

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240006079

APPLICANT REQUESTS:

- in effect, an upgrade of his under other than honorable conditions characterization of service
- a personal appearance hearing before the Board (via video/telephone)

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

- DD Form 149 (Application for Correction of Military Record), 24 March 2024
- State Department of Corrections Personal Incarceration History, undated

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he was shot in the hand in 1967 during the Vietnam War. He had years of post-traumatic stress disorder (PTSD), drug use, and a criminal path that led to health issues. He was a decorated infantry soldier and would like an upgrade to his characterization of service so he can access veteran assistance programs.
3. The applicant provides his State Department of Corrections Personal Incarceration History, which shows he was incarcerated on six separate occasions for drug related offenses, covering the period from June 1980 to October 2006.
4. A review of the applicant's records shows:
 - a. He was inducted into the Army of the United States on 14 July 1967.

b. His DA Form 20 (Enlisted Qualification Record), shows in:

- Item 31 (Foreign Service) – 18 December 1967 to 18 December 1968, U.S. Army Pacific – Vietnam
- Item 40 (Wounds) – no entries

c. Headquarters, 1st Battalion (Mechanized), 58th Infantry, 197th Infantry Brigade, Special Court-Martial Order Number 7, 31 January 1969 shows the applicant was found guilty of violation of Article 86 (Absent Without Leave (AWOL)), Uniform Code of Military Justice (UCMJ). The applicant did, on or about 27 December 1968, absent himself from his unit and did remain so absent until on or about 10 January 1969. The sentence, adjudged 27 January 1969 included confinement at hard labor for three months, forfeiture of \$72.00 per month for three months, and to be reduced to the rank/grade of Private (PV1) /E-1. The portion of the sentence adjudging confinement at hard labor for three months was suspended for three months, at which time, unless the suspension is sooner vacated, the suspended portion of the sentence will be remitted without further action.

d. Headquarters, 1st Battalion (Mechanized), 58th Infantry, 197th Infantry Brigade, Special Court-Martial Order Number 19, 11 March 1969, vacated the suspension of a portion of the sentence. The unexecuted portion of the sentence to confinement at hard labor would be duly executed.

e. U.S. Department of Justice, Federal Bureau of Investigation memorandum (Applicant), 11 August 1969, lists the applicant as a deserter fugitive. He was apprehended in Arlington, GA, and confined at Marine Corps Supply Center, Albany, GA.

f. DA Form 2173 (Statement of Medical Examination and Duty Status) shows the applicant underwent a medical examination at Fort Benning, GA on 5 January 1970. The details of the accident show the applicant injured his left shoulder in an automobile accident on 31 December 1969, while in an AWOL status. Additionally, a formal line of duty investigation was recommended to determine if the applicant's injury incurred in the line of duty.

g. DA Form 261 (Report of Investigation), 18 March 1970, shows the applicant sustained a left shoulder fracture in an automobile accident on 31 December 1969. The investigating officer noted the applicant was reported AWOL on 22 December 1969. He was admitted to Martin Army Hospital on 5 January 1970. He was the passenger in a personally owned vehicle driven by W ____ J. D ____.

(1) The investigating officer determined the applicant's injury was not incurred in the line of duty – not due to own misconduct.

(2) On 14 May 1970 and 15 May 1970, the appointing authority and reviewing authority approved the findings.

h. On 19 June 1970, the applicant's immediate commander notified him that his injury sustained on 31 December 1969 was determined to not have been incurred in the line of duty – not due to own misconduct.

i. On 11 February 1971, the applicant was found guilty by a general court-martial for violation of Article 86 (AWOL), UCMJ, from on or about 20 February 1970 to on about 20 November 1970. His sentenced adjudged on 11 February 1971 included forfeiture of \$66.00 per month for 6 months and a bad conduct discharge.

j. On 16 February 1971, the applicant underwent a medical examination for the purpose of separation. The examining official did not note any medical issues and found the applicant was qualified for separation.

k. On 18 February 1971, the applicant underwent a psychiatric evaluation for the purpose of separation. The examination did not reveal any mental condition and found no evidence of psychiatric disease.

l. Headquarters, U.S. Army School/Training Center and Fort Gordon, General Court-Martial Order Number 79, 14 July 1971, affirmed the sentence to bad conduct discharge and forfeiture of \$66.00 per month for six months, as promulgated in General Court-Martial Number 28, 5 March 1971 and ordered the sentence to be executed.

m. The applicant was discharged on 9 August 1971. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation 635-204 (Dishonorable and Bad Conduct Discharges), by reason of other than desertion (court-martial), in the rank/grade of PV1/E-1, and his service was characterized as under other than honorable conditions. He completed 2 years and 1 day of net active service with 143 days of lost time. Item 24 (Decorations, Medal, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded or authorized the following:

- Vietnam Service Medal with three bronze service stars
- Vietnam Campaign Medal
- Combat Infantryman Badge
- Expert Marksmanship Qualification Badge with rifle bar
- Two Overseas Service Bars

5. There is no indication the applicant applied to the ADRB for review of his discharge processing within the Board's 15-year statute of limitations.

6. 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.

7. Army Regulation 635-204, in effect at that time, set forth the basic authority for separation of enlisted personnel with a dishonorable discharge or BCD. This regulation states that an enlisted person will receive a BCD pursuant only to an approved sentence of a general court-martial imposing a dishonorable discharge.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting, in effect, an upgrade of his under other than honorable conditions (UOTHC) characterization of service. On his DD Form 149, the applicant indicated that Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues are 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 was inducted into the Regular Army on 14 July 1967, 2) His DA Form 20 (Enlisted Qualification Record), shows he had Foreign Service from 18 December 1967 to 18 December 1968, U.S. Army Pacific – Vietnam and on item 40 (Wounds) there were no entries, 3) Special Court-Martial orders dated 31 January 1969 show the applicant was found guilty of being Absent Without Leave (AWOL) from on or about 27 December 1968 to on or about 10 January 1969, 4) U.S. Department of Justice, Federal Bureau of Investigation memorandum dated 11 August 1969 lists the applicant as a deserter fugitive. He was apprehended in Arlington, GA and confined at Marine Corps Supply Center, Albany, GA, 5) DA Form 261 (Report of Investigation) dated 18 March 1970 shows the applicant sustained a left shoulder fracture in an automobile accident on 31 December 1969. The investigating officer noted the applicant was reported AWOL on 22 December 1969. He was admitted to Martin Army Hospital on 5 January 1970. The investigating officer determined the applicant's injury was not incurred in the line of duty – not due to own misconduct, 6) on 11 February 1971, the applicant was found guilty by a general court-martial for going AWOL from on or about 20 February 1970 to on about 20 November 1970, 7) on 16 February 1971, the applicant underwent a medical examination for the purpose of separation and was qualified for separation, 8) on 18 February 1971, the applicant underwent a psychiatric evaluation for the purpose of separation and found no evidence of psychiatric disease, 9) The applicant was discharged on 9 August 1971, under the provisions of AR 635-204 (Dishonorable and Bad Conduct Discharges), by reason of other than desertion (court-martial). He was assigned the separation program number of 292 and the RE code of 4. He received several Medals and Awards during his service including Vietnam Service Medal with three bronze service stars, Vietnam Campaign Medal, Combat Infantryman's Badge, Expert Marksmanship Qualification Badge with rifle bar, Two Overseas Service Bars.

b. The Army Review Boards 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. The applicant's Record of Induction dated 12 July 1967 shows his PULHES as 111111, indicative that there were no BH concerns identified at the time of his induction into the military. A DA Form 2173 dated 06 March 1970 shows the applicant injured his left shoulder in an automobile accident while he was in an AWOL status and was admitted to the hospital from 31 December 1969 to 05 January 1970. A line of duty determination dated 19 June 1970 determined his injury was not in the line of duty-not due to own misconduct. A Report of Medical Examination for the purposes of separation dated 16 February 1971 shows item number 42, psychiatric, as 'normal' on clinical evaluation. A psychiatric evaluation was conducted on 18 February 1971 for the purposes of separation. It was determined that there was no evidence of psychiatric disease, and the applicant was cleared for administrative procedures deemed necessary by command.

d. A review of JLV shows the applicant is not service connected for any conditions; however, it is of note that his UOTHC discharge renders him ineligible for VA services. A VA Mental Health Initial Evaluation note dated 17 July 2024 shows the applicant presented to the VA requesting housing assistance. The evaluating Social Worker noted PTSD in the section 'presenting mental health symptoms,' though did not elaborate on his PTSD-related symptoms.

e. Review of the applicant's DA Form 20, assignments, shows his conduct and efficiency were rated as 'excellent' and 'good' from the time of Basic Training through 24 December 1967. Beginning 23 July 1968, his conduct and efficiency were documented as 'unsatisfactory,' 'unknown,' and 'fair.'

f. On his DD Form 149, the applicant indicated that he was shot in the hand while in Vietnam in 1967. He also indicated he had years of PTSD. The applicant stated he had a "drug criminal war path [cocaine] that led to health issue[s] of 54 years." As part of his application, the applicant provided his State Department of Corrections Personal Incarceration History, which shows he was incarcerated on six separated occasions for drug related offenses from June 1980 to October 2006.

g. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant more likely than not had PTSD-related symptoms as a result of his service in Vietnam. This Advisor would contend that the applicant's misconduct of going AWOL is mitigated by PTSD-related symptoms.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of records was void of any BH diagnosis or treatment history for the applicant during service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. The applicant is not service-connected through the VA for any conditions; however, due to his UOTHC discharge, he is ineligible for VA clinical services. Review of a social work triage note through the VA documented PTSD in the section noted as 'presenting mental health symptoms,' though it is of note he was not formally diagnosed with the condition at the time of the encounter. The lack of documentation of PTSD symptoms in the applicant's military records does not necessarily indicate he did not have in-service PTSD. In the era of the applicant's military service, PTSD symptoms were frequently not recognized as the condition was not formally recognized in the DSM until 1980, approximately 9 years after the applicant's discharge. In such cases, the presence of PTSD has to be inferred from behavioral indicators documented in the applicant's record. Such is the case with this applicant. On his DD Form 149, the applicant stated that he had been shot in the hand while in Vietnam and he had suffered with symptoms of PTSD for years. Review of the applicant's service records show that he was awarded a CIB during his service to Vietnam, indicative that he was engaged in ground combat while deployed. Prior to going to Vietnam, the applicant's conduct and efficiency were rated as 'excellent' and 'good.' This pattern of performing well followed by suddenly engaging in avoidance behaviors, such as going AWOL, is not uncommon in soldiers suffering from PTSD. Thus, it is more likely than not that the applicant experienced PTSD-related symptoms secondary to his service in Vietnam. As there is an association between exposure to combat-related trauma and avoidance behaviors, there is a nexus between going AWOL and the applicant's report of PTSD-related symptoms secondary to his deployment to Vietnam. As such, BH mitigation is supported. Regarding applicant's assertion of Other Mental Health Issues, while there is no evidence to support this diagnosis, applicant's self-assertion of Other Mental Health Issues alone merits consideration by the board.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for conviction by court-martial. The Board found no error or injustice in the separation proceedings. However, the Board reviewed and concurred with the medical advisor's review finding sufficient evidence that the applicant more likely than not had PTSD-related symptoms as a result of his service in Vietnam and therefore granted relief. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. A review of records was void of any BH diagnosis or treatment history for the applicant during service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. The applicant is not service-connected through the VA for any conditions; however, due to his UOTHC discharge, he is ineligible for VA clinical services. Review of a social work triage note through the VA documented PTSD in the section noted as 'presenting mental health symptoms,' though it is of note he was not formally diagnosed with the condition at the time of the encounter. The lack of documentation of PTSD symptoms in the applicant's military records does not necessarily indicate he did not have in-service PTSD. In the era of the applicant's military service, PTSD symptoms were frequently not recognized as the condition was not formally recognized in the DSM until 1980, approximately 9 years after the applicant's discharge. In such cases, the presence of PTSD has to be inferred from behavioral indicators documented in the applicant's record. Such is the case with this applicant. On his DD Form 149, the applicant stated that he had been shot in the hand while in Vietnam and he had suffered with symptoms of PTSD for years. Review of the applicant's service records show that he was awarded a CIB during his service to Vietnam, indicative that he was engaged in ground combat while deployed. Prior to going to Vietnam, the applicant's conduct and efficiency were rated as 'excellent' and

'good.' This pattern of performing well followed by suddenly engaging in avoidance behaviors, such as going AWOL, is not uncommon in soldiers suffering from PTSD. Thus, it is more likely than not that the applicant experienced PTSD-related symptoms secondary to his service in Vietnam. As there is an association between exposure to combat-related trauma and avoidance behaviors, there is a nexus between going AWOL and the applicant's report of PTSD-related symptoms secondary to his deployment to Vietnam. As such, BH mitigation is supported. Regarding applicant's assertion of Other Mental Health Issues, while there is no evidence to support this diagnosis, applicant's self-assertion of Other Mental Health Issues alone merits consideration by the board.

2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a court-martial. The appellate review was completed and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process and the rights of the applicant were fully protected.


3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was warranted.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 9 August 1971, to show his characterization of service as honorable.



X //SIGNED//

CHAIRPERSON

Signed by:

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

REFERENCES:

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

2. Army Regulation 635-204, in effect at that time, set forth the basic authority for separation of enlisted personnel with a dishonorable discharge or BCD. This regulation states that an enlisted person will receive a BCD pursuant only to an approved sentence of a general court-martial imposing a dishonorable discharge.

3. Army Regulation 635-200 (Personnel Separation), the regulation currently in effect, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b states that 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.

c. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.

- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

5. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, 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.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records 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.

//NOTHING FOLLOWS//