and RE Code, will be entered exactly as listed in AR 635-5-1, Separation Program Designator (SPD) Codes. The Board found no mitigating factors that would merit a change to the applicant's narrative reason for discharge or associated codes. In view of the foregoing, the Board determined that the reason for discharge was both proper and equitable and there is no reason to change it.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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 applicant a DD Form 214 for the period ending 23 April 1970, as follows: Character of Service: Under Honorable Conditions (General).
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

11/18/2024

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. 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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

3. Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), in effect at the time, set forth the basic authority for the separation of enlisted personnel for unfitness and unsuitability.

a. Paragraph 4a provided an individual separated by reason of unfitness would be furnished an Undesirable Discharge Certificate except that an Honorable or General Discharge Certificate might be awarded if the individual being discharged was awarded a personal decoration or if warranted by the particular circumstances in a given case.

b. Paragraph 5b provided commanders exercising general court-martial jurisdiction were authorized to convene boards of officers for unfitness and unsuitability and to order separation.

c. Paragraph 6a(1) provided members involved in frequent incidents of a discreditable nature with civil or military authorities were subject to separation for unfitness. An undesirable discharge was normally considered appropriate.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

5. Army Regulation 635-5 (Separation Documents) This regulation prescribed the separation documents that would be furnished each individual who was separated from the Army including Active Duty Training personnel and established standardized procedures for the preparation and distribution of these documents. All available records would be used as a basis for the preparation of the DD Form 214, including DA Form 20, DA Form 66, and orders.

a. Item 11c (Reason and Authority), except as indicated in b below, the authority for transfer or discharge will be entered in this item by reference to the appropriate regulation, circular, bulleting, special separation directive, statute, etc., followed by the Separation Program Number (SPN) and descriptive reason for transfer or discharge.

b. The SPN 28B corresponded with the authority Army Regulation 635-212 and the narrative reason-Unfitness-Frequent Involvement in Incidents of a Discreditable Nature Civil or Military Authorities

6. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

7. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. 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 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.

9. Section 1556 of Title 10, U.S. 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//