

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2025

DOCKET NUMBER: AR20240004894

APPLICANT REQUESTS: through counsel, reconsideration of his previous request for correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show:

- Item 13a (Character of Service), an upgrade from under other than honorable conditions to general, under honorable conditions
- Item 11a (Reason and Authority), change to Secretarial Authority

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's Brief (22 pages)
- Exhibit A – DD Form 214, 4 March 1970
- Exhibit B – Military Personnel Record Jacket documents in support of his application
- Exhibit C – Applicant's Personal Statement
- Exhibit D – Vet Center Treatment Summary, dated 22 April 2002, showing his diagnosis and treatment for post-traumatic stress disorder (PTSD)
- Exhibit E – Medical Records (25 pages) in support of his application
- Exhibit F – Character Reference Letters (4) (The letters are available for review by the Board in the supporting documents)

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 AC77-07400 on 11 January 1978.

2. The applicant states pursuant to the Hagel, Kurta, Carson, and Wilkie memorandums, because new evidence, including the evidence of PTSD, is being submitted which has not previously been considered. It is in the interest of justice to review this discharge upgrade application on the merits. The applicant explains in his 6-page statement, which is available for the Board's review in the supporting documents:

- Growing up [REDACTED] and his childhood
- Racism in the military against African American Soldiers
- Clarification of his Article 15's and court-martials
- Racism and violence experienced in combat and by fellow service members
- Cannabis at Fort Ord and Soldiers self-medicating their PTSD with marijuana
- Financial hardship his family endured
- Post service life
- Mental health and drug use
- Treatment for PTSD and substance abuse

3. The applicant's counsel states in his 22-page legal brief:

a. The applicant readily admits that he was not a perfect Soldier, and he is remorseful for the misconduct he committed, but he asks now that the Board consider his misconduct in the context of the persistent racism he experienced, and the trauma he saw in combat which resulted in severe PTSD that continues to impact him to this day. He made mistakes, but he also volunteered to serve during a time of war, carried the bodies of his fallen comrades, and watched his best friend suffer, staying by his side so that he would not be alone when he died. He does not deserve to live out the remainder of his own life without ever having been recognized as a "veteran" because of two dollars' worth of marijuana. The applicant petitions the ABCMR to upgrade his discharge as an act of clemency in the interest of ensuring fundamental fairness.

b. Counsel argues that the applicant's case falls squarely into the type of discharge upgrade application that the Hagel Memo was intended to address. Although the applicant, like many similarly situated applicant's, does not have substantive information pertaining to PTSD in his service treatment records or personnel records, he does have a diagnosis of PTSD from a veteran's affairs (VA) clinician, which ties his current diagnosis of PTSD to his experiences of racism and combat-related trauma during his military service. Pursuant to the Hagel Memo, this determination must be given special consideration, and the applicant's PTSD must be considered as a potential mitigating factor in the misconduct underlying his discharge. Counsel expounds on the following areas:

- The applicant has been diagnosed with PTSD, a condition that may excuse or mitigate his discharge
- His PTSD arose during service due to racism and combat-related trauma in Vietnam, and therefore existed at the time of the misconduct
- The misconduct leading to his discharge is mitigated by his service-related PTSD because impulsivity, impaired decision-making, and limited judgment are all symptomatic of PTSD

- His misconduct was relatively minor and is outweighed by his experiences of racial discrimination and combat trauma, and the resulting PTSD that he has already lived with for 55 years and will continue to suffer from for the rest of this life
- He received unduly harsh treatment for relatively minor misconduct
- He accepts responsibility for his part in the misconduct and as a Soldier he also accepted and served his punishments
- He was young at the time of his misconduct, and it has been over 50 years since his discharge
- He is now in his late 70s and without a discharge upgrade he is unable to access VA healthcare or benefits

c. Counsel concludes stating the applicant's service should be characterized by his bravery and by his contributions to the Army, not his troubled past or the impact that youthful indiscretion, combined with racial discrimination, had on his record. For this, and all the foregoing reasons, it is in the interest of ensuring fundamental fairness to grant his application, and therefore his discharge status and narrative reason for separation should be changed as requested as a matter of clemency.

d. Counsel's complete brief and supporting documents are available for the Board to review.

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

a. He enlisted in the Regular Army on 1 February 1966.

b. He served in Vietnam from 16 January 1967 to 21 May 1968.

c. He accepted non-judicial punishment on 19 September 1966 for being absent without leave (AWOL) from on or about 1900 hours, 16 September 1966 to on or about 2045 hours, 16 September 1966.

d. On 15 November 1966, at Fort Ord, CA, the applicant was found guilty by a special court-martial of:

- Charge I, one specification of on or about 18 October 1966, failing to obey a lawful order from a noncommissioned officer
- Charge I, one specification of being AWOL from on or about 1800 hours, 25 October 1966 to on or about 1915, 25 October 1966
- Charge II, one specification of on or about 25 October 1966, wrongfully appearing in a fatigue uniform without headgear
- The court sentenced him to be confined to hard labor for 30 days, forfeiture of \$25.00 for one month, and to be reduced to the grade of private/E-1

f. He accepted non-judicial punishment on:

- 7 January 1967, for being AWOL from on or about 0115 hours, 7 January 1967 to on or about 1030 hours, 7 January 1967
- 10 January 1967, for breaking restriction on or about 7 January 1967 and for being AWOL from on or about 2300 hours, 7 January 1967 to on or about 0230 hours, 8 January 1967
- 23 January 1967, for on or about 22 January 1967, leaving his appointed place of duty

g. On 4 March 1967, at Phu Lam, Republic of Vietnam, he was found guilty by a special court-martial of:

- Charge I, one specification of on or about 2 February 1967, sleeping upon his post
- The court sentenced him to confinement at hard labor for five months, reduction to private/E-1, and forfeiture of \$67.00 per month for five months

h. On 25 March 1967, by special court-martial order number 9, the unexecuted portion of the sentence to confinement for five months was suspended, effective 25 March 1967, for 3 months and 28 days

i. On 29 March 1967, by special court-martial order number 21, so much of the sentence as was in excess of forfeiture of \$67.00 per month for five months, confinement to hard labor for five months, and reduction to the grade of private/E-1, was set aside. All rights, privileges, and property of which the accused had been deprived by virtue of that portion of the sentence so set aside was restored.

j. On 9 April 1967, by special court-martial order number 14, the approved sentence to confinement at hard labor for five months, was vacated. The unexecuted portion of the sentence to confinement at hard labor for five months would be duly executed.

k. On 28 November 1967, at Long Binh, Republic of Vietnam, he was found guilty by a special court-martial of on or about 22 October 1967, failing to go at the time prescribed to his appointed place of duty, to wit: a security guard formation. The court sentenced him to be reduced to private/E-1, forfeiture of \$64.00 per month for one month, and 60 days restriction.

l. He accepted non-judicial punishment on 15 May 1969 for violating a lawful post regulation by exceeding posted speed limit.

m. On 7 July 1969, at Fort Ord, CA, the applicant was found guilty by a general court-martial of wrongfully selling marijuana, on or about 21 January 1969. The court

sentenced him to reduction to private/E-1, confinement to hard labor for one month, to forfeit all pay and allowances, and to be discharged from the service with a bad conduct discharge. Only so much of the sentence that provided for a bad conduct discharge, reduction to the grade of private/E-1, confinement at hard labor for one month, and forfeiture of \$50.00 per month for four months was approved.

n. The sentence was approved on 7 July 1969, and the record of trial was forwarded to the Judge Advocate General of the Army for appellate review.

o. The Acting Inspector General (IG) submitted a letter, wherein he stated the applicant appeared to be a victim of circumstance in many of the instances leading to his questionable record of past. Without a doubt the applicant was guilty of the offenses causing punishment by Article 15 and Courts Martial, however, the majority of his punishments under Article 15 appeared to be unduly severe in light of the offenses committed. It was in the opinion of the IG that because of his "spotty" record of AWOL's, most of which were for periods of time covering less than two hours, and the circumstances under which he entered the Army, a "snowball" effect resulted which pushed him into a corner which was terribly difficult for him to overcome.

p. General Court-Martial Order Number 191, issued on 11 December 1969, shows the sentence had been affirmed pursuant to Article 66. The provisions of Article 71(c) had been complied with and the sentence would be duly executed.

q. He was discharged under other than honorable conditions on 4 March 1970. His DD Form 214 shows he completed 3 years, 5 months, and 12 days of service this period.

5. The ABCMR considered the applicant's request in ABCMR Docket Number AC77-07400 on 11 January 1978. The Board determined that insufficient evidence was presented to indicate probable material error or injustice, and the application was denied.

6. There is no indication the applicant applied to the Army Discharge Review Board to request an upgrade of his characterization of service within the 15-year Statute of Limitations.

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

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting, through counsel, reconsideration of his previous request to upgrade his under other than honorable conditions (UOTHC) discharge to under honorable conditions and to change the reason and authority to "Secretarial Authority." On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) is 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 on 01 February 1966, 2) he served in Vietnam from 16 January 1967 to 21 May 1968, 3) he received nonjudicial punishment on 19 September 1966 for being absent without leave (AWOL) for approximately 1.75 hours on 16 September 1966, 4) on 15 November 1966, he was found guilty by special court-martial of: failing to obey a lawful order from a noncommissioned officer (NCO) on or about 18 October 1966, being AWOL for approximately 1.75 hours on or about 25 October 1966, and wrongfully appearing in a fatigue uniform without headgear on or about 25 October 1966, 5) he accepted NJP on 07 January 1967 for being AWOL from on or about 0115 to 1030 on 07 January 1967; on 10 January 1967 for breaking restriction on or about 07 January 1967 and for being AWOL from on or about 2300 07 January 1967 to on or about 0230 08 January 1967; on 23 January 1967 for leaving his appointed place of duty on or about 23 January 1967, 6) on 04 March 1967, at Phu Lam, Republic of Vietnam, he was found guilty by a special court-martial of sleeping upon his post on or about 02 February 1967, 7) on 28 November 1967, he was found guilty by a special court-martial of failing to go at the prescribed time to his appointed place of duty on or about 22 October 1967, 8) on 15 May 1969 he received NJP due to exceeding the speed limit, 9) on 07 July 1969, the applicant was found guilty by a general court-martial of wrongfully selling marijuana (on or about 21 January 1969), 10) The Acting Inspector General submitted a letter wherein he stated the applicant appeared to be a victim of circumstance in many of the instances leading to his questionable record of past. Although noted that the applicant was guilty of the offenses causing punishment by Article 15 and Courts Martial, it was stated that the majority of his punishments under Article 15 appeared to be unduly severe in light of the offenses committed. It was in the opinion of the IG that because of his "spotty" record of AWOL's, most of which were for periods of time covering less than two hours, and the circumstances under which he entered the Army, a "snowball" effect resulted which pushed him into a corner which was terribly difficult for him to overcome, 11) the applicant was discharged under other than honorable conditions on 04 March 1970 under the provisions of AR 635-204, with an SPN of 292, 12) the applicant's previous petition to the ABCMR summarized in Docket Number AC77-07400 on 11 January 1978 shows his previous request for relief was denied.

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) was 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. There were no in-service medical records available for review.

d. A review of JLV shows the applicant is not service connected through the VA for any conditions. There were limited VA medical records in JLV, none of which are BH-related. It is of note that his UOTHC discharge renders him ineligible for VA services.

e. The applicant's service records were reviewed. The applicant's DA Form 20 (Enlisted Qualification record) Record of Assignments section shows his conduct and efficiency were rated as 'excellent' and 'good' during Basic Combat Training, AIT, and during his assignment as a Security Guard, 194th MPCo (PhysScty) APO 96307 effective 25 August 1967. General Court-Martial Order Number 104 dated 07 July 1969 shows the applicant was found guilty of wrongfully selling marijuana to another Service Member. In the sentencing section, it was documented that the applicant was to be "reduced to the grade of E-1, to be confined at hard labor for one month, to forfeit all pay and allowances, and to be discharged from the service with a bad conduct discharge. (Three previous convictions considered)." An opinion of the court dated 17 October 1969 documented that they considered "errors in light of the entire record of trial including his three previous convictions and have concluded that the appellant sustained no prejudice either with respect to the referral of the charge to trial or to the convening authority's post-trial action on the sentence."

f. A letter from the applicant's behavioral health provider at the Vet Center, a Licensed Marriage and Family Therapist (LMFT), dated 22 April 2022 summarized his treatment with the applicant. It was documented that the applicant had engaged in individual psychotherapy with the provider since May 2018 due to traumatic stressors associated with his tour in Vietnam and the legal difficulties he experienced in the Army after his tour in Vietnam. The provider documented that the applicant met criteria for PTSD and documented that there were several combat-related stressors that were associated with his diagnosis to include engagement in regular combat three or four times a month, witnessed his best friend get shot, learning about others getting killed, and casualty recovery. Furthermore, the provider opined that his diagnosis of PTSD was more likely than not a result of his time in the military.

g. VA records provided by the applicant show that he sought treatment for substance and alcohol use 1992 and 1993. He was diagnosed with Cocaine Dependence, Alcohol Abuse, and Psychoactive Substance Use Disorder. An undated Medical Note from the VA Evidence Intake Center [REDACTED] shows the applicant reported a history of active combat while serving in Vietnam. He reported flashbacks, waking up in sweating, and talking in his sleep.

h. A medical note from [REDACTED] dated 16 May 2019 shows the applicant's problem list as Benign Prostatic Hyperplasia, Knee Pain, and Popliteal Cyst (date of onset for each condition listed as 16 July 2015).

i. 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 PTSD secondary to his service in Vietnam, which is a potentially mitigating BH condition. This Advisor would contend that the totality of the applicant's in-service misconduct as convicted by court-martial is partially mitigated.

j. 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 secondary to his service in Vietnam.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD secondary to his service in Vietnam.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. There were no in-service medical records available for review. Since being discharged from the military, the applicant has been diagnosed with PTSD secondary to his service in Vietnam. As it pertains to the misconduct that led to the applicant's discharge, it is noted that wrongfully selling marijuana is not part of the natural history and sequelae of PTSD, nor does the condition interfere with the ability to distinguish between right and wrong and adhere to the right. Thus, BH mitigation would not be supported for the specific misconduct that led to his discharge.

k. However, as it was documented in his separation records that his previous convictions by court-martial were considered as part of his sentencing, his diagnosis of PTSD in relation to his previous convictions appears to be relevant for consideration. His initial conviction by court-martial occurred in 1966, prior to his deployment to Vietnam, and thus BH mitigation would not be supported for the behaviors associated with that conviction given a nexus cannot be established between his combat-related diagnosis of PTSD and the date of the misconduct. Subsequent to that conviction, the applicant was found guilty by special court-martial on 04 March 1967 for sleeping upon his post and on 28 November 1967 for failing to go at the prescribed time to his appointed place of duty. As there is an association between sleep problems, avoidance behaviors, and trauma, there is a nexus between the applicant's misconduct of sleeping upon his post and failing to go at the prescribed time to his appointed place of duty and his diagnosis of PTSD. Thus, BH mitigation would be supported for these episodes of misconduct. In considering the totality of his misconduct as convicted by court-martial,

there is support for partial BH mitigation, specifically sleeping upon his post and failing to go at the prescribed time to his appointed place of duty.

BOARD DISCUSSION:

1. 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 through counsel carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. While one potential outcome was to grant relief based on the comments from the Inspector General processing his case and the determination that the character of service was harsh given the nature of the applicant's minor misconduct. However, upon review of the applicant's petition, available military records, and medical review, the Board considered the opinion of the Agency Medical Advisor, who contended that the totality of the applicant's in-service misconduct, as adjudicated by court-martial, is partially mitigated by the diagnosed PTSD secondary to his service in Vietnam.

Kurta Questions:

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2. Although the advising official recognized PTSD as a potentially mitigating factor under liberal consideration, the Board determined that the available evidence did not sufficiently demonstrate in-service mitigating factors to outcome the applicant's misconduct. The applicant did not provide post-service achievements or character references of support for Board consideration. The ABCMR is only authorized to adjust

the severity of a court-martial sentence when clemency is deemed appropriate. The available records confirm that, at the time of separation, the documented reason and authority for discharge were properly reflected on the applicant's DD Form 214. Based on the information presented, the Board concluded that the applicant and counsel did not provide sufficient evidence to establish an error or injustice that would warrant an upgrade from an under other than honorable conditions (UOTHC) discharge to a general discharge. As a result, the Board upheld its prior decision, finding no grounds for reversal, and denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	█	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	:	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 AC77-07400 on 11 January 1978.

X

CHAIRPERSON

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

REFERENCES:

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

a. Chapter 3 states a Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or a special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Paragraph 5-3 (Secretarial Authority) provided that the separation of enlisted personnel for the convenience of the Government is the prerogative of the Secretary of the Army and will be accomplished only by his authority. Except as delegated in this regulation or by special Department of the Army directives, the discharge or release of any enlisted member of the Army for the convenience of the Government will be in the Secretary's discretion with issuance of an honorable or general discharge certificate as determined by him. Such authority may be given either in an individual case or by an order applicable to all cases specified in such order.

2. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

3. 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.

4. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

5 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//