

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240005531

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for Review of Discharge from the Armed Forces of the United States)
- Self-Authored Statement
- General Orders Number 10821
- DA Form 19-32 (Military Police Report)
- Separation Packet
- Eyewitness statement
- Three letters of character to Congressman
- Department of Veterans Affairs (VA) decision report
- Medical Records

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 application states in effect, he was a high school dropout hitchhiking in search of work when he was picked up by an Army recruiter at the age of 17. The recruiter brought him to the recruiting office, where he enlisted on January 17, 1966. After completing training, he was assigned to the 79th Engineer Battalion in Germany, serving as a laborer and dump truck driver, despite enlisting as a construction machine operator. Seeking opportunities to work in his specialty, he requested and was transferred to the 168th Engineers in Vietnam.

a. Upon arriving in Vietnam, he experienced traumatic combat events, including rocket and mortar attacks, night ambushes, and mine-sweeping missions in dangerous regions like the Iron Triangle. He sustained a hernia and witnessed the horrors of war, including injuries, deaths, and the handling of bodies at graves registration. After recovering from surgery, he joined the 1st Engineer Battalion, enduring further combat exposure and near-death experiences during mine-clearing operations and enemy attacks.

b. During his second enlistment, he was stationed in Vietnam again, where he faced different challenges, including widespread drug use among soldiers. He succumbed to heroin addiction as a means of coping with PTSD and the stresses of war. Despite performing his duties, his addiction led to disciplinary actions and demotion. An incident involving false accusations of misconduct and the toxic environment pushed him to go AWOL, which he attributes to saving his life by removing himself from the harmful environment.

c. His AWOL status led to a less-than-honorable discharge, although his earlier honorable service remained intact. He struggled with addiction and homelessness after discharge but eventually sought help from the Veterans Administration. Through counseling and group therapy, he overcame addiction, managed his PTSD, and rebuilt his life.

d. He requests an upgrade of his discharge to reflect his honorable service, arguing that his actions were directly influenced by untreated PTSD and the circumstances of war.

### 3. The applicant provides:

a. On 12 October 1968, general orders number 10821 shows, the applicant was awarded the Army Commendation Medal with first Oak Leaf Cluster.

b. The applicant provides his separation packet.

c. Mr. C.X.D. served in Vietnam from December 1967 to December 1968 as a medic with the First Engineer Battalion, First Infantry Division, where he became close friends with the applicant, worked in various combat engineer roles, including as a front-end loader operator and mine sweeper. They often worked in dangerous field conditions, such as during mortar attacks in the Iron Triangle, where the applicant helped treat and evacuate wounded soldiers. In one incident, they attempted to save a man severely injured by a grenade but were unsuccessful. The two also faced constant threats from ground attacks, mortars, and rockets, even in their base camp. Over time, Mr. C.X.D. noticed a significant change in the applicant's personality, with him becoming

short-tempered, melancholy, and angry, in contrast to his previous easy-going demeanor.

d. Mrs. M.S. states she has known the applicant for three years and the applicant dedication to running is inspiring and infectious. She feels the applicant possesses the traits a sense of honor, decency, and hard work.

e. Mr. W.J.W (Harbormaster) has known the applicant for a few years. In his opinion the applicant has proven himself to be a valuable asset to the community. The applicant has been an avid boater, has proven to be a very conscientious and knowledgeable seaman.

f. The Chief of Police writes a letter of recommendation supporting a veteran's request to have his discharge upgraded. The applicant, a Vietnam War veteran, faced significant personal struggles, particularly with drug addiction, following his service. Over the past 20 years, he has turned his life around and become a respected and positive figure in the Salem community, serving as a role model for others. The Chief emphasizes the need to reconsider how Vietnam veterans, like the applicant, are treated, acknowledging the challenges they faced during and after their service. The letter urges support for the veteran's discharge upgrade as a deserved and reasonable step.

g. A VA decision report shows, the applicant received a disability rating of 70% for post traumatic stress disorder (PTSD) and it was found as service connected.

h. The applicant provides his medical records from RCS Client pages 44 – 177.

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

a. He enlisted in the Regular Army on 17 January 1966.

b. On 9 February 1967, he accepted nonjudicial punishment for disrespect to a commissioned officer. His punishment included reduction to private first class (PFC)/E-3 (reduction in grade was suspended for sixty days) and forfeiture of \$10.00 for one month.

c. On 31 May 1967, he accepted nonjudicial punishment for stealing a sport bicycle. His punishment included reduction to private first class (PFC)/E-3 (reduction in grade was suspended for sixty days) and forfeiture of \$60.00 for two months.

d. On 5 December 1971, he accepted nonjudicial punishment for failure to report to place of duty. His punishment include forfeiture of \$90.00 for one month.

e. On 30 May 1972, DA Form 19-32 shows, the applicant surrendered to the military authorities on 8 May 1972. After being absent without leave (AWOL) from 28 February 1972 to 28 March 1972.

f. The record is void of the DD Form 458 (Charge Sheet) and complete separation packet.

g. On 8 June 1972, after consulting with legal counsel he requested a discharge for the good of the service in lieu of trial by court-martial under the provisions of chapter 10, Army Regulation (AR) 635-200 (Enlisted Personnel). He acknowledged:

- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions 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

h. On 28 June 1972, the immediate commander recommended disapproval of defense counsel's request for issuance of a General Discharge Certificate. He recommended that the applicant be separated from service with an Undesirable Discharge Certificate.

i. On 26 June 1972, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the good of the service. He would be issued an Undesirable Discharge Certificate and reduced to the lowest enlisted pay grade.

j. On 20 July 1972, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 6 years, 3 months, and 9 days of active service with 84 days of lost time. He was assigned separation code SPN 246 and with reentry code 3. It also shows he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Vietnam Campaign Medal with 60 Device
- Overseas with 1 Bar

5. Army Regulation 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

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

8. 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.

9. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

10. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHCD) characterization of service. The applicant contends that 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 (RA) on 17 January 1966, 2) on 09 February 1967 he accepted nonjudicial punishment (NJP) for disrespect to a commissioned officer, 3) he accepted NJP on 31 May 1967 for stealing a sport bicycle, 4) on 05 December 1971 he accepted NJP for failure to report to his place of duty, 5) the applicant surrendered to military authorities on 08 May 1972 after being absent without leave (AWOL) from 28 February to 28 March 1972, 6) the record is void of the DD Form 458 and complete separation packet, 7) on 08 June 1972, the applicant requested a discharge for the good of the service in lieu of trial by court-martial under the provisions of Chapter 10, Army Regulation (AR) 635-200, 8) the applicant was discharged on 20 July 1972. His DD Form 214 shows his separation code as 246 and reentry code of '3.'

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. Review of the applicant's DA Form 20 shows he served two tours in Vietnam: November 1967-November 1968 and 04 April 1971 to 24 January 1972. A memorandum authored by the applicant's Defense Counsel dated 08 June 1972 indicated that the applicant stated he can "no longer soldier properly in the states and becomes unusually nervous and irritable." Defense counsel also noted that the applicant had no prior history of court-martial and had no prior incidents of going AWOL. He was awarded the Army Commendation Medal (ARCOM) with an Oak Leaf Cluster for service from February 1968 to September 1968. An in-service disposition form with the subject being for Notification of Line of Duty Status shows the applicant was admitted to an overseas hospital on 14 January 1972 and discharged from Irwin Army Hospital on 24 January 1972 under the provisions of the Drug Identification and Treatment Program of the U.S. Army. There were no in-service medical records available for review.

d. An undated Department of Veterans Affairs Decision rating letter shows the applicant is 70% service-connected through the VA for PTSD with a note that his condition was evaluated as 70% disabling since December 16, 1967. His VA service-connection for PTSD was also reflected in JLV, in addition to several other medical conditions. The letter cited a statement from the applicant dated 12 June 1998 which detailed the traumatic events he experienced in Vietnam which included mortar and rocket attacks, grave registration and detail, hospital evacuation, attack in the Iron Triangle and being pinned down for three days noting eleven men were wounded, carrying the wounded to the MEDEVAC helicopters while under fire, mine sweeping, clearing roads, and the deaths of two men in his platoon. It was noted that he also described several other instances of traumatic experiences. His VA Compensation and Pension (C&P) examination dated 09 July 1998 shows he was diagnosed with PTSD, Chronic, Severe. The provider noted that the applicant reported his symptoms had been present at the time of the evaluation for at least thirty years and that "not a day goes by that he does not think about Vietnam or be disturbed by symptomatology associated with PTSD."

e. The applicant provided treatment records from the Vet Center for review. An undated visit information sheet shows the applicant was treated for PTSD via individual therapy from 25 May 2023 through 04 January 2024. Review of the treatment records show his treatment centered on his experiences and symptoms associated with PTSD due to his service in Vietnam. Review of additional civilian BH treatment records from

1999 through 2004 show he received treatment for PTSD, depression, anxiety, and substance abuse.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has a potentially mitigating BH condition, PTSD. This Advisor would contend that the applicant's misconduct of AWOL is mitigated by his post-discharge 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 and is 70% service-connected through the VA for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and is 70% service-connected through the VA for PTSD. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Although there were no in-service medical records available for review, an in-service memorandum from the applicant's Defense Counsel pertaining to his discharge request noted that the applicant reported experiencing nervousness and irritability, symptoms that may be associated with various BH conditions, to include combat-related trauma/PTSD. Since being discharged from the military, the applicant has been diagnosed and is 70% service-connected through the VA with PTSD due to his service in Vietnam. As there is an association between avoidance behaviors and trauma, there is a nexus between his misconduct of going AWOL and his diagnosis of PTSD. As such, BH mitigation is supported.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. Based upon the six years of service completed, the misconduct involved, and the mitigation found in the medical review, the Board concluded there was sufficient evidence to grant relief by upgrading the applicant's characterization of service 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 a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change



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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-200 (Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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. Paragraph 3-7b (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

4. 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 post-traumatic stress disorder (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.

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 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, 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 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.

//NOTHING FOLLOWS//