

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 December 2024

DOCKET NUMBER: AR20240004566

APPLICANT REQUESTS: an upgrade of his characterization of service from under conditions other than honorable to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 21 February 2024
- self-authored statement
- character reference statement, from [REDACTED] 5 October 2023
- character reference statement, from [REDACTED] 6 December 2023
- character reference statement, from [REDACTED]
- character reference statement, from [REDACTED]
- character reference statement, from [REDACTED]
- citizens letter, from Chief [REDACTED]

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 he is requesting a discharge upgrade due to mental health and stress issues related to his marital problems at the time of his discharge.
 - a. In a self-authored statement he states, the reason for his discharge was due to the fact that his wife at the time kept sending letters to his commanding officer regularly stating he was not sending home any money and she was demanding his officer do something about it. He was put in for a hardship discharge, twice, however they both were denied. His Chaplain contacted his wife and told her he had proof of the allotments which were sent to her each pay period. He continued to deal with this trouble for months. He stopped obeying orders, would not do what he was told, and had a hard time getting to duty on time. His Second Lieutenant told him he would receive an undesirable discharge and without thinking he accepted it. The term dishonorable

discharge was never mentioned to him by his counsel; if he had heard of a dishonorable discharge, he would have never accepted it.

b. He states there is nothing in his records which indicates he was a dishonorable man, nor does he have a dishonorable bone in his body – then or now. Since his discharge from the Army, he drove trucks with no negative incidents, his new spouse helped him in the landscaping business, and he worked as a prison guard as a licensed security officer. He was a Captain on the force, had a license to carry a weapon, and had 5 people working under him. He had respect for those he served with. There is nothing of dishonor in his military record, and he believes he is an American Army fighting man ready, willing, and able to serve if needed.

3. On his DD Form 149, the applicant annotates other mental health is related to his request.

4. The applicant enlisted in the Regular Army on 14 April 1964 for a 3-year period. He was honorably discharged on 4 March 1966 for immediate reenlistment, in the grade of E-4. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was awarded military occupational specialty 11B (Light Weapons Infantryman), and he served for 1 year, 10 months, and 21 days of active service this period. He reenlisted on 5 March 1966, for a period of 6 years.

5. The applicant received nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ):

a. On 24 March 1966, for operating an improperly registered or unregistered motor vehicle on or about 24 March 1966. His punishment imposed was forfeiture of \$47.00 per month for one month.

b. On 15 April 1966, for failing to go to his appointed place of duty at the prescribed time, to wit: his bed for the first bed check, on or about 14 April 1966. His punishment imposed was forfeiture of \$47.00 per month for one month, two hours extra duty for six days, and restriction for six days.

6. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) is void in the applicant's official military personnel record.

7. Before a special court-martial on 21 July 1966, the applicant was found guilty of failing to go to his prescribed appointed place of duty on or about 4 July 1966, absenting himself without proper authority from his place of duty on or about 5 July 1966, failing to obey a lawful order on or about 5 July 1966, and failing to go to his appointed place of duty from 7 July 1966. He was sentenced to reduction to the grade of E-1, confinement

at hard labor for six months, and forfeiture of \$83.00 per month for six months. The sentence was adjudged on 16 July 1966 and was approved and ordered to be duly executed on 21 July 1966.

8. Special Court-Martial Order Number 32, dated 10 August 1966, shows the findings of guilty for the charge of failing to go to his prescribed appointed place of duty on or about 4 July 1966 were set aside.

9. Special Court-martial Order Number 67, dated 17 November 1966, shows the unexecuted portion of the sentence to confinement at hard labor for six months, reduction to the grade of E-1, and forfeiture of \$83.00 pay per month for six months was remitted.

10. The applicant received NJP, under the provisions of Article 15 of the UCMJ, on 8 April 1967, for breaking the lock off the Motor Pool door without authority, on or about 27 March 1967, and for misappropriating a US government vehicle without authority by taking the jeep from the Motor Pool and driving the vehicle from Warner, Kaserne, Munich, Germany, to Magraw Kaserne, Munich, Germany, and back from Warner Kaserne, Munich, Germany. His punishment imposed was forfeiture of \$50.00 per month for one month.

11. Before a special court-martial on 29 December 1967, the applicant was found guilty of absenting himself without proper authority on or about 27 July 1967 and remaining absent until on or about 1 December 1967. He was sentenced to confinement at hard labor for six months and forfeiture of \$40.00 per month for six months. The sentence was adjudged on 20 December 1967.

12. Special Court-Martial Order Number 22, dated 4 January 1968, shows the unexecuted portion of the sentence of confinement at hard labor for six months was remitted without further action.

13. He received NJP, under the provisions of Article 15 of the UCMJ:

a. On 28 May 1968, for speeding in a US government vehicle by driving 25 miles per hour in a posted 20 miles per hour speed zone, he was apprehended by military police. His punishment imposed was forfeiture of \$5.00 per month for one month.

b. On 24 July 1968, for having an unclean weapon which was his responsibility to maintain on or about 17 July 1968. His punishment imposed was forfeiture of \$5.00 per month for one month, restriction for 14 days and extra duty for 14 days.

14. On 16 November 1968, the applicant's immediate commander notified him of the intent to recommend him for separation under the provisions of Army Regulation (AR)

635-212 (Personnel Separations - Discharge - Unfitness and Unsuitability), Chapter 13 (Separation for Unfitness or Unsuitability). He noted the applicant's habits and traits of character manifested by repeated commission of petty offenses and habitual shirking as the reason for the recommended discharge.

15. On 18 November 1968, the applicant consulted with counsel and was advised of the basis for the contemplated action to separate him and of the rights available to him. He waived consideration, a personal appearance, and representing counsel by an administrative separation board and understood he may encounter prejudice in civilian life. Additionally, he elected to not submit a statement in his behalf.

16. The separation authority approved the recommended discharge for unfitness, directed the issuance of an DD Form 258A (Undesirable Discharge Certificate) and reduced to the lowest enlisted grade of E-1.

17. The applicant was discharged on 9 December 1968, under the provisions of AR 635-212, in the grade of E-1. His DD Form 214 shows his service was characterized as under conditions other than honorable, with separation program number of 28B (unsuitability) and reenlistment code of RE-4. He completed 2 years, 2 months, and 24 days of active service with 191 days lost time. He was awarded or authorized the following decorations, medals, badges, commendations, citations, and campaign ribbons:

- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Army Commendation Medal
- Expert M-14

18. On 9 April 1976, the Army Discharge Review Board reviewed the applicant's request for an upgrade of his undesirable discharge. After careful consideration, the Board determined the applicant was properly discharged and denied his request for an upgrade of his discharge.

19. The applicant additionally provides:

a. A character reference statement, from his son, [REDACTED] dated 5 October 2023, summarizing his father, the applicant, as hardworking, committed to his family, a standout guy who is loyal, honest, and considerate. He is a supportive individual who has the ability to see and understand things from another person's perspective, a great communicator, and well-balanced person with an abundance of positive qualities.

b. Two-character reference statements, from [REDACTED] and [REDACTED] family friends of the applicant, who summarize the applicant as reliable, trustworthy, capable of great compassion, a family man that believes in God and his promises. They both admit to have known the applicant for many years, knowing he holds his family, community, and country with high regard, is a provider for his family, and a man who always is willing to lend a helping hand to those who need it.

c. A character reference statement, from his Army buddy, [REDACTED] who states he and the applicant served together on the Honor Guard with the Disabled American Veterans for approximately 7 years. He believes the applicant is an honorable man and submits his letter in consideration on the applicant's behalf.

d. Two letters on his behalf, one from his housing authority stating he is a model tenant while being nice, respectful and honest, and one from the Chief of the [REDACTED] Police Department stating he is respectful, has no criminal history, only has one minor traffic offense, and is everything someone could ask a citizen to be.

20. AR 635-212 states that an individual is subject to separation when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier further effort is unlikely to succeed.

21. 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.

22. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. On his application, the applicant indicated Other Mental Health Issues are related to his request. 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 (RA) on 14 April 1964, 2) the applicant received an Article 15 on 24 March 1966 for operating an improperly registered or unregistered motor vehicle and on 15 April 1966 for failing to go to his appointed place of duty at the prescribed time, to wit: his bed for the first bed check, 3) on 21 July 1966 the applicant was found guilty by a special court-martial of failing to go at the prescribed time to his appointed place of duty, absenting himself without proper authority from his place of duty, and failing to obey a lawful order. A special court-martial order dated 10 August 1966 shows the findings of guilty for failing to go to his prescribed appointed place of duty was set aside, 4) on 08 April 1967, the applicant received an Article 15 for breaking the lock off the motor pool door without authority and for misappropriating a US government vehicle without authority, 5) on 29 December 1967, the applicant was found guilty by a special

court-martial of absenting himself without proper authority, 6) he received two Article 15s between 28 May 1968 and 24 July 1968 for speeding in a US government vehicle and having an unclean weapon which was his responsibility to maintain, 6) on 16 November 1968 the applicant's commander notified him of his intent to recommend him for separation under the provisions of Army Regulation (AR) 635-212, Chapter 13, noting the applicant's habits and traits of character manifested by repeated commission of petty offenses and habitual shirking as the reason for the recommended discharge. The applicant was discharged on 09 December 1968 under the provisions of AR 635-212, with a separation program number of 28B (unsuitability) and reenlistment code of RE-4. 7) on 09 April 1976, the ADRB denied the applicant's previous request for upgrade of his discharge.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) and the Veterans Benefits Management System (VBMS) were also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. An in-service psychiatric evaluation dated 06 November 1968 and conducted for the purposes of administrative separation under the provisions of AR 635-212 diagnosed with Immature Personality. It was noted he had received 17 Article 15s and underwent two special court-martials while in-service. The provider determined that the applicant was able to distinguish between right and wrong and adhere to the right, was mentally able to understand the nature of the board proceedings, that his condition was not amenable to hospitalization, treatment, disciplinary action, or reclassification to other forms of duty, that there was no physical or mental defect warranting medical separation under the provisions of AR 635-40. Thus, he was psychiatrically cleared for any action deemed appropriate by command.

d. Review of the applicant's recommendation for discharge dated 16 November 1968 shows his conduct and efficiency were largely rated as 'excellent' (with the exception of 03 July-06 October 1964 to which they were rated as 'good' and 'fair,' respectively) until the period beginning 22 July 1967 wherein his ratings began reflecting 'unsatisfactory,' 'unknown,' and 'fair.'

e. A review of JLV shows the applicant is 10% service-connected through the VA for Tinnitus, he is not service-connected for any BH conditions. A VA Rating Decision Letter dated 05 February 2013 shows the applicant's request for service-connection for PTSD was denied. The letter noted that the applicant's service treatment records were negative for a diagnosis of PTSD [Advisor's note: PTSD was not recognized in the DSM until 1980, 12 years after the applicant's discharge]. The letter further indicated that the

applicant claimed the stressor he incurred happened in 1968 while stationed at the DMZ. It was also noted that, at the time of the writing, he was diagnosed with a Mood Disorder through the VA. Furthermore, the letter noted that the VA was unable to corroborate combat or any other in-service stressor and that the stressor he described occurred during a period of service that was under dishonorable conditions, and, as such, service connection was determined to be not entitled as the event occurred during the period of dishonorable service. The applicant appeared to engage in individual psychotherapy through the VA on 08 January 2007 for treatment of depression and PTSD symptoms and has engaged in treatment on-and-off through the present day. His records show that he has been treated for Depressive Disorder, Not Otherwise Specified (NOS), Major Depressive Disorder (MDD), Recurrent, Moderate, Anxiety Disorder, NOS and PTSD, Chronic. An individual therapy note dated 08 January 2007 documented that the applicant endorsed symptoms of PTSD related to several events he experienced during his military service while stationed in Korea (i.e., being near an ambulance carrying several Soldiers when an 80mm mortar blew it up killing those in the ambulance, an incident involving open fire while patrolling the DMZ area in Korea, and witnessing a Soldier get ran over by a tank). The provider also noted a traumatic event that occurred during childhood. A subsequent social work note dated 20 January 2011 documented that the applicant reported experiencing nightmares and noted several events associated with those symptoms such as taunting and threats by others that occurred both in Korea (noted to start 4 months after arrival to Korea) and while in Germany (1965). Regarding his experiences in Germany, he reported there were several guys swinging knives at him who threatened to kill him and noted he got cut a couple of times though was helped away. The provider documented the diagnosis as PTSD. His diagnosis of PTSD has been maintained through his most recent visit with psychiatry dated 11 September 2024. The provider also noted the applicant was prescribed Duloxetine (antidepressant), Gabapentin (neuropathy), and Trazodone and had been previously trialed on numerous medications used for depression, anxiety, sleep, nightmares, pain, and mood stabilization.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with a potentially mitigating BH condition associated with his service post-discharge, PTSD. This Advisor would contend that the applicant's misconduct is partially mitigated based on his diagnosis of PTSD.

g. Kurta Questions:

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with PTSD through the VA.
- (2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD through the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. In-service records show the applicant was diagnosed with Immature Personality in-service, which does not constitute a mitigating BH condition. Additionally, it is of note that there was a change in the applicant's 'conduct' and 'efficiency' ratings from 'excellent' to 'fair,' 'unknown,' and 'unsatisfactory' beginning in 1967. Under Liberal Consideration, a change in behavior and performance may be considered as evidence of the presence of a BH condition. VA records show that the applicant has been diagnosed and treated for several BH conditions since being discharged from the military to include Depressive Disorder, NOS, MDD, Recurrent, Moderate, Anxiety Disorder, NOS, and PTSD, Chronic. However, the available documentation does not clearly associate any of his BH conditions with his military service aside from his diagnosis of PTSD. His VA Rating Decision Letter in 2013 noted that he claimed a stressor that occurred during service in 1968 while stationed at the DMZ; however, there is also documentation in his medical records noting that he reported experiencing nightmares associated with events that occurred while stationed in Germany in 1965, the year prior to the documented episode(s) of misconduct. As there is an association between avoidance behaviors, difficulty with authority figures, and disinterest in participating in activities, there is a nexus between his misconduct of absenting himself without proper authority, failing to obey a lawful order, and failing to maintain a clean weapon and his diagnosis of PTSD. However, operating an improperly registered or unregistered motor vehicle, breaking the lock off the motor pool door without authority, speeding in a US government vehicle, and misappropriating a US government vehicle without authority are not part of the natural history and sequelae associated with PTSD. Thus, BH mitigation is partially supported for his misconduct of absenting himself without proper authority, failing to obey a lawful order, and failing to maintain a clean weapon.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's conduct and the reason for separation. The applicant was separated for unsuitability. The Board noted the applicant's provided documentation to support his request, including his personal statement and multiple character letters to support clemency. The Board noted and concurred with the medical advisor's review finding sufficient evidence that the applicant has been diagnosed with a potentially mitigating behavioral health condition associated with his service post-discharge, post-traumatic stress discharge which partially mitigated

his misconduct. Based on a preponderance of the evidence, the Board concluded that an upgrade to under honorable conditions (General) was warranted.

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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 9 December 1968, to show his characterization of service as under honorable conditions (General).
2. The Board further determined that 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 upgrading his characterization of service to honorable.

3/25/2025



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. 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 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.
 - a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.
 - b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.
4. Army Regulation 635-212 (Personnel Separations - Discharge - Unfitness and Unsuitability), then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.

5. 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.

6. 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//