

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 December 2024

DOCKET NUMBER: AR20240003748

APPLICANT REQUESTS: in effect, reconsideration of his previous request for:

- upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

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 AR20150005248 on 14 January 2016.
2. The applicant states he completed his first enlistment and attained the rank of sergeant (SGT)/E-5. He reenlisted to complete another tour of service then he started to have marital issues which caused him to have mental health issues because he could not concentrate on his military duties. He was busted down to private (PVT)/E-1 and released out of the Army under other than honorable conditions. The applicant lists other mental health as related to his request.
3. A review of the applicant's service record shows:
  - a. DD Form 4 (Enlistment Record-Armed Forces of the United States) reflects the applicant enlisted in the Regular Army on 28 October 1963.
  - b. The applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on 15 November 1963 for without authority absenting himself from his unit on or about 11 November 1963 until on or about 14 November 1963. His punishment consisted of forfeiture of \$18.00, restriction for 14 days and extra duty for 14 days.
  - c. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was honorably discharged on 27 May 1966 for immediate

reenlistment. He completed 2 years, 6 months, and 27 days of active service. He was awarded or authorized the Army of Occupation Medal (Berlin), Sharpshooter Marksmanship Qualification Badge with Rifle Bar.

- d. He reenlisted on 28 May 1966.
- e. DA Form 20 (Enlisted Qualification Record) shows in item 31 (Foreign Service) he served in Germany from 17 March 1964 to 6 November 1966 and in Vietnam from 14 December 1966 to 4 January 1968.
- f. Before a special court martial on 22 June 1967, the applicant was found guilty of without proper authority absenting himself from his unit in Vietnam on or about 3 May 1967 until 27 May 1967. The court sentenced him to forfeiture of \$100.00 per month for 4 months, reduction to private first class/E-3 and restriction for 60 days. On 29 June 1967 the sentence was approved and would be duly executed but the restriction for 60 days was suspended for 60 days.
- g. The Extract of Records of NJP of Article 15, UCMJ shows the applicant accepted NJP on 8 July 1968 for being absent without leave (AWOL) from on or about 30 June 1968 to on or about 3 July 1968. His punishment consisted of restriction and extra duty for 14 days and forfeiture of \$16.00 per month for one month.
- h. Before a special court martial on 23 October 1968, the applicant was found guilty of AWOL from on or about 19 July 1968 until 9 October 1968. The court sentenced him to confinement at hard labor for 3 months and reduction to private 2/E-2. On 29 October 1968 the sentence was approved and would be duly executed.
- i. Special Court Martial Order Number 72, Headquarters, U.S. Army Armor Center Fort Knox, KY, 6 December 1968 shows the unexecuted portion of the sentence to confinement at hard labor for 3 months was suspended.
- j. The applicant accepted NJP under Article 15 of the UCMJ on 20 August 1969 for AWOL from on or about 16 August 1969 to on or about 19 August 1969. His punishment consisted of reduction to private 2/E-2, forfeiture of \$69.00 per month for 2 months, correctional custody for 5 days, and 30 days extra duty.
- k. Court martial charges were preferred against the applicant on 26 February 1970. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from on or about 14 October 1969 until on or about 25 January 1970.
- l. The applicant voluntarily requested a discharge under the provision of Army Regulation 635-200 (Personnel Separations-Enlisted Separations), Chapter 10, in lieu of trial by court-martial on 11 March 1970. The applicant consulted with legal counsel

and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an undesirable discharge; the procedures and rights that were available to him.

(1) He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Department of Veteran Affairs, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws and he may expect to encounter substantial prejudice in civilian life if discharged under a UOTHC discharge and furnished an Undesirable Discharge Certificate.

(2) He elected not to submit statements in his own behalf.

m. His immediate commander recommended approval of the applicant's voluntary request for discharge on 12 March 1970 with the issuance of an Undesirable Discharge Certificate. His chain of command recommended approval.

n. The separation authority approved the discharge action on 16 March 1970 under the provisions of Army Regulation 635-200, Chapter 10, and directed the applicant be reduced to the private/E-1 and issued an Undesirable Discharge Certificate.

o. He was discharged on 20 March 1970. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service-in lieu of trial by court-martial. He had a separation program number (SPN) of 246 and reenlistment code 3 and 3B. His service was characterized as under other than honorable conditions. He completed 2 years, 11 months, and 25 days of active service. He had lost time from 30 June 1968 to 2 July 1968, 19 July 1968 to 9 October 1968, 23 October 1968 to 9 December 1968, 16 December 1968 to 16 December 1969, 25 August 1969 to 29 August 1969 and 14 October 1969 to 27 February 1970. He was awarded or authorized the:

- Vietnam Service Medal
- Republic of Vietnam Campaign Medal
- Army Good Conduct Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar

4. On 9 January 2015, the Army Review Boards Agency, notified the applicant that medical records that support his stated issue were requested for consideration of his application.

5. On 14 January 2016, in Docket Number AR20150005248, the Board determined 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 applicant's records and denied his request for upgrade.

6. On 24 September 2024, a staff member at ARBA, requested the applicant provide medical documents that support his issue of other mental health issues. The applicant did not respond.
7. By regulation, (AR 15-185), the ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.
8. In reaching its determination, the Board can consider the applicant's petition, and service record in accordance with the published equity, injustice, or clemency guidance.

**MEDICAL REVIEW:**

- a. The applicant is applying to the ABCMR requesting reconsideration of his request for an upgrade of his under other than honorable conditions discharge. He contends he experienced mental health conditions that mitigate 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 28 October 1963; 2) The applicant deployed to Vietnam from 14 December 1966-04 January 1968; 3) On 22 June 1967, the applicant was found guilty before a special court martial of without proper authority absenting himself from his unit in Vietnam from 3-27 May 1967. The applicant again accepted nonjudicial punishment (NJP) on 8 July 1968 for being AWOL from 30 June-3 July 1968. Before a special court martial on 23 October 1968, the applicant was found guilty of AWOL from 19 July-9 October 1968. The applicant accepted NJP on 20 August 1969 for AWOL from about 16-19 August 1969. Court martial charges were preferred against the applicant on 26 February 1970 for being AWOL from 14 October 1969-25 January 1970; 3) On 02 October 1975, court-martial charges were preferred against the applicant for being AWOL from 17-19 March 1975 and 02 April-16 September 1975; 4) The applicant was discharged on 20 March 1970, Chapter 10, for the good of the service-in lieu of trial by court-martial. His service was characterized as under other than honorable conditions; 5) On 14 January 2016, ARBA reviewed and denied the applicant's request for an upgrade.
- b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review.

- c. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. There is insufficient medical evidence the applicant reported or was diagnosed with a mental health disorder, while on active service.
- d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a mental health condition, and he does not receive any service-connected disability. No additional medical documentation was provided for review.
- 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 mental health conditions including PTSD which mitigates his misconduct.
- (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 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 a mental health condition including PTSD, while he was on active service. The applicant did repeatedly not show up to work and go AWOL, which could be avoidant behavior and a natural sequela to some mental health conditions including PTSD. However, the presence of 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 and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the multiple AWOLs leading to the applicant's separation and the lack of mitigation found in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

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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. Section 1556 of Title 10, U.S. Code (USC), 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.

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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

- a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
- b. 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.

4. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

- a. 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.
- b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
- c. Chapter 10 of the version in effect at the time provided that a member who committed an offense or offenses for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses charged, type of discharge normally given under the provisions of this chapter, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An Undesirable

Discharge Certificate would normally be furnished an individual who was discharged for the good of the Service.

5. 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 post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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 to 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. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.
  - 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//