

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2024

DOCKET NUMBER: AR20240003738

APPLICANT REQUESTS: an upgrade of his character of service from under other than honorable conditions (UOTHC) to honorable and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record), 9 February 2024
- DD Form 4 (Enlistment Contract – Armed Forces of the United States), 16 December 1970
- General Orders Number 1850, 12 August 1972
- DD Forms 214 (Armed Forces of the United States Report of Transfer or Discharge), 15 December 1970 and 30 March 1973
- Department of Veterans Affairs (VA) rating decisions, 19 September 2023, and 12 December 2023

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 after serving in Vietnam, he was given a UOTHC discharge upon his return for having four ounces of marijuana in his possession. He feels that he should have been given counseling for his post-traumatic stress disorder (PTSD) and retained an honorable status. Instead, he was told to “get out” or face court-martial.

a. His infraction was four ounces of marijuana, to which he purchased eight ounces and shared it with another Soldier who turned him in. He learned in his two voluntary tours while in Vietnam that the use of marijuana off duty was a safe way to relieve stress from combat, and he purchased the marijuana to relieve his combat related stress.

b. He believes his punishment was excessive and he should have been offered counseling for his undiagnosed PTSD. He states not a single day went by that he did not serve his country with honor. He has recently been diagnosed with PTSD – combat medical disorder, he receives a disability rating of 30 percent (%) from the VA and he is in treatment.

3. The applicant enlisted in the Regular Army on 29 September 1969, for a period of 3 years. He was honorably discharged on 15 December 1970 for immediate reenlistment, in the grade of E-3. His DD Form 214 shows he was awarded military occupational specialty 76Y (Armorer Supply Specialist), and he served for 1 year, 2 months, and 17 days of net active service this period.

4. He reenlisted on 16 December 1970, for a period of 3 years. His DA Form 20 (Enlisted Qualification Record) shows he arrived in Vietnam on 18 February 1971 and served in the 1st Military Intelligence Battalion. He transferred from the 1st Military Intelligence Battalion on 10 April 1972, where he arrived on 12 April 1972 to the 191st Military Intelligence Detachment.

5. While in Vietnam, he received the Army Commendation Medal, a letter of appreciation from his Commander for appreciation of the efficient and timely manner in which he served on the Quick Reaction Force and accomplished the mission, and he was awarded the Bronze Star Medal for his outstanding meritorious service in connection with military operations against a hostile force.

6. He returned from Vietnam in September 1972. Court-martial charges were preferred against him on 12 February 1973, for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with:

- wrongfully introducing 25 ounces, more or less, of a habit-forming narcotic drug, marihuana, into a military post for the purpose of transfer
- wrongfully transferring a habit-forming narcotic drug, marihuana
- wrongfully having in his possession 25 ounces, more or less, of a habit-forming narcotic drug, marihuana

7. He consulted with legal counsel on 20 March 1973, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge in Lieu of Trial by Court-Martial). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of a UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. He acknowledged that he may be deprived of many rights and benefits as a Veteran under both Federal and State law. Additionally, he elected to submit a statement in his own behalf, stating, in effect:

(1) He referenced his apprehension, and stated it was difficult and frightening. He wrote of his use of marijuana while was a habit he was introduced to while in Vietnam and admitted he was influenced by his peer group to use drugs regularly while in Vietnam. After his apprehension, he decided to discontinue the use of marijuana and knew it was shameful for his family, himself, and his career.

(2) He stated he had never had any trouble with the law, nor court-martialed, or even had court appearances until the incident of the marijuana. His service record would show he was a good Soldier. He requested a chapter 10 discharge because he felt he could remain a productive law-abiding citizen, and hoped he would receive a under honorable conditions (general) discharge. He had worked hard to become a non-commissioned officer, despite his recent association with marijuana and its users. He referenced his Army Commendation Medal and his Bronze Star, stated he had always done his duty conscientiously and to the best to his ability during his military career.

8. On 21 March 1973, the applicant's immediate commander recommended approval of his request for separation and on 22 March 1973, the applicant's intermediate commander recommended approval of his request for separation. Additionally adding, the recommendation for of an Undesirable Discharge Certificate due to the applicant's possession and transfer of marijuana, which warranted a more severe form of administrative action.

9. The separation authority approved the applicant's request for discharge for the good of the service on 29 March 1973. He further directed the applicant be furnished an Undesirable Discharge Certificate.

10. The applicant's DD Form 214 shows he was discharged on 30 March 1973, under the provisions of AR 635-200, with separation program number 246 (for the good of the service), in the grade of E-1. His characterization of service was UOTHC, and he was assigned reenlistment code 4. He was credited with 2 years, 3 months, and 15 days of net active service this period with 1 year, 2 months, 17 days of other service, totaling

3 years, 6 months, and 2 days of total active service. He had 2 years, 2 months, and 16 days of foreign and/or seas service with service to Vietnam. He was awarded or authorized the following decorations, medals, badges, commendations, and campaign ribbons:

- Bronze Star Medal
- Army Commendation Medal
- Vietnam Service Medal
- Republic Vietnam Campaign Medal
- National Defense Service Medal
- Overseas Service Bar (3)
- Sharpshooter Badge (Rifle)

11. The applicant additionally provides his VA rating decision documents, showing on 19 September 2023 the VA granted him a 20% service-connected disability rating for bilateral hearing loss and 10% for bilateral tinnitus. Further showing on 12 December 2023, the VA rated him at 30% for PTSD and 0% for hypertension associate with herbicide exposure.

12. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

13. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

14. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. 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 enlisted in the Regular Army on 29 September 1969.
- He reenlisted on 16 December 1970, for a period of 3 years. His DA Form 20 (Enlisted Qualification Record) shows he arrived in Vietnam on 18 February 1971 and served in the 1st Military Intelligence Battalion. He transferred from the 1st Military Intelligence Battalion on 10 April 1972, where he arrived on 12 April 1972 to the 191st Military Intelligence Detachment.

- While in Vietnam, he received the Army Commendation Medal, a letter of appreciation from his Commander for appreciation of the efficient and timely manner in which he served on the Quick Reaction Force and accomplished the mission, and he was awarded the Bronze Star Medal for his outstanding meritorious service in connection with military operations against a hostile force.
- He returned from Vietnam in September 1972. Court-martial charges were preferred against him on 12 February 1973, for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with:
 - wrongfully introducing 25 ounces, more or less, of a habit-forming narcotic drug, marihuana, into a military post for the purpose of transfer
 - wrongfully transferring a habit-forming narcotic drug, marihuana
 - wrongfully having in his possession 25 ounces, more or less, of a habit-forming narcotic drug, marihuana
- He consulted with legal counsel on 20 March 1973, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge in Lieu of Trial by Court-Martial).
- The applicant's DD Form 214 shows he was discharged on 30 March 1973, under the provisions of AR 635-200, with separation program number 246 (for the good of the service), in the grade of E-1. His characterization of service was UOTHC, and he was assigned reenlistment code 4.

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 after serving in Vietnam, he was given a UOTHC discharge upon his return for having four ounces of marijuana in his possession. He feels that he should have been given counseling for his post-traumatic stress disorder (PTSD) and retained an honorable status. Instead, he was told to "get out" or face court-martial. His infraction was four ounces of marijuana, to which he purchased eight ounces and shared it with another Soldier, this Soldier turned him in. He learned in his two voluntary tours while in Vietnam that the use of marijuana off duty was a safe way to relieve stress from combat, he purchased the marijuana to relieve his combat related stress. He believes his punishment was excessive and he should have been offered counseling for his undiagnosed PTSD. He states not a single day went by that he did not serve his country with honor. He has recently been diagnosed with PTSD – combat medical disorder, he receives a disability rating of 30 percent from the VA and he is in treatment.

d. Due to the period of service, no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected, including 30% for PTSD. A medical assessment on 25 January 2017, shows the applicant was being treated for insomnia via medication. However, he denied any other symptoms and declined behavioral health services. On 23 May 2023, he participated in a mental health consultation, he endorsed symptoms of PTSD related to his experiences in Vietnam and shared his recent symptoms appeared to have been triggered by recent world events including wars in Ukraine and Iraq, as well as the withdrawal from Afghanistan. He was recommended for individual therapy, but contrary to his statement of being in treatment for PTSD, after completing all intake sessions the applicant declined further services.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had an experience, serving in a combat zone, that contributed to his behavioral health condition of PTSD and partially mitigates his discharge.

g. 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, and earned a Bronze Star. He is 100% service connected including 30% for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The record shows, contrary to his assertion of being discharged for possession of 4 ounces of marijuana, the applicant was discharged due to possession of 25 ounces of marijuana as well as introducing 25 ounces of marijuana, into a military post for the purpose of transfer. The medical documentation shows the applicant is service-connected for PTSD. Given the association between PTSD and the use of substances as a coping mechanism, the applicant's misconduct of possession of marijuana is mitigated by his BH condition. However, his intent to transfer or distribute marijuana would not be mitigated by his BH condition. PTSD does not impair the ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant’s contentions, his record of service to include service in Vietnam, his awards and decorations, the frequency and nature of his misconduct, the court-martial charges, his separation for the good of the service and his character of service upon discharge. The Board considered his statement, his service-connected PTSD diagnosis, and the review and conclusions of the Agency medical advisor. The Board found: (1) the applicant asserts the mitigating condition of PTSD; (2) the applicant served in a combat zone, earned a Bronze Star and is 100% service connected including 30% for PTSD; while the applicant’s misconduct of possession of marijuana is mitigated by his BH condition, his intent to transfer or distribute marijuana would not be mitigated by his BH condition. The Board concurred with the medical advisor’s conclusion that PTSD does not impair the ability to distinguish right from wrong and act in accordance with the right. The applicant did not provide evidence of post-service conduct or achievement in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the reason and character of the applicant’s discharge was not in error or unjust and that an upgrade is not warranted as a matter of liberal consideration.

3. 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

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| : | : | : | 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.

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):

1. Review of the applicant's record and Army regulations show he meets the regulatory guidance for additional awards not currently listed on his DD Form 214; for the period ending 30 March 1973.

a. The applicant served in the 1st Military Intelligence Battalion from 18 February 1971 to 11 April 1972. The 1st Military Intelligence Battalion was awarded by Department of the Army General Order Number (DAGO) 5, 1973 the Meritorious Unit Commendation.

b. The applicant served in the 191st Military Intelligence Detachment from 12 April 1972 to 13 September 1972. The 191st Military Intelligence Detachment was awarded by DAGO 54, 1974, the Republic of Vietnam Gallantry Cross with Palm Unit Citation.

2. Remove the following from Item 24 – Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized:

- Vietnam Service Medal
- Republic of Vietnam Campaign Medal

3. Add the following in Item 24 - Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized:

- Vietnam Service Medal with four bronze service stars

- Republic of Vietnam Campaign Medal with device (1960)
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Meritorious Unit Commendation

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that 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. It is not an investigative body."

4. Army Regulation 600-8-22 (Military Awards) states a bronze service star will be awarded for wear on the Vietnam Service Medal for participation in each campaign. During the applicant's service in Vietnam, he participated in the following four campaigns:

- Vietnam Counteroffensive Phase VII, 1 July 1970 - 30 June 1971
- Consolidation I, 1 July 1971 - 30 November 1971
- Consolidation II, 1 December 1971 - 29 March 1972
- Vietnam Cease-Fire, 30 March 1972 - 28 January 1973

5. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) lists the unit awards received by units serving in Vietnam. This pamphlet shows:

a. The 1st Military Intelligence Battalion was awarded by Department of the Army General Order Number (DAGO) 5, 1973 the Meritorious Unit Commendation

b. Shows the 191st Military Intelligence Detachment was awarded by DAGO 54, 1974, the Republic of Vietnam Gallantry Cross with Palm Unit Citation

6. 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. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under conditions other than honorable is normally considered appropriate.

b. 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.

c. 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.

7. 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 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 post-traumatic stress disorder; 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 sexual assault or sexual harassment was unreported, or 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.

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 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//