

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 December 2024

DOCKET NUMBER: AR20240004520

APPLICANT REQUESTS: reconsideration of his earlier request for an upgrade of his under other than honorable conditions discharge to honorable, and an appearance via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record), 27 February 2024
- Self-authored Statement, undated
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 24 March 1968
- DD Form 4 (Enlistment Record-Armed Forces of the United States), page 1 only, 25 March 1968
- DD Form 214, 26 May 1971
- DD Form 214 (Report of Separation from Active Duty), 31 December 1974

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 AR20050012939 on 25 May 2006.

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:

a. When he returned from Vietnam, he was stationed at Fort Bragg where he met a girl at a night club. They started dating to which her parents agreed. She had an identification card showing she was 18 years of age, but he did not know her actual age which was 15 years of age. Her parents were Vietnam protesters and when they discovered he was in Vietnam they got mad. They went to California together to get married when she turned 16. She returned to North Carolina with him and their child, and he was placed in jail. His attorney did not show up to trial, so the Judge appointed an attorney. He was sentenced to 2 years.

b. He received no legal help from the Army. His girlfriend visited him every weekend and he could not make parole because the Army had a hold on him. After he was released the military police sent him back home. He was later given an option for alternative service, but it was 100 miles from his home, and he had not money or car or place to live. He served in Vietnam and completed 5 years of service and asks for an upgrade so he can get Veterans Administration benefits.

3. The applicant provides copies of three DD Forms 214 from his periods of service and a copy of page one of his second reenlistment.

4. A review of his service records reflect:

a. On 27 May 1971, he reenlisted for 4 years beginning in the rank specialist four (SP4)/E-4, following two periods of honorable service totaling 3 years, 10 months, and 3 days. His military occupational specialty was 64B (Heavy Truck Driver).

b. During his most recent enlistment, he served in Vietnam from 2 July 1971 to 7 April 1972 for 9 months and 5 days.

c. On 21 November 1972, the (County) District Court (Court) of North Carolina charged him with forcible trespass upon the lands and tenements of (Name redacted).

d. On 19 December 1972, the (County) Court of North Carolina further charged him with willfully resisting, delaying, and obstructing a public officer, by escaping after being placed under arrest for contributing to the delinquency of a minor (Name redacted).

e. On 17 January 1973, the (County) Court of North Carolina consolidated his charges and found him guilty of all the charges of forcible trespass, contributing to the delinquency of a minor, and resisting an officer; he was subsequently sentenced to 2 years of incarceration in the North Carolina Department of Corrections. The Court further recommended he be given work release program.

f. A Military Police Report, MPR Number XXXX-72-XXXX, dated 19 January 1973, reflects he was arrested at Fay Airport for assault on a female and contributing to the delinquency of a minor, and resisting arrest. He appeared in Civil court and pleaded not guilty but was found guilty; sentenced to 2 years. He was confined at the (County) jail.

g. On 20 February 1973, he entered a plea of guilty for escape from prison in the (County) Court of North Carolina, and the Court found him guilty of said offense and sentenced him to 3 months of work under of supervision of the State Department of Corrections; said sentence of 3 months to run in succession of his previous 2 years' sentence, at the expiration of his 2 year sentence.

h. On 20 September 1973, the Commander, 517th Transportation Company, Fort Bragg, advised him by memorandum of his intent to recommend his discharge under the provisions of Army Regulation 635-206 (Personnel Separations-Discharge-Misconduct), by reason of conviction and sentence by a civil court; with issuance of an Undesirable Discharge Certificate.

i. On 3 October 1973, he acknowledged receipt of his commander's notification memorandum; he elected his rights by response letter; he provided a written statement; he elected representation by military counsel; and he indicated he did not intend to appeal his civil conviction. He understood that he may expect to 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.

j. His commanding officer and his intermediate commanders forwarded their recommendation to the separation authority for approval, recommending he be separated with an Undesirable Discharge Certificate, on 12 October 1973, and 20 October 1973, respectively.

k. On 26 November 1973, having entered a plea of guilty to a second offense of felonious escape to the (County) Superior Court of North Carolina, the Court sentenced him to 6 months of incarceration in the North Carolina State Prison; said sentence of 6 months to run in succession to his previous 2 years' and 3 months' sentences.

i. Special Orders Number 21, issued from Headquarters, XVIII Airborne Corps and Fort Bragg, dated 30 January 1974, administratively reassigned him to Personnel Control Facility, Fort Bragg; he was still in the hands of civil authorities.

j. On 26 March 1974, the Commanding Officer, 517th Transportation Company, Fort Bragg, recommended his separation a second time under the provisions of Army Regulation 635-206, paragraph 40B(2), by reason of conviction and a sentence by a civil court; with issuance of an Undesirable Discharge Certificate.

k. On 5 April 1974, his Commanding Officer, 517th Transportation Company, Fort Bragg, advised him by memorandum for the second time of his intention to recommend his discharge under the provisions of Army Regulation 635-206, paragraph 40B(2), by reason of conviction and sentence by a civil court; with issuance of an Undesirable Discharge Certificate; and advised him of his rights.

l. The intermediate commanders endorsed this recommendation; however, the separation authority approval was either not completed or it is not in the available record.

m. On 27 December 1974, after having consulted with counsel, and fully being advised in accordance with the Presidential Proclamation Number 4313, dated 16 September 1974, the applicant elected his rights. He understood that if he elected to participate in the Presidential Amnesty Program, he would be required to perform a period of alternative service, not to exceed 24 months; he would be required to execute a reaffirmation of allegiance to the United States of America, and he would, upon his request, initially be discharged for the good of the service with an Undesirable Discharge Certificate. He elected to apply for participation in the President's Program for Military Deserters and he requested the court-martial charges be suspended. He understood satisfactory completion of the alternative service program would be acknowledged by issuance of a Clemency Discharge Certificate. He further understood that such certificate would not alter his ineligibility for any benefits predicated upon his military service.

n. On 31 December 1974, after having consulted with counsel, he voluntarily requested discharge for the good of the service pursuant to provisions of Presidential Proclamation Number 4313. He understood he would be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate; and as a result of the adverse nature of such a discharge, he would be deprived of all service benefits, he would be ineligible for all benefits administered by the Veterans Administration, and that he may be deprived of his rights and benefits as a Veteran under both Federal and State law. He also understood he may expect to encounter substantial prejudice in civilian life.

o. On the same date, he reaffirmed his allegiance to the United States of America, and he acknowledged that on or about November 1972, he voluntarily absented himself from his military unit without being properly authorized. He agreed to serve whatever alternative service his country may prescribe for him for a period of 5 months' service.

p. On 31 December 1974, he was discharged. His DD Form 214 for this period reflects his service was characterized as under other than honorable conditions, under the provisions of Presidential Proclamation Number 4313, by reason of "Separation for the good of the service by reason of willful and persistent unauthorized absence pursuant to Presidential Proclamation Number 4313." The Separation Program Designator was shown as KNL, and the reenlistment code was 4. He served a total of 3 years, 10 months, and 3 days of prior active service and he served 5 years, 4 months, and 11 days of total service. He had 759 days of time lost before normal expiration of term of service. He was awarded or authorized the:

- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-14)

- Vietnam Service Medal
- Republic of Vietnam Campaign Medal with Device (1960)
- Overseas Service Bar (1)
- Army Good Conduct Medal

q. On 5 June 1975, the Selective Service System, Reconciliation Service Division terminated him from active enrollment in the program by reason of being noncooperative with efforts to place him on an approvable job. He signed a statement declining to participate in the program.

5. On 30 October 1980, the Army Discharge Review Board denied his request for an upgrade of his undesirable discharge, finding it was both proper and equitable. This decision references two nonjudicial punishments for absence without leave, however the DA Forms 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)), showing the offenses, punishments, and appeals, if any, are not in the available record.

6. On 25 May 2006, and in ABCMR Docket AR20050012939, the Board carefully considered his request to upgrade his undesirable discharge. The Board found he committed serious civil offenses while in the Army. It did not appear he met the eligibility criteria for separation under Presidential Proclamation 4313, in that he never returned to military control; nevertheless, he was separated under that program. He did not complete his required period of alternative service. The applicant's record was insufficiently meritorious to warrant the relief he requested.

7. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

#### 8. 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 24 July 1967. He served as a field wireman in Germany and was honorably discharged on 24 March 1968 for immediate reenlistment. He reenlisted on 25 March 1968 for a period of 4 years. He served as a heavy vehicle driver in Korea and was honorably discharged on

26 May 1971 for immediate reenlistment. He reenlisted on 27 May 1971 for a period of 4 years. He was transferred to Vietnam on 21 July 1971 for duty as a heavy truck driver.

- The applicant went absent without leave (AWOL) on 30 November 1972, was apprehended by civil authorities, and returned to military control on 18 December 1972.
- On 19 December 1972, the (County) Court of North Carolina further charged him with willfully resisting, delaying, and obstructing a public officer, by escaping after being placed under arrest for contributing to the delinquency of a minor (Name redacted).
- On 17 January 1973, the (County) Court of North Carolina consolidated his charges and found him guilty of all the charges of forcible trespass, contributing to the delinquency of a minor, and resisting an officer; he was subsequently sentenced to 2 years of incarceration in the North Carolina Department of Corrections. The Court further recommended he be given work release program.
- A Military Police Report, dated 19 January 1973, reflects he was arrested at Fay Airport for assault on a female and contributing to the delinquency of a minor, and resisting arrest. He appeared in Civil court and pleaded not guilty but was found guilty; sentenced to 2 years. He was confined at the (County) jail.
- On 20 February 1973, the applicant was convicted of escaping from prison and sentenced to 3 months of confinement.
- On 20 September 1973, the applicant's unit commander initiated action to separate him under the provisions of Army Regulation 635-206, for conviction by civil court.
- On 26 November 1973, having entered a plea of guilty to a second offense of felonious escape to the (County) Superior Court of North Carolina, the Court sentenced him to 6 months of incarceration in the North Carolina State Prison; said sentence of 6 months to run in succession to his previous 2 years' and 3 months' sentences.
- On 31 December 1974, he was discharged. His DD Form 214 for this period reflects his service was characterized as under other than honorable conditions, under the provisions of Presidential Proclamation Number 4313, by reason of "Separation for the good of the service by reason of willful and persistent unauthorized absence pursuant to Presidential Proclamation Number 4313." The Separation Program Designator was shown as KNL, and the reenlistment code was 4. He served a total of 3 years, 10 months, and 3 days of prior active service and he served 5 years, 4 months, and 11 days of total service. He had 759 days of time lost before normal expiration of term of service.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states after serving in Vietnam, he was stationed at Fort Bragg where he met a girl at a night club. They started dating to which her parents

agreed. She had an identification card showing she was 18 years of age, but he did not know her actual age which was 15 years of age. Her parents were Vietnam protesters and when they discovered he was in Vietnam they got mad. They went to California together to get married when she turned 16. She returned to North Carolina with him and their child, and he was placed in jail. His attorney did not show up to trial, so the Judge appointed an attorney. He was sentenced to 2 years. He received no legal help from the Army. His girlfriend visited him every weekend and he could not make parole because the Army had a hold on him. After he was released the military police sent him back home. He was later given an option for alternative service, but it was 100 miles from his home, and he had no money or car or place to live. He served in Vietnam and completed 5 years of service and asks for an upgrade so he can get Veterans Administration benefits.

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 not service connected, likely due to the characterization of his discharge. The applicant has an extensive medical history requiring several hospitalizations for his chronic medical conditions (COPD and Afib) and much of his care has been provided by the VA. However, he has very limited behavioral health care since he has consistently denied interest in BH care or has reported no mental health concerns during his medical encounters. The applicant sought behavioral health services for the purpose of obtaining a PTSD diagnosis. He was referred for in-depth psychological testing and the results of the evaluation were reviewed with the applicant on 18 June 2001. He was diagnosed with PTSD related to his military experience. The applicant was recommended for group therapy and started on 23 October 2001 but was discontinued on 11 December 2001 due to missing sessions. Over a decade later, the applicant had a one-time behavioral health encounter, on 1 May 2018 related to a relationship break-up. On 6 April 2022, the applicant contacted social work services seeking housing and financial assistance. He reported eviction from his mobile home after experiencing a motorcycle accident that left him unemployed and focused on his recovery. The few months unemployed left him without enough money to cover his cost of living which led to the eviction from his mobile home. The record shows the applicant was provided with ongoing support.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is minimal but sufficient evidence the applicant had an experience, serving in a combat zone, that contributed to his behavioral health condition of PTSD. However, his BH condition would not mitigate his misconduct.

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 was diagnosed with PTSD via a psychological evaluation.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharge from military service due to a civil conviction of forcible trespass, contributing to the delinquency of a minor, and resisting an officer. He was further arrested for assault on a female, contributing to the delinquency of a minor, and resisting arrest. The applicant was further convicted for escaping from prison twice. Per the applicant's own admission, he had a child with the girl he was attempting to abscond with. Having sex with a child under the age of 16, attempting to abscond with her, assaulting an officer, and escaping prison twice is not part of the natural sequela of PTSD and his BH condition and would not mitigate the reason for his discharge. Specifically, PTSD does not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

#### BOARD DISCUSSION:

1. The Board determined 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.

2. 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. The evidence shows the applicant was convicted by civil authorities of forcible trespass, contributing to the delinquency of a minor, and resisting an officer. He was further arrested for assault on a female, contributing to the delinquency of a minor, and resisting arrest. The applicant was further convicted for escaping from prison twice. As a result, his chain of command initiated separation action against him for civil conviction. He was separated with an under rother than honorable conditions discharge.

a. The Board 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 minimal but sufficient evidence the applicant had an experience, serving in a combat zone, that contributed to his behavioral health condition of PTSD. However, his behavioral health (BH) condition would not mitigate his misconduct. By his own admission, the applicant had a child with the girl he was



attempting to abscond with. Having sex with a child under the age of 16, attempting to abscond with her, assaulting an officer, and escaping prison twice is not part of the natural sequela of PTSD and his BH condition and would not mitigate the reason for his discharge, as PTSD does not impair an individual's ability to know right from wrong, understand consequences, and make purposeful, conscious decisions.

b. The Board also considered his combat service in Vietnam and the fact that he was given an opportunity to participate in the Selective Service System, Reconciliation Service Division but he was terminated him from active enrollment in the program by reason of being noncooperative with efforts to place him on an approvable job. He signed a statement declining to participate in the program. Also, the applicant provided insufficient evidence of post-service achievements in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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 to amend the decision of the ABCMR set forth in Docket Number AR20050012939 on 25 May 2006.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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 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, which is the principle that government officials properly discharged their official duties unless there is evidence showing otherwise.

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, paragraph 2-11 reads 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 1-9 provided:

(1) 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 member 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.

(2) 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.

(3) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

3. Presidential Proclamation 4313, issued on 16 September 1974, provided for the issuance of a clemency discharge to certain former Soldiers, who voluntarily entered into and completed an alternate public work program specifically designated for former Soldiers who received a less than honorable discharge for AWOL-related incidents between August 1964 and March 1973. Under this proclamation, eligible deserters were given the opportunity to request discharge for the good of the service with the understanding that they would receive an undesirable discharge. Upon successful completion of the specified alternative service, the deserter was issued a clemency discharge. The clemency discharge did not affect the individual's underlying discharge and did not entitle him to any VA benefits. Rather, it restored federal and, in most instances, state civil rights which may have been denied due to the less than honorable discharge. If a participant of the program failed to complete the period of alternative service, the original undesirable characterization of service would be retained.

4. The Department of the Army Special Discharge Review Program (SDRP) was based on a memorandum from Secretary of Defense Brown and is often referred to as the "Carter Program." It mandated the upgrade of individual cases in which the applicant met one of several specified criteria and when the separation was not based on a specified compelling reason to the contrary. The ADRB had no discretion in such cases other than to decide whether re-characterization to fully honorable as opposed to a general discharge was warranted in a particular case. An individual who had received a punitive discharge was not eligible for consideration under the SDRP. Absentees who returned to military control under the program were eligible for consideration after they were processed for separation. Individuals could have their discharges upgraded if they met any one of the following criteria: wounded in action; received a military decoration other than a service medal; successfully completed an assignment in Southeast Asia; completed alternate service; received an honorable discharge from a previous tour of military service; or completed alternate service or were excused from completing alternate service in accordance with Presidential Proclamation 4313 of 16 September 1974. Compelling reasons to the contrary to deny discharge upgrade were desertion/AWOL in or from the combat area; discharge based on a violent act of misconduct; discharge based on cowardice or misbehavior before the enemy; or discharge based on an act or misconduct that would be subject to criminal prosecution under civil law.

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 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 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.

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, 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.

8. 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//