

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 December 2024

DOCKET NUMBER: AR20240005328

APPLICANT REQUESTS: through counsel:

- removal of the DA Form 2627-1 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ)), 14 November 1973, from his Official Military Personnel File (OMPF)
- in effect, removal of the DA Form 2627-1, 31 May 1973, from his OMPF

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Counsel's Brief in Support of Application for Correction of Record with Exhibits –
 - Exhibit 1 – Department of Veterans Affairs (VA) Administrative Decision (Line of Duty Determination for Disability Compensation Claim), 7 February 1974
 - Exhibit 2 – DA Form 20 (Enlisted Qualification Record) (page 3 only)
 - Exhibit 3 – Former Counsel's Notice of Disagreement and Brief in Support of (Applicant's) Disability Claim for Post-Traumatic Stress Disorder (PTSD), 9 January 2014
 - Exhibit 4 – DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the Period Ending 16 July 1973
 - Exhibit 5 – VA Rating Decision, undated (page 2 of 3 only)
 - Exhibit 6 – Standard Form 513 (Medical Record – Consultation Sheet), 12 September 1985
 - Exhibit 7 – DD Form 2627-1, 31 May 1973 (page 1 only)
 - Exhibit 8 – Standard Form 502 (Clinical Record – Narrative Summary), 29 May 1973
 - Exhibit 9 – Headquarters, Department of Army, Line of Duty Determination, 20 June 1973
 - Exhibit 10 – DA Form 3647 (Clinical Record Cover Sheet), 29 May 1973
 - Exhibit 11 – DA Form 3647-1 (Inpatient Treatment Record Cover Sheet (For Plate Imprinting)), 29 May 1973

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 defers to counsel. Counsel states:

a. The applicant was drafted into military service on 13 April 1970. He describes the applicant's training, first duty station, deployment to Vietnam from 25 July 1971 until 21 July 1972, and experiences leading to his PTSD.

b. The applicant was granted an "early-out [early release from active duty of overseas returnee]" and was supposed to be sent back to the United States after spending 9 months in Vietnam, but that was changed at the last minute and he was sent to another unit. He returned home approximately 3 months later and was struggling to adjust to life after his "early-out" was rescinded.

c. The applicant received nonjudicial punishment (NJP) under the provisions of Article 15 on 26 February 1973 for assaulting another Soldier and was placed on restriction when he was injured in an automobile accident on 22 March 1973. He needed numerous surgeries following the accident. A line-of-duty investigation determined his injuries were not incurred in the line of duty and not due to his own misconduct.

d. The applicant's command made an error of fact and discretion when punishing him on 26 February 1973. His return from Vietnam and the trauma he experienced was likely related to his misconduct. If the applicant had been treated for PTSD, it is unlikely that the misconduct would have occurred. PTSD was not well known or recognized as a mental health disorder at that time. The VA denied the applicant's request to have his injuries from the car accident covered as service-connected disabilities because the applicant was absent without leave (AWOL) at the time of the accident. The VA later diagnosed him with service-connected PTSD.

e. The applicant was granted an "early-out" but was suddenly forced to continue his service. If the applicant had been allowed to separate early, he would never have been in the Army to receive the NJP. The command's errors become clearer when he was honorably discharged on 16 July 1973, despite being accused of assaulting another Soldier and being AWOL shortly after returning from Vietnam.

f. The applicant's restriction for the alleged assault prevented him from receiving the necessary medical care related to the car accident. If he had been treated properly, he would not have been on restriction when he got into the accident, and therefore the line-

of-duty investigation would have indicated the accident was in the line of duty. The applicant's chain of command believed he was AWOL after his accident because he was on convalescent leave to recover from his injuries.

g. The Kurta (Under Secretary of Defense) memorandum (Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions Sexual Assault, or Sexual Harassment) issued in 2016 provided clarifying guidance to the Board to apply liberal consideration to veterans seeking review when the application is based in whole or in part on matters relating to mental health conditions and sexual harassment.

3. On 7 April 1970, the applicant was inducted into the Army of the United States. He was honorably discharged on 12 April 1970 for immediate enlistment in the Regular Army. He completed 6 days of active duty service during this period.

4. The applicant enlisted in the Regular Army for a 3 year-service obligation on 13 April 1970.

5. The applicant received NJP under the provisions of Article 15, UCMJ, on 22 July 1971 while serving in the rank/grade of specialist four/E-4. The DA Form 2627-1 shows he was punished for being AWOL from his unit on or about 13 July 1971 until 21 July 1971 (8 days). His punishment consisted of reduction to the rank/grade of private first class/E-3 and forfeiture of \$39 pay for 1 month. He elected not to appeal or submit matters in rebuttal.

7. The applicant served in Vietnam from on or about 25 July 1971 until 21 July 1972. His service records contain no evidence showing he was offered or granted an early release from active duty.

8. The applicant again received NJP under the provisions of Article 15, UCMJ, on 14 November 1972 while serving in the rank/grade of specialist four/E-4. The DA Form 2627-1 shows he was punished for one specification of being AWOL from his unit on or about 29 August 1972 until 27 October 1972 (59 days), and one specification of being AWOL from his unit on or about 1 November 1972 until 6 November 1972 (5 days). His punishment consisted of reduction from the grade of E-4 to E-3, a 45-day suspended reduction to private/E-1, forfeiture of \$144 pay for 2 months, 45 days of extra duty, and 45 days of restriction. He elected not to appeal or submit matters in rebuttal.

9. The applicant again received NJP under the provisions of Article 15, UCMJ, on 23 January 1973 while serving in the rank/grade of private first class/E-3. The DA Form 2627 shows he was punished for failing to report to his place of duty on or

about 22 January 1973. His punishment consisted of reduction to the rank/grade of private/E-2, forfeiture of \$50 pay for 1 month, 14 days of extra duty, and 14 days of restriction. He elected not to appeal or submit matters in rebuttal.

10. The applicant's Standard Form 502, 29 May 1973, shows he was involved in an automobile accident on 22 March 1973 and hospitalized for 68 days until 29 May 1973.

11. The applicant's DA Form 3647, 29 May 1973, shows he was AWOL while riding as a passenger when the driver of the vehicle fell asleep, went off the right side of the road, and struck a culvert. The line-of-duty determination shows his injuries were not incurred in the line of duty and were not due to his own misconduct.

12. The applicant's DA Form 3647-1, 29 May 1973, describes his injuries and notes and he was placed on 20 days of convalescent leave from 9 May 1973 until 29 May 1973.

13. The applicant again received NJP under the provisions of Article 15, UCMJ, on 4 June 1973 while serving in the rank/grade of private/E-2. The DA Form 2627-1 shows he was punished for one specification of assaulting another Soldier by intentionally cutting him with a knife on the right chest and left forearm, inflicting grievous bodily harm, on or about 26 February 1973 and one specification breaking restriction on or about 21 March 1973. His punishment consisted of reduction to the rank/grade of private/E-1, forfeiture of \$150 pay for 2 months, 45 days of extra duty, and 45 days of restriction. He elected not to appeal or submit matters in rebuttal.

14. The Headquarters, Third U.S. Army, line-of-duty determination, 20 June 1973, determined the applicant's injuries were not incurred in the line of duty and were not due to his own misconduct.

15. The applicant was honorably released from active duty on 16 July 1973 and transferred to the U.S. Army Reserve Control Group (Reinforcement). He completed 3 years and 22 days of net active service during this period, including 11 months and 27 days of foreign service and 73 days of lost time due to AWOL. His DD Form 214 shows he was awarded or authorized the:

- National Defense Service Medal
- Vietnam Service Medal with one campaign star
- Republic of Vietnam Campaign Medal with Device (1960)
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-16)

16. The VA Administrative Decision (Line of Duty Determination for Disability Compensation Claim), 7 February 1974, shows the VA denied the applicant's claim for

compensation for disabilities related to his automobile accident on 22 March 1973 because the injuries were not incurred in the line of duty because he was AWOL.

17. The applicant's Standard Form 513, 12 September 1985, shows he reported he was offered an "early-out" after serving 9 months in Vietnam. When he was about to leave, he was transferred to another area in Vietnam and adopted a "bad attitude." When he returned home, he was being readied for discharge but was AWOL for about 45 days.

18. Counsel provides:

a. an excerpt of the applicant's previous counsel's Notice of Disagreement and Brief in Support of (Applicant's) Disability Claim for PTSD), 9 January 2014; and

b. an excerpt of the applicant's VA Rating Decision, 15 October 2019, increasing his previously granted service-connected disability for PTSD from 30 percent to 50 percent.

19. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of removal of the Article 15 indicating the applicant was AWOL. He contends he experienced undiagnosed PTSD that mitigates his misconduct.

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 into the Regular Army on 13 April 1970.
- The applicant was punished for being AWOL from 13 to 21 July 1971.
- He served in Vietnam from 25 July 1971 until 21 July 1972.
- The applicant again received NJP for being AWOL from 29 August to 27 October 1972 and from 1 to 6 November 1972. On 23 January 1972 he received NJP for failing to report for duty.
- The applicant received NJP for one specification of assaulting another Soldier by intentionally cutting him with a knife on the right chest and left forearm, inflicting grievous bodily harm, on 26 February 1973 and one specification breaking restriction on 21 March 1973.
- The applicant was hospitalized following a car accident that occurred on 22 March 1973. He was placed on 20 days of convalescent leave from 9 to 29 May 1973.
- The applicant was honorably released from active duty on 16 July 1973 and was credited with 3 years and 22 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The

applicant asserts that his misconduct related to assaulting another soldier by cutting him with a knife on the right chest and left forearm was attributable to his undiagnosed PTSD following trauma exposure in Vietnam, and this trauma exposure had a direct causal relationship with any misconduct that may have occurred when he returned. Additionally, he asserts that had he not been on restriction (which he broke) as a result of this alleged incident, then the car accident would have been considered in the line of duty. An Administrative Decision document dated 7 February 1974 showed that the applicant was denied service-connected claims related to the auto accident because the event was determined to be not in the line of duty since the applicant was AWOL at the time. A portion of a VA Rating Decision notice (no date) showed that the applicant was increased from 30% to 50% service connected for PTSD. A medical record document dated 12 September 1985 reported the applicant's history of deployment to Vietnam, receiving orders for an "early out," and then being reassigned to another area of Vietnam, which angered him and created a "bad attitude." A Clinical Record Cover Sheets showed documentation of an auto accident on 22 March 1973 while the applicant was AWOL and the determination of not in line of duty. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed an Initial PTSD Compensation and Pension (C&P) examination on 8 March 2011. The applicant endorsed symptoms of PTSD associated with his experiences in Vietnam, but he did not meet full criteria for the condition and was diagnosed with Depressive Disorder not otherwise specified (NOS) and Anxiety Disorder NOS. The length of time between the trauma exposure and the evaluation is discussed as a potential factor in the applicant's ability to adjust to the trauma and, therefore, have fewer symptoms. The applicant is considered 60% disable due to PTSD (50%) and Tinnitus (10%). A second C&P exam specific to other mental health disorders dated 3 May 2011 showed that the applicant reported his symptoms started about one month after deployment, and he initially received medication management from a VA in 1992. He reported depression, anxiety, sleep difficulty, and memory problems, and he was diagnosed with Depressive Disorder NOS and Anxiety Disorder NOS. He reported occupational impairment primarily associated with his physical injuries from the car accident, and he noted his mood and anxiety were worsened because of this.

e. Available VA mental health treatment documentation dates back to December 2000, and the documentation is sparse but indicates the applicant was prescribed antipsychotic medications because of delusional and paranoid thinking. In September 2006 he was seen by a psychologist following the death of his wife and difficulty adjusting, and documentation indicated he reported multiple medical problems associated with the car accident that occurred while in the service. In a psychiatry visit on 8 June 2010, the applicant reported deployment related trauma exposure, including

“massive body bags. You never forget that” and “I’ve had 40 years of depression.” He also discussed his injuries associated with the traumatic car accident, and he was diagnosed with PTSD. He was started on medication for mood and sleep, and documentation noted improvement with medication and trauma-focused psychotherapy. The applicant routinely engaged in mental health treatment through 2014, and documentation focused on his Vietnam experiences, the car accident and his subsequent physical health problems, and financial problems, including returning to work despite his physical limitations. Eventually, he was also diagnosed with post-traumatic encephalomalacia of the frontal lobes, which is essentially damage to the frontal lobe resulting in behavioral problems, depression, and muscle weakness and is attributable to a history of traumatic brain injury. Since 2014, the applicant has primarily utilized medication management, and his last documented prescription for any psychotropic medication was in 2023.

f. A Review PTSD C&P evaluation, not included in the applicant’s JLV record, dated 5 November 2019 was reviewed and showed that the applicant endorsed the requisite number of symptoms to warrant a diagnosis of PTSD. The evaluator noted that the new diagnosis is a “correction of the previous diagnosis,” and trauma exposure was reported as “veteran was deployed to Vietnam in 1971, during which he was subject to a range of threatening environments, including bombs, gunfire, and witnessing casualties.”

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a mental health condition while on active service. The applicant deployed to Vietnam from July 1971 to July 1972, and he was AWOL from August to October 1972 and again in November 1972. In late February 1973, he was involved in an altercation with another soldier resulting in lacerations to the right chest and left forearm of the other soldier, and on 21 March 1973 at 2300 hours he was reported as breaking restriction. Documentation shows that the applicant received medical care for injuries sustained in a car accident, which occurred at 0157 on 22 March 1973. It is this advisor’s opinion that there is sufficient evidence to support a nexus between the applicant’s behavior associated with being AWOL and/or breaking restriction and his mental health condition, but there is insufficient evidence to support a nexus between the alleged assault and his mental health condition.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had undiagnosed PTSD at the time of the misconduct. There are no available mental health records from his time in service, but VA documentation showed that the applicant initiated mental health treatment in 1992 and was diagnosed with deployment related PTSD in 2010. He is 50% service connected for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. Records show he deployed to Vietnam from July 1971 to July 1972.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. However, the applicant has been diagnosed with PTSD by the VA and is service connected for this condition. Given that PTSD was not a well known or understood mental health condition in the early 1970s, it is reasonable to connect his initiation of mental health services in 1992 and again in 2000 to his deployment related experiences, and documentation from his mental health treatment from 2010 to 2023 showed that deployment related trauma exposure was the identified stressor to his diagnosis of PTSD. Avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events, and the applicant went AWOL twice prior to breaking restriction and the subsequent car accident. A nexus can be drawn between the misconduct of being AWOL and breaking restriction and the applicant's undiagnosed PTSD. Additionally, hyperarousal symptoms, such as feeling on edge, keyed up, or irritable, can create a more reactive response to threatening situations, and impulsive or aggressive behaviors are not uncommon for those suffering with PTSD. However, there is insufficient evidence to support a nexus between the applicant's alleged assault on another soldier, resulting in lacerations to the chest and forearm, and his trauma exposure. This type of misconduct is not part of the natural history of a mental health condition and PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right.

i. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates 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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows the applicant accepted NJP under the provisions of Article 15, UCMJ, on 14 November 1972 while serving in the rank/grade of SP4/E-4 for two counts of AWOL from his unit 29 August 1972 to 27 October 1972 (59 days) and 1 November 1972 to 6 November 1972 (5 days). He was found guilty, and his commander punished him with reduction to E-3, a 45-day suspended reduction to private/E-1, forfeiture of \$144 pay for 2 months, and 45 days of extra duty and restriction. He also

elected not to appeal or submit matters in rebuttal. The Board found no evidence the applicant was denied any rights and therefore, the Board found no error or injustice in the administration of this NJP.

b. The evidence also shows the applicant accepted a second NJP under the provisions of Article 15, UCMJ, on 4 June 1973 while serving in the rank/grade of private/E-2, for one count of assaulting another Soldier by intentionally cutting him with a knife on the right chest and left forearm, inflicting grievous bodily harm, on or about 26 February 1973 and one count of breaking restriction on or about 21 March 1973. He was found guilty, and his commander punished him with reduction to private/E-1, forfeiture of \$150 pay for 2 months, and 45 days of extra duty and restriction. He also elected not to appeal or submit matters in rebuttal. The Board found no evidence the applicant was denied any rights and therefore, the Board found no error or injustice in the administration of this NJP.

c. Counsel argues that the applicant's command made an error of fact and discretion when punishing the applicant. However, counsel does not show how the commander made an error: In each case, the applicant was advised of the commander's intent to punish him under Article 15 of the UCMJ. In each case the applicant was provided a defense counsel and in each NJP, the applicant declined trial by a court-martial. Additionally, in each NJP the applicant was afforded the opportunity to appeal the findings of guilty and/or the punishment but chose not to.

d. The Board does not question the applicant's PTSD diagnosis. However, counsel again makes an inaccurate statement that if the applicant had been treated for PTSD, it is unlikely that the misconduct would have occurred. The evidence shows the applicant received NJP for being AWOL before arriving in Vietnam. His propensity for misconduct began before his Vietnam tour. Additionally, his receipt of multiple NJPs did not prevent him or any other Soldier from receiving an honorable characterization of service.

e. The ABCMR does not normally reexamine issues of guilt or innocence under Article 15 of the UCMJ. This is the imposing commander's function and it will not be upset by the ABCMR unless the commander's determination is clearly unsupported by the evidence. The applicant was provided a defense attorney, was given the right to demand trial by court-martial, and was afforded the opportunity to appeal the Article 15 through the proper channels. The applicant elected not to appeal.

f. The basis for any set aside action is a determination that, under all the circumstances of the case, the punishment has resulted in a clear injustice. "Clear injustice" means that there exists an unwaived legal or factual error that clearly and affirmatively injured the substantial rights of the Soldier. The applicant and his counsel did not provide convincing evidence that shows the imposing commander denied him any rights during the proceedings. Therefore, the Board determined the applicant's NJP

proceedings were conducted in accordance with law and regulation and his Article 15s are properly filed in the service record as required. He has not demonstrated that either NJP action was unjust or untrue or that either NJP should be removed from his record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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

REFERENCES:

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

2. Army Regulation 27-10 (Military Justice) prescribes policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial. It provides that a commander should fully use nonpunitive administrative measures to further the efficiency of the command before resorting to NJP under the UCMJ. Use of NJP is proper in all cases involving minor offenses in which nonpunitive measures are considered inadequate or inappropriate. NJP may be imposed to correct, educate, and reform offenders who the imposing commander determines cannot benefit from less stringent measures; to preserve a Soldier's record of service from unnecessary stigma by record of court-martial conviction; and to further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial.

3. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to authorize placement of unfavorable information about Army members in individual official personnel files; to ensure that unfavorable information that is unsubstantiated, irrelevant, untimely, or incomplete is not filed in individual official personnel files; and to ensure that the best interests of both the Army and the Soldiers are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

4. Army Regulation 640-10 (Individual Military Personnel Records), in effect at the time, pertained to individual personnel records of all members of the Army on active duty and in the U.S. Army Reserve and stated DA Forms 2627, 2627-1, and 2627-2 will be filed in the Military Personnel Records Jacket in accordance with Army Regulation 27-10.

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 Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records (BCM/NRs) when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate

relief, but rather provides standards and principles to guide BCM/NRs 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. 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//