

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20240004845

APPLICANT REQUESTS: an upgrade of his under honorable conditions (General) to honorable.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Four Character Letters
- Employee of the Year Award
- Best All-Around Employee Award

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 that after deploying to Vietnam in 1969, due to a negative command environment, he went absent without leave (AWOL) for brief 24 to 48 hour periods of time while in Vietnam. Following the deployment, he was given the option to retrain (by completing bootcamp again) or to be discharged early. He believes he served honorably when called upon in Vietnam and requested a second deployment, rather than retraining or separating, which was denied. He now requests an upgrade in character of service to honorable based upon his character since his discharge. The applicant marked post-traumatic stress disorder (PTSD), and mental health issues as contributing and mitigating factors in the circumstances that resulted in his separation.
3. The applicant provides:
 - a. Four post service letters of character that describe the applicant as a hard-working trustworthy family man, an extraordinary husband, father, grandfather, and friend. A very professional employee who treated everyone with respect, he was fair and equal to all he had contact with, and he went above and beyond his duties and

responsibilities. He is dependable and a man of his word with the safety for the students and staff was his number one priority. The letters were from the following:

- Mr. DLA, Sales Consultant and Former Suwannee County Deputy Sheriff
- Two from Ms. JS, Custodial Staff Supervisor, Suwannee County School District
- Colonel ID, USAR, Assistant Principal of Administration, Suwanee High

b. An image of a plaque that shows the applicant was awarded Non-Instructional Employee of the Year. The plaque did not list the year.

c. An image of a plaque that shows the applicant was awarded Best All-Around Employee of the Suwanee County District Schools for 2004-2005.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 7 July 1969 for 3 years. He completed training and was awarded the military occupational specialty 57B (Cargo Handler). The highest grade he held was E-4.

b. His DA Form 20 (Enlisted Qualification Record) shows he served in the Republic of Vietnam from on or about 10 December 1969 to 11 November 1970.

c. The applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on five occasions for the following:

- 11 July 1970, for failure to obey a lawful order by being apprehended in an off-limits area; his punishment included reduction to E-3
- 27 August 1970, for failure to obey a lawful order by being apprehended in an off-limits area; his punishment included reduction to E-2
- 27 September 1970, for sleeping on duty as a sentinel and failure to obey a lawful order by being apprehended in an off-limits area; his punishment included reduction E-2
- 8 January 1971, for being AWOL from 18 to 27 December 1970
- 6 April 1971, for being AWOL from 10 to 31 March 1971

d. Court-martial charges were preferred against the applicant on 10 January 1972 for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being absent without leave (AWOL) from on or about 1 May 1971 until on or about 23 December 1971.

e. On 29 December 1971, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. He acknowledged:

- he had not been subjected to coercion
- he was afforded the opportunity to consult with military counsel and did so on 28 December 1971
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a Veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life
- he elected not to submit matters on his own behalf

f. On 26 January 1972, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. He would be issued an Undesirable Discharge Certificate and reduced to the lowest enlisted rank of private, E-1.

g. On 4 February 1972, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 1 year, 10 months, and 5 days of active service with 270 days of lost time. He was assigned separation number 246 and the reason and authority for separation listed as "Chapter 10, AR 635-200, For the Good of the Service." There were no authorized awards listed.

5. On 4 April 1977, the Department of Defense Special Discharge Review Program (SDRP) reviewed the applicant's discharge processing and granted an upgrade for "satisfactorily completed an assignment in Southeast Asia or in the Western Pacific in support of operations in Southeast Asia". The SDRB upgraded his characterization of service to general, under honorable conditions. The applicant's DD Form 214 (Report of Separation from Active Duty) was reissued on 20 May 1977.

6. On 11 November 1978, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

7. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for the good of the service. An Under Other than Honorable Discharge

Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

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

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge to honorable. He contends he experienced mental health conditions including PTSD that mitigates his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 7 July 1969; 2) The applicant served in the Republic of Vietnam from on or about 10 December 1969 to 11 November 1970; 3) The applicant accepted nonjudicial punishments (NJP) on 5 occasions between July 1970-6 April 1971 for: 2 instances of being apprehended in an off-limits area, 1 instance of sleeping on duty, and 2 instances of being AWOL (18-27 December 1970 and 10-31 March 1971); 4) Court-martial charges were preferred against the applicant on 10 January 1972 for being AWOL from 1 May- 23 December 1971; 5) The applicant was discharged on 4 February 1972, Chapter 10-For the Good of the Service. His characterization of service was under other than honorable conditions. He completed 1 year, 10 months, and 5 days of active service with 270 days of lost time; 6) On 4 April 1977, the SDRB upgraded his characterization of service to general, under honorable conditions; 7) On 11 November 1978, the Army Discharge Review Board (ADRB) reviewed and denied the applicant's request for an upgrade.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also reviewed. No additional medical records were provided.

c. The applicant asserts he was experiencing mental health conditions including PTSD, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD, while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA in 2008, predominately for physical concerns and exposure to Agent Orange. In 2020, the applicant, during a primary care appointment, screened positive for PTSD symptoms. On 23 December 2020, the applicant met with a psychologist and reported symptoms consistent with PTSD and alcohol abuse related to his report of witnessing another Soldier commit suicide during his deployment. He was diagnosed with service-

connected PTSD and was enrolled in evidence-based treatment for PTSD and alcohol abuse. He currently receives service-connected disability for PTSD (SC 30%).

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant has been diagnosed with PTSD by the VA that partially mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(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. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD.

(3) Does the condition/experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence beyond self-report the applicant has been diagnosed with service-connected PTSD in 2020 due to his description of symptoms related to his report of witnessing another Soldier commit suicide during his deployment. However, the applicant had a repeated history of misconduct to include various types of behavior during and after his deployment. Avoidant behavior like going AWOL can be associated with PTSD, but it is uncertain when the applicant began to potentially engage in this avoidant behavior as the result of his diagnosis of PTSD due to his lengthy history of misconduct. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 misconduct and the reason for separation. The applicant was charged with absenting himself from his unit from 1 May 1971 to 23 December 1971, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board noted the applicant's contention of post-traumatic stress disorder. The Board majority reviewed and concurred with the medical advisor's review finding sufficient evidence to support the applicant was experiencing symptoms consistent with post-traumatic stress disorder. Based on the applicant's contention, the Board majority granted relief. The Board minority determined based on the applicant's total service record, including his charge sheet and five records of nonjudicial punishment, the characterization of service upgraded to under honorable conditions (General) by the Army Discharge Review Board was not in error or unjust and did not warrant an additional upgrade to honorable.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant 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 4 February 1972 to show an honorable characterization of service.

█

█

█

█

█

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel. The version in effect at that time provided that:

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 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 the Soldier's separation specifically allows such characterization.

c. Chapter 10 of that regulation provided, in pertinent part, that a member who had 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 in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, an under other than honorable conditions discharge was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an undesirable discharge certificate.

3. The Department of Defense (DOD), on 4 April 1977, directed the Services to review all less than fully honorable administrative discharges issued between 4 August 1964 and 28 March 1973. This program, known as the DOD Discharge Review Program (Special) (SDRP) required, in the absence of compelling reasons to the contrary, that a discharge upgrade to either honorable or general be issued in the case of any individual who had either completed a normal tour of duty in Southeast Asia, been wounded in action, been awarded a military decoration other than a service medal, had received an honorable discharge from a previous period of service, or had a record of satisfactory military service of 24 months prior to discharge. Consideration of other factors,

including possible personal problems which may have contributed to the acts which led to the discharge and a record of good citizenship since the time of discharge, would also be considered upon application by the individual.

4. Public Law 95-126, enacted on 8 October 1977, provided generally, that no Department of Veterans Affairs benefits could be granted based on any discharge upgraded under either the Ford Memorandum of 19 January 1977, or the DOD Special Discharge Review Program. It required the establishment of uniform published standards which did not provide for automatically granting or denying a discharge upgrade for any case or class of cases. The services were then required to individually compare each discharge previously upgraded under one of the special discharge review programs to the uniform standards and to affirm only those cases where the case met those standards.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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. 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

8. Section 1556 of Title 10, United States 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//