

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 February 2025

DOCKET NUMBER: AR20240006207

APPLICANT REQUESTS: reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge to honorable

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Memorandum, Licensed Clinical Social Worker (LCSW), 22 August 2023
- Psychological Evaluation, 30 August 2023

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 AC 90-07730 on 29 July 1992.

2. The applicant states, in effect, he would like the board to reconsider the characterization of his discharge under other than honorable conditions due to his service in Vietnam and subsequent in addition to his post-traumatic stress disorder (PTSD) diagnoses.

3. The applicant provides medical documentation from his LCSW, and a licensed developmental psychologist, detailing his chronic depression, PTSD, and history of substance abuse stemming from his military service in the U.S. Army while serving in Vietnam as an infantryman.

a. A memorandum dated 22 August 2023, from the applicant's LCSW indicates that the applicant has been under care for chronic depression and PTSD for the past three years. The applicant's chief complaints include panic attacks, depression, nightmares, and hypervigilance. The letter also notes the applicant's history of heroin use initiated during his service in Vietnam, leading to an other than honorable discharge, although he has been heroin-free for over 15 years.

b. A psychological evaluation dated 30 August 2023, by a licensed developmental psychologist states the applicant a 72-year-old army veteran who suffers from chronic depression and severe PTSD, linked to traumatic experiences during his service in south Saigon in which he witnessed death and combat. He reports nightmares, panic attacks, hypervigilance, and trust issues. He has other diagnoses of high blood pressure, diabetes, and mild neurocognitive dysfunction. He has undergone multiple surgeries for his back, hip, and knee. The psychologist concludes that the applicant's disabilities are directly related to his military service and recommends sustained treatment and therapy.

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

a. He was inducted into the Army of the United States on 12 April 1971.

b. His DA Form 20 (Enlisted Qualification Record) shows he served in Vietnam from 18 December 1971 to 22 June 1972, through two campaigns.

c. He accepted nonjudicial punishment on three occasions, the DA Forms 2627 (Record of Proceedings Under Article 15, UCMJ) show:

- 6 July 1971 – for one specification of being absent without leave (AWOL) from on or about 5 July 1971 to on or about 8 July 1971
- 1 October 1971 – for one specification of being AWOL from on or about 7 September 1971 to on or about 30 September 1971
- 28 August 1972 – for one specification of being AWOL from on or about 29 July 1972 to on or about 27 August 1972 his punishment included reduction to private first class (PFC), E-3

d. On 5 February 1973, a Standard Form 88 (Report of Medical Examination) shows the applicant underwent a medical evaluation for the purpose of separation which indicated he was generally in good health. He was subsequently marked qualified for service, to include separation/chapter.

e. A DA Form 2496 (Disposition Form - Mental Status Examination), dated 5 February 1973 confirmed the applicant received a mental status evaluation. The applicant was psychiatrically cleared for any administrative action deemed appropriate by the Command. The evaluation further outlined the following:

- normal behavior and fully alert
- fully oriented with depressed mood
- clear thinking process and normal thought content
- good memory and poor effectiveness for further rehabilitation
- had the mental capacity to understand and participate in board proceedings

- met the retention standards prescribed in Chapter 3, AR 40-501

f. On 6 February 1973, a DD Form 458 (Charge Sheet) shows court-martial charges were preferred on the applicant for one specification of being AWOL from on or about 29 November 1972 to on or about 31 January 1973.

g. On the same day, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- if his request for discharge was accepted, he may be discharged and furnished an Undesirable 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. The applicant submitted a statement on his own behalf which stated for the following reasons he wished to be discharged from the service:

- he had personal problems at home
- his wife had an accident
- he could not get emergency leave which led to his AWOL

i. On 12 February 1973, 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 16 February 1973, a DA Form 4032 (Statement of Medical Condition) was signed by the applicant indicating there has been no change in his medical condition since his last separation examination.

k. On 16 February 1973, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Armed Forces of the United States Report of Transfer of Discharge) shows he completed 6 months and 8 days of active service with 119 days of lost time. It also shows he was awarded or authorized:

- National Defense Service Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar

I. A DD Form 215 (Correction to DD Form 214) issued on 24 April 1973, listing the following corrections to his DD Form 214:

- Block 22a (1) (Net service this period): 1 year, 6 months, and 6 days
- Block 22a (3) (Total): 1-6-6
- Block 22b (Total Active Service): 1-6-6
- Block 22c: (Foreign and/ or Sea Service): USARPAC, 6 months and 5 days
- Block 24 (Decorations, Awards, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized):
 - Republic of Vietnam Campaign Medal (RVNCPM)
 - Vietnam Service Medal w/ Device 1960
 - Bronze Star Medal
 - Purple Heart
 - 1 Overseas Service Bar
- Block 30 (Remarks): Vietnam from 18 December 1971- 22 June 1972

5. A review of the applicant's record confirms he is eligible for awards that are not recorded on his DD Form 215. These awards will be added to his DD Form 215 as administrative corrections and will not be considered by the Board.

6. On 5 July 1974 and 30 December 1985, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied both requests for an upgrade of his discharge.

7. On 29 July 1992, the ABCMR rendered a decision in Docket Number AC 90-07730. The Board found the applicant had not presented and the records did not contain sufficient justification to conclude that it would be in the interest of justice to grant the relief requested or to excuse the failure to file within the time prescribed by law. In the absence of new evidence showing that it would be in the interest of justice to excuse his failure to timely file, further consideration by the Board was not appropriate.

8. 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 conditions discharge normally is appropriate for a member who is discharged for the good of the service.

9. Department of the Army General Order (DAGO) Number 54, dated 1974, awarded 7th Cavalry, 1st Battalion, the Republic of Vietnam Gallantry Cross with Palm for service in Vietnam from 18 December 1971 to 22 June 1972.

10. 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.

11. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a reconsideration of his prior request for an upgrade of his under other than honorable conditions (UOTHC) characterization of service. On his DD Form 293, the applicant indicated 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 was inducted into the Army on 12 April 1971, 2) he served in Vietnam from 18 December 1971 to 22 June 1972 through two campaigns, 3) he accepted nonjudicial punishment on three occasions for being absent without leave (from 05 July 1971 to 08 July 1971; from 07 September 1971 to 30 September 1971; from 29 July 1972 to 27 August 1972), 4) the applicant was medically cleared for separation on 05 February 1973, 5) the applicant was psychiatrically cleared for administrative action deemed appropriate by command on 05 February 1973, 6) on 06 February 1973, court-martial charges were preferred against the applicant for one specification of AWOL from 29 November 1972 to 31 January 1973, 7) the applicant was discharged on 16 February 1973 under the provisions of Army Regulation (AR) 635-200, Chapter 10, For the Good of the Service. The applicant's DD Form 215 dated 24 April 1973 shows he was awarded the following: Republic of Vietnam Campaign Medal (RVNCM), Vietnam Service Medal w/ Device 1960, Bronze Star Medal, Purple Heart, and 1 Overseas Service Bar. 8) on 05 July 1974 and 30 December 1985, the Army Discharge review Board denied requests for upgrade of his discharge as it was determined that his discharge processing was proper and equitable. 9) On 29 July 1992, the ABCMR rendered a decision in Docket Number AC 90-07730 and determined that further consideration by the Board was not appropriate, 10) Department of the Army General Order (DAGO) Number 54, dated 1974, awarded 7th Cavalry, 1st Battalion, the Republic of Vietnam Gallantry Cross with Palm for service in Vietnam from 18 December 1971 to 22 June 1972.

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 his conduct and efficiency were rated as 'excellent' for several periods of service (19 April 1971; 16 July 1971; 24 December 1971; April 1972) prior to being rated 'fair' (02 September 1972) and

Unsatisfactory (29 November 1972). An in-service Report of Medical Examination dated 05 February 1973 for the purposes of separation shows item number 42, psychiatric, as 'normal' on clinical evaluation. His MSE dated 05 February 1973 shows all domains of the MSE were within normal limits (WNL), with the exception of mood which was noted as 'depressed level.' The provider documented that the applicant was mentally responsible, able to distinguish between right and wrong and adhere to the right, had the mental capacity to understand and participate in board proceedings, and met retention standards in accordance with (IAW) AR 40-501, Chapter 3.

d. As part of his application the applicant included civilian BH records. A treatment summary from his treating BH provider (Licensed Clinical Social Worker (LCSW)) dated 22 August 2023 shows he had been treating the applicant for three years for Chronic Depression and PTSD "secondary to traumatic experiences he endured while in the U.S. Army while stationed in Vietnam as an Infantryman." The provider noted his chief complaints as panic attacks, nightmares, and hypervigilance. It was further noted that the applicant reported heroin use while in Vietnam, to which he struggled with for 40 years, though as of the time of the letter he had been in remission for 15 years. The applicant also provided a psychological evaluation conducted by a licensed developmental psychologist dated 30 August 2023 as part of his application. The provider documented the traumatic experiences he had in Vietnam which included often witnessing death, dead bodies, and often being shot at. She noted that he has frequent intrusive thoughts, nightmares, difficulty trusting others, and sleep problems. The provider concluded that the applicant's information provided during the interview and assessment tools that were administered revealed significant symptoms of PTSD directly related to his military experience. The diagnoses were documented as Unspecified Neurocognitive Disorder and PTSD.

e. A review of JLV was void of medical information and is not service-connected through the VA for any conditions. It is of note that the applicant's UOTHC discharge renders him ineligible for VA services.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient information that the applicant has been diagnosed post-discharge with a potentially mitigating BH condition, PTSD. This Advisor contends that the applicant's misconduct of going AWOL is mitigated by his 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 asserts PTSD associated with the circumstances of his discharge and he has been diagnosed with PTSD secondary to experiences in Vietnam by two civilian/non-VA BH providers.

(2) Did the condition exist or experience occur during military service? Yes, the applicant's assertion is supported by his subsequent diagnosis of PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant asserts mitigation due to PTSD at the time of his discharge. Per liberal consideration guidelines, his assertion alone is worthy of consideration by the Board. He has been diagnosed with PTSD secondary to his experiences in Vietnam by two civilian/non-VA BH providers. Given that AWOL is an avoidance behavior associated with the natural history and sequelae of trauma-exposure/PTSD, there is a nexus between his symptoms/experiences and the AWOL leading to his discharge. As such, BH mitigation is supported.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is sufficient information that the applicant has been diagnosed post-discharge with a potentially mitigating BH condition, PTSD. This Advisor contends that the applicant's misconduct of going AWOL is mitigated by his diagnosis of PTSD.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts PTSD associated with the circumstances of his discharge and he has been diagnosed with PTSD secondary to experiences in Vietnam by two civilian/non-VA BH providers.

(2) Did the condition exist or experience occur during military service? Yes, the applicant's assertion is supported by his subsequent diagnosis of PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant asserts mitigation due to PTSD at the time of his discharge. Per liberal consideration guidelines, his assertion alone is worthy of consideration by the Board. He has been diagnosed with PTSD secondary to his experiences in Vietnam by two civilian/non-VA BH providers. Given that AWOL is an avoidance behavior associated

with the natural history and sequelae of trauma-exposure/PTSD, there is a nexus between his symptoms/experiences and the AWOL leading to his discharge. As such, BH mitigation is supported.

3. The Board determined that there is sufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant expressed remorse and acknowledged the consequences of receiving an undesirable discharge. In his personal statement, he cited significant personal hardship including his wife's accident and the denial of emergency leave as contributing factors to his misconduct. Based on the advisory opinion and a review of the record, the Board found that the applicant's combat service in Vietnam, along with his receipt of valorous awards such as the Bronze Star Medal and Purple Heart, weighed heavily for consideration. These factors, coupled with the personal challenges he faced at the time, provided meaningful mitigation for his offenses. However, the Board agreed that an upgrade to honorable is not warranted. The Board found that an upgrade to a general, under honorable conditions characterization is more appropriate and better reflects the overall quality of the applicant's service and the mitigating circumstances surrounding his separation. As such, the Board granted partial relief.

4. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction be completed to more accurately depict the military service of the applicant

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. In addition to the administrative notes annotated by the Analyst of Record (below the signature), the Board determined the evidence presented is sufficient to warrant a recommendation for partial 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 his characterization of service as General Under Honorable Conditions.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrade of his under other than honorable conditions discharge to honorable.

X //SIGNED//

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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's service records shows he is authorized awards not annotated on his DD Form 215. As a result, amend his DD Form 215 to show he is awarded or authorized:

- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- add 2 bronze service stars to his already awarded Vietnam Service Medal

REFERENCES:

1. 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. 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.

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

a. 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. 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 and/or in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. Department of the Army Pamphlet 672-3 (Unit Citations and campaign Participation Credit Register) assist commanders and personnel officers in determining or establishing the eligibility of individual members for campaign participation credit, assault landing credit, and unit citation badges awarded during the Vietnam Conflict. A bronze service star is authorized to denote participation in each designated campaign. Department of the Army General Order (DAGO) Number 54, dated 1974, awarded 7th Cavalry, 1st Battalion, the Republic of Vietnam Gallantry Cross with Palm for service in Vietnam from 18 December 1971 to 22 June 1972.

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.

7. 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//