

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 January 2025

DOCKET NUMBER: AR20240005770

APPLICANT REQUESTS RECONSIDERATION FOR: an upgrade of his general under honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Separation from Active Duty)
- DD Form 215 (Correction to DD Form 214)
- Personal statement
- Medical documents
- Department of Veterans Affairs decision letter

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 AR20120015057 on March 12, 2013.

2. The applicant states, via personal statement, in effect:

a. He is a veteran incarcerated at [REDACTED]. He applied for service connected disability for hearing loss, post-traumatic stress disorder (PTSD), and a pension. He believes he requires a discharge upgrade from a General to an Honorable Discharge. His PTSD occurred during his Army service. After enlisting, he sank inexplicably into a fight or flight mental state.

b. It appears from his life's experience that nothing was the same for him after his enlistment. For instance, after his divorce, he lived in his pickup truck for three years. This is another instance of the symptoms of PTSD, such as homelessness. He was treated for this condition at the time at the VA Clinic in [REDACTED]. He has a PhD. in Education, however, he was never able to utilize the degree in any way. He tried consulting and teaching, all ended in failure. He has been suffering from acute depression since his enlistment in 1966. Before that date, he was well-adjusted, having completed high school, enjoyed his family and friends, and lived a normal life.

c. After that youthful time, he enlisted in the Army wanting to serve his country. However, it seems as if his service time was a gigantic speed bomb that caused his inner self to shake apart.

d. He receives Supplemental Security Income (SSI) from his Social Security, and is now 77 years old. He has three sons and a life marred by the consequences of a pivotal event from his youth. He has contributed to society through a lifelong support of his country and its values, proudly calling himself a citizen of the greatest nation to have ever graced this world. However, a lingering regret hangs over him - a less than honorable discharge earned by his own actions. This has become a constant reminder of unfulfilled potential and opportunities missed, including those in the realms of education and professional development, where doors were sealed shut. It's a painful truth, made all the more poignant by the realization that it was the impulsive decisions of a 19-year-old boy, struggling to become a man, that led to this state of affairs.

e. In a final attempt to find redemption, he reaches out, pleading for forgiveness and a chance to leave his past behind, bringing closure to this chapter of his life in the hope of a happier ending.

3. The applicant provides:

a. His DD Form 214 which shows he was discharged on 27 March 1968, under the provisions of AR 635-212 (Personnel Separations – Discharge Unfitness and Unsuitability), Separation Program Number (SPN) 28B, unfitness, and his service was characterized as general under honorable conditions. He served 8 months and 17 days of net service this period. He had 254 days of lost time under 10 USC 972 as follows:

- 17 July 1967 – 26 December 1967
- 27 December 1967 – 26 March 1968

b. His DD Form 215 which reflects a correction was made to item 27 (Remarks) of the DD Form 214 to read “discharge reviewed under provisions (UP) Policy (PL) 95-126 and a determination made that characterization of service was warranted UP Department of Defense (DOD) Special Discharge Review Program (SDRP) 4 April 1977.

c. Medical documents (8 pages), dated between 6 September 2023 and 12 June 2024.

d. Department of Veterans Affairs decision letter (2 pages), dated 11 March 2024, reflects the applicant's claim for service connection for hearing loss and tinnitus remains denied because the evidence submitted is not new and relevant.

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

a. He enlisted in the Regular Army on 20 October 1966 for a period of three (3) years.

b. The applicant accepted nonjudicial punishment (NJP) on 3 May 1967, for on or about 29 April 1967, without property authority failed to go at the time prescribed to her appointed place of duty.

c. Headquarters Troop Command, Fort Carson, CO 80913 Special Court-Martial Order Number 190, dated 26 January 1968, reflect the following:

Charge I. Article 86.

Specification: On or about 17 July 1967, without proper authority, absent himself from his unit, to wit: U.S. Army Hospital, U.S. Army Flight Training Center, located at Fort Stewart, Georgia, and did remain so absent until on or about 27 December 1967. Plea: Guilty. Finding: Guilty.

Sentence: Sentence was adjudged on 23 January 1968: To be confined at hard labor for six months and to forfeit \$68.00 per month for six months. (No previous convictions considered.)

Action: In the forgoing case of the applicant, it appears from the evidence adduced outside the record of trial that the accused was not mentally responsible at the time of his trial. Under the circumstances of this case, this error is materially prejudicial to the substantial rights of the accused. For this reason, the sentence is disapproved, and a rehearing is ordered before another court-martial to be hereafter designated.

d. Headquarters Troop Command, Fort Carson, CO 80913 Special Court-Martial Order Number 525, dated 7 March 1968, reflect the following:

Charge I. Article 86.

Specification: On or about 17 July 1967, without proper authority, absent himself from his unit, to wit: U.S. Army Hospital, U.S. Army Flight Training Center, located at Fort Stewart, Georgia, and did remain so absent until on or about 27 December 1967. Plea: Guilty. Finding: Guilty.

Sentence: Sentence was adjudged on 24 February 1968: To be confined at hard labor for six months and to forfeit \$68.00 per month for six months. (No previous convictions considered.)

Action: In the forgoing case of the applicant, the sentence is approved and will be duly executed. The applicant will be confined in the Post Stockade, Fort Carson, CO, and the confinement will be served therein, or elsewhere as competent authority may direct.

e. Headquarters Troop Command, Fort Carson, CO 80913 Special Court-Martial Order Number 706, dated 26 March 1968, states, the unexecuted portion of the sentence to confinement at hard labor for three months and forfeiture of \$60.00 per month for three months, in the case of the applicant, promulgated in Special Court-Martial Order Number 525, this headquarters, dated 7 March 1968, is remitted, effective 27 March 1968.

5. The applicant applied to the Army Discharge Review Board (ADRB) for review of his discharge. On 27 June 1980, the ADRB disapproved his request for an upgrade of his discharge due to his case being previously heard on 4 September 1973 by the SDRP.

6. AR 635-212, then in effect, establishes policy and provides procedures and guidance for eliminating enlisted personnel who are found to be unfit or unsuitable for further military service.

7. 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.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request to upgrade his general under honorable conditions discharge to honorable. He contends PTSD as related to his request.

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:

- Applicant enlisted into the Regular Army on 20 October 1966.
- Applicant accepted nonjudicial punishment (NJP) on 3 May 1967, for on or about 29 April 1967, without proper authority failed to go at the time prescribed to his appointed place of duty.
- On 24 February 1968, he was convicted by Special Court-Martial of being Awol from 17 July 1967 to 27 December 1967.
- His DD Form 214 shows he was discharged on 27 March 1968, under the provisions of AR 635-212 (Personnel Separations – Discharge Unfitness and Unsuitability), Separation Program Number (SPN) 28B, unfitness, and his service

was characterized as general under honorable conditions. He served 8 months and 17 days of net service this period.

- His DD Form 215 reflects a correction was made to item 27 (Remarks) of the DD Form 214 to read “discharge reviewed under provisions (UP) Policy (PL) 95-126 and a determination made that characterization of service was warranted UP Department of Defense (DOD) Special Discharge Review Program (SDRP) 4 April 1977.
- Applicant applied to the Army Discharge Review Board (ADRB) for review of his discharge. On 27 June 1980, the ADRB disapproved his request for an upgrade of his discharge due to his case being previously heard on 4 September 1973 by the SDRP.
- On 12 March 2013, the ABCMR denied his request for an upgrade of his general under honorable conditions discharge to honorable.

c. Review of Available Records: The Army Review Board Agency’s (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant’s file. The applicant states he is a veteran incarcerated at [REDACTED]. He applied for service-connected disability for hearing loss, post-traumatic stress disorder (PTSD), and a pension. He believes he requires a discharge upgrade from a General to an Honorable Discharge. His PTSD occurred during his Army service. After enlisting, he sank inexplicably into a fight or flight mental state. It appears from his life’s experience that nothing was the same for him after his enlistment. For instance, after his divorce, he lived in his pickup truck for three years. This is another instance of the symptoms of PTSD, such as homelessness. He was treated for this condition at the time at the VA Clinic in [REDACTED]. He has a PhD. in Education, however, he was never able to utilize the degree in any way. He tried consulting and teaching, all ended in failure. He has been suffering from acute depression since his enlistment in 1966. Before that date, he was well-adjusted, having completed high school, enjoyed his family and friends, and lived a normal life. After that youthful time, he enlisted in the Army wanting to serve his country. However, it seems as if his service time was a gigantic speed bomb that caused his inner self to shake apart.

d. Contrary to the applicant’s statement, the VA rating decision letter dated 11 March 2024 indicates he filed a claim for service connection for hearing loss and tinnitus, not for PTSD. However, his claim was denied.

e. Due to the period of service no active-duty electronic medical records were available for review.

f. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. On 12 December 2011, the applicant was enrolled in VA health services and the note indicates he was experiencing homelessness. He reported living in his pick-up truck for almost 4 years since his divorce and requested assistance with

housing due to his advancing age. However, he indicated that there were “a lot of advantages to living in my truck that most people wouldn't consider”. During this encounter the applicant was screened for depression, alcohol abuse, and PTSD; all screened negative. The applicant participated in a mental health intake appointment on 28 December 2011 and was provisionally diagnosed with Dysthymia related to his psychosocial stressors including homelessness and financial issues. The applicant was seen for a psychiatry appointment on 20 January 2012 and was started on antidepressant medication. A follow-up psychiatry appointment, on 23 May 2012, indicates the applicant reported he was only taking his medication intermittently since he only experienced occasional bouts of depression. On 4 January 2013, the applicant participated in a psychiatry appointment and reported he had stopped his medication but was currently experiencing symptoms of depression, he was started on a different antidepressant medication. He presented on 4 December 2013, requesting to be restarted on medication since he was experiencing symptoms of depression and had not taken his prescribed medication for nearly a year. On 5 February 2014, the applicant requested to discontinue his medication since he did not feel any improvement and he reported, “he only felt depressed one day every 15 days and sometimes once in a blue moon. Patient noted that his depression only lasts a few hours and does not in any way put himself in danger. Patient voiced that he hopes there was some kind of medication where he can take as a p.r.n. (as needed) for depression, such as marijuana”. The applicant was seen for a follow-up session on 20 May 2014, he reported “doing great without medications” and denied any symptoms of depression. The applicant was next seen by psychiatry, on 5 January 2015, and requested to restart medication since he was experiencing symptoms of depression. Follow-up appointments on 26 August 2015 and 27 May 2016, indicate the applicant reported taking his medication and denied any depressive symptoms. On 10 March 2017, the applicant was seen by psychiatry and requested to restart his medication since he had not taken it since May 2016 and was experiencing some anxiety. He was seen next on 8 June 2017, when he reported experiencing anxiety and depression due to legal stressors. He was living in subsidized housing at the time, was provided with medication for his symptoms, and diagnosed with Anxiety, Not Otherwise Specified; Depression, Not Otherwise Specified; and Alcohol Use Disorder (partial remission). Psychiatry appointments on 11 December 2017 and 16 April 2018, show the applicant was stable on his medication, but his legal issues remained unresolved. A note dated 26 June 2018, indicates the applicant opted to discontinue his medication, but on 21 July 2018 was restarted on a different medication per his request. A note dated 2 July 2019, shows the applicant screened negative for depression. The applicant continued to intermittently take psychotropic medication situationally and would discontinue when he was feeling well. The last psychiatry encounter in JLV is dated 1 March 2022.

g. Medical documentation from the Bureau of Prison Health Services shows, on 23 September 2023, the applicant screened positive for depression. An encounter dated 14 May 2024, indicates the applicant was started on antidepressant medication on 16 April

2024 and his medications were adjusted during this appointment. The applicant was diagnosed with Unspecified Mood Disorder and a follow-up session on 12 June 2024, indicates his diagnosis remained unchanged and his medication was further adjusted.

h. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

i. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant contends PTSD as related to his request but does not provide an index trauma or a rationale for his alleged PTSD.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses and the VA has not service-connected the applicant for any BH condition. The first evidence of any depressive symptoms is documented in December 2011, and relates to his psychosocial stressors of divorce, homelessness, and financial stressors not to his military service. The available medical record shows the applicant has not been diagnosed with PTSD, there is no evidence in the medical record of any reported trauma, and his depressive and anxious symptoms are described as situational and related to his psychosocial stressors.

j. Per Liberal Consideration guidelines, his assertion of PTSD is sufficient to warrant consideration by the Board.

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 not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to the misconduct leading to the applicant's separation and the following findings annotated in the medical review,

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes..

(2) Did the condition exist or experience occur during military service? No.

(3) Does the condition or experience actually excuse or mitigate the discharge? No.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

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 635-212 (Personnel Separations – Discharge Unfitness and Unsuitability) establishes policy and provides procedures and guidance for eliminating enlisted personnel who are found to be unfit or unsuitable for further military service. Paragraph 5b states, commanders exercising general court-martial jurisdiction are authorized to convene boards of officers for unfitness and unsuitability and to order separation, except that they may not order discharge of personnel who have completed 18 or more years active Federal service.
2. 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.
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 (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. 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. 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//