

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20240006257

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable. Additionally, he requests favorable change of his separation code.

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

- DD Form 293 (Application for the Review of Discharge)
- DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) – 2
- Request for Assistance to Honorable S____, with Agency response letter

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 when he returned from Vietnam, he was mentally incapacitated and didn't realize it. There was no diagnosis for post-traumatic stress disorder (PTSD) back then. He had nightmares, anxiety, and terrible anger issues. With the proper treatment, he would have remained in the Army.

3. On 13 September 1963, the applicant enlisted in the Regular Army. The highest grade he attained was E-4.

4. He was honorably discharged on 17 May 1966, for immediate reenlistment. His DD Form 214 confirms he completed 2 years, 8 months, and 5 days of net active service this period.

5. He reenlisted in the Regular Army on 18 May 1966.

6. He served in the Republic of Vietnam from 8 January 1967 to 7 January 1968.

7. On 3 June 1968, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for failing to go at the time prescribed to his appointed place of duty, on or about 17 May 1968. His punishment included forfeiture of \$33.00 pay and 14 days restriction.

8. On 5 July 1968, the applicant was reported as absent without leave (AWOL), and remained absent until he returned to military authorities on 19 August 1968.

9. On 30 August 1968, the applicant was reported AWOL a second time, and remained absent until he returned to military authorities on 25 September 1968.

10. Before a special court-martial Fort Belvoir, VA on 17 October 1968, the applicant was found guilty of two specifications of going AWOL. The court sentenced the applicant to forfeiture of \$145.00 per month for six months and reduction to E-3. The sentence was approved on 5 November 1968, and the record of trial was forwarded for appellate review.

11. Before a civilian court on 16 December 1968, in Richmond, VA, the applicant was found guilty of interstate transportation of a stolen motor vehicle. The court placed the applicant on probation for three years.

12. On 10 February 1969, the applicant underwent a mental status evaluation. The attending psychiatrist noted the applicant had been constantly going AWOL since returning from Vietnam and he was unmotivated for further military duty. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

13. The applicant's commander notified him on 12 February 1969, that he was initiating actions to separate him under the provisions of Army Regulation 635-206 (Personnel Separations – Discharge – Misconduct (Fraudulent Entry, Conviction by Civil Court, AWOL, Desertion)), for conviction by civil court.

14. The applicant acknowledged that he had been advised by counsel of the basis for the contemplated separation action, on 14 February 1969. Following his consultation, he waived his right to have his case considered by a board of officers. He understood that, as a result of issuance of a discharge UOTHC, he may be ineligible for many or all benefits as a Veteran under Federal and State laws as a result, and that he may expect to encounter substantial prejudice in civilian life. He declined to submit a statement in his own behalf.

15. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-206, on 24 February 1969. As the specific reasons,

the commander noted the applicant's conviction by a civil court of law for interstate transportation of a stolen motor vehicle.

16. Consistent with the chain of command's recommendations, the separation authority approved the applicant's discharge and directed issuance of a DD Form 258A (Undesirable Discharge Certificate).

17. The applicant was discharged on 21 March 1969. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-206, with Separation Program Number 284 (Conviction by Civil Court) and Reenlistment Code RE-4. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He completed 2 years, 4 months, and 12 days of net active service this period with 172 days of lost time.

18. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

19. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable conditions discharge. The applicant contends his request is related to his experience of PTSD that mitigates his misconduct. 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 on 13 September 1963; 2) The applicant deployed to Vietnam for approximately one year beginning on 8 January 1967; 3) Following his deployment, on 3 June 1968, the applicant accepted non-judicial punishment for failing to be on time at his place of duty; 4) Before a special court-martial, on 17 October 1968, the applicant was found guilty of two specifications of going AWOL; 5) On 16 December 1968, a civilian court found the applicant guilty of interstate transportation of a stolen motor vehicle; 6) The applicant was discharged on 21 March 1969 for, "Conviction by Civil Court." His character of service was under other than honorable conditions. The applicant completed 2 years, 4 months, and 12 days of net active service this period with 172 days of lost time.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he experienced PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition while on active service. The applicant was

medically cleared (on 15 January 1969) and psychiatrically cleared (on 10 February 1969) to engage in the administrative separation process. Neither examination diagnosed the applicant with either a physical or mental health condition. However, during the applicant's mental status examination, the provider noted evidence of a change in behavior following the applicant's deployment to Vietnam. This included a distinct lack of motivation or interest in serving in the military following his deployment.

d. A review of JLV did not produce any results. There is insufficient evidence the applicant was diagnosed with any service-connected mental health condition. The applicant does not receive service-connected disability at this time.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition or experience that partially mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, there is insufficient evidence beyond self-report the applicant has been diagnosed with a mental health condition, including PTSD. There was evidence during the applicant's separation mental status evaluation that he was demonstrating a change in behavior since his deployment to Vietnam. In addition, he did engage in avoidant behavior such as going AWOL, which is a natural sequelae to PTSD. However, the applicant provided insufficient evidence of being diagnosed with service-connected PTSD. In addition, there is no nexus between the applicant's reported PTSD and the interstate transportation of a stolen motor vehicle in that: 1) This type of misconduct is not a part of the diagnosis or natural sequelae of PTSD; 2) PTSD does not impact one's ability to distinguish right from wrong. However, the applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 reviewing the applicant's petition, available military records, and medical review, the Board acknowledged the advisory opinion of the Agency Medical Advisor, that found there is sufficient evidence indicating the applicant may have had a condition or experience that partially mitigates his misconduct. However, the Board determined the evidence of in-service mitigating factors is insufficient to outweigh the misconduct and conviction by civilian authorities. As a result, the Board determined there is not enough evidence of an error or injustice to warrant a change in the applicant's separation code.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? Partially, there is insufficient evidence beyond self-report the applicant has been diagnosed with a mental health condition, including PTSD. There was evidence during the applicant's separation mental status evaluation that he was demonstrating a change in behavior since his deployment to Vietnam. In addition, he did engage in avoidant behavior such as going AWOL, which is a natural sequelae to PTSD. However, the applicant provided insufficient evidence of being diagnosed with service-connected PTSD. In addition, there is no nexus between the applicant's reported PTSD and the interstate transportation of a stolen motor vehicle in that: 1) This type of misconduct is not a part of the diagnosis or natural sequelae of PTSD; 2) PTSD does not impact one's ability to distinguish right from wrong. However, the applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

3. The Board noted that the applicant did not provide any post-service accomplishments or character references to support consideration for clemency. Additionally, the record lacks evidence of a diagnosis of service-connected PTSD, and no clear connection was established between the applicant's reported PTSD and the offense involving interstate transportation of a stolen motor vehicle. Furthermore, the Board determined that the applicant has not demonstrated, by a preponderance of the evidence, the existence of an error or injustice that would justify the requested upgrade from an under other than honorable conditions (UOTHC) discharge to a general under honorable conditions discharge. Therefore, the Board denied relief.

4. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is 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
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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 //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):

1. Army Regulation 635-5 (Separation Documents), in effect at the time, stated the DD Form 214 was to list all decorations, service medals, campaign credits, and badges awarded or authorized.
2. Army Regulation 600-8-22 (Military Awards) states a bronze service star will be awarded, for wear on the Vietnam Service Medal, for participation in each campaign. Recognized campaigns for Vietnam include the Vietnam Counteroffensive Phase II (1 July 1966 to 31 May 1967), and Vietnam Counteroffensive Phase III (1 June 1967 to 29 January 1968).
3. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) shows DAGO Number 8, dated 1974 awarded the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, United States Army Vietnam, and its subordinate units during the period 20 July 1965 to 28 March 1973.
4. A review of the applicant's record shows his DD Form 214, for the period ending 21 March 1969, is missing important entries that affect recognition for his acts of heroism. As a result, amend the DD Form 214 by adding the following entries in item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized):
 - Vietnam Service Medal with two Bronze Service Stars
 - Republic of Vietnam Gallantry Cross with Palm

- Overseas Service Bars (2)

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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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.

3. Army Regulation 635-5 (Personnel Separations – Separation Documents), Appendix A (SPN and Authority Governing Separations), provided for SPNs and their corresponding reason for separation/discharge. The SPN (later renamed Separation Program Designator (SPD) codes) are three-character alphabetic combinations that identify reasons for and types of separation from active duty. The SPN "284" was the correct code for Soldiers separating under the provisions of Army Regulation 635-200 for conviction by a civil court during current term of active military service.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. This regulation provides that:

a. 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. 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.

5. Army Regulation 635-206 (Personnel Separations – Discharge – Misconduct (Fraudulent Entry, Conviction by Civil Court, AWOL, Desertion)), in effect at the time, set forth the basic authority for the separation of enlisted personnel for misconduct. Section VI, (Conviction by Civil Court) of this regulation prescribes the standards and procedures for processing cases of individuals who, during their current term of active military service, have been initially convicted or adjudged juvenile offenders by a domestic court of the U.S. or its territorial possessions, or convicted by a foreign tribunal. If discharge is desired and the individual is not physically in the custody of the civil authorities, a recommendation for discharge may be submitted to Headquarters, Department of the Army. It provided that an undesirable discharge was normally considered appropriate for members separated under this regulation.
6. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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.
7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. 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.
8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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 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//