

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 February 2025

DOCKET NUMBER: AR20240006266

APPLICANT REQUESTS: in effect:

- an upgrade of his under honorable conditions (general) discharge to an honorable discharge
- to appear before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharged from the Armed Forces of the United States)
- Veterans Affairs (VA) Form 20-0986 (Eligibility Determination for Character of Discharge (COD) Request Form)
- Self-authored statement
- Headquarters, 2d Armored Division, Office of the Division Staff Judge Advocate (SJA), Fort Hood, TX, memorandum, Subject: Discharge for the Good of the Service [Applicant], dated 7 July 1970
- DD Forms 214 (Armed Forces of the U.S. Report of Transfer or Discharge) (2)
- Office of The Adjutant General (TAG) and TAG Center, Washington, DC letter, dated 12 July 1977
- DD Form 257A (General Discharge Certificate), dated 23 July 1970
- VA letter, dated 6 October 1981
- VA Form 21-4138 (Statement in Support of Claim), dated 25 September 2009
- VA letter, dated 13 December 2018
- Extract from VA Statement of the Case (2 pages)
- VA letter, (1st page) dated 6 July 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 his characterization of discharge was based on unfair treatment that caused him to be absent without leave (AWOL). He contends his period of AWOL was less than 6 months long and believes Public Law 95-126 should not be applied to his case, and it was unjust to do so. The pressure of post-traumatic stress disorder (PTSD), racial tension with unfair treatment, and financial struggles are all related to his periods of AWOL. He provides a self-authored statement which is available in its entirety for the Board's consideration.

a. The applicant provides a detailed synopsis of how he was arrested for having stolen property that another Soldier had hidden in his vehicle. He also explains how his arrest upset his racist leadership and they made it their business to see that he was punished. He received punishment for being AWOL when his unit was fully aware of the fact that he was in jail; they knew exactly where he was so, he should not have been considered AWOL.

b. Next, he was the victim of a kangaroo court charge for refusing to sweep the motor pool. He was told he was unfit for service and advised that he could avoid being tried by court-martial by requesting to be administratively separated for the good of the service in lieu of court-martial.

c. There were many other Blacks who received the same type of discharge. He gets very angry and could not understand why they were hated so much. All he wanted to do was serve his country,

d. He contends he was awarded a Silver Star for saving his commanding officer in Vietnam. He was awarded a medal, but he never physically received it.

e. He still suffers from PTSD and has attempted to receive assistance to upgrade his discharge with the assistance of a lawyer and Congressional inquiry, but to no avail.

3. On 13 July 1967, the applicant enlisted in the Regular Army for a period of 3 years. Upon completion of training, he was awarded military occupational specialty (MOS) 63B (Wheeled Vehicle Mechanic) and assigned to a unit in Vietnam.

4. The applicant served in Vietnam from 2 December 1967 to 1 December 1968.

a. On 27 April 1968, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for violating a lawful general regulation by being in an off limits area. His punishment was forfeiture of \$32.00 pay for one month.

b. He was advanced to the rank/grade of specialist four/E-4 on 1 October 1968.

c. His DA Form 20 (Enlisted Qualification Record) shows his conduct was rated as "Good" and his efficiency was rated as "Excellent" during his service in Vietnam.

5. Before a special court-martial convened on 9 January 1970 at Fort Hood, TX the applicant was found guilty of two specifications of willfully disobeying lawful orders issued by two superior noncommissioned officers on or about 1 November 1969. The court sentenced him to be restricted for a period of 60 days; to be reduced from E-4 to private first class/E-3; and to forfeit \$75.00 per month for 3 months. The sentence was adjudged on 9 January 1970. On 18 February 1970, only so much of the sentence as provided for extra duty for a period of 60 days, reduction to E-3, and forfeiture of \$75.00 per month for 3 months was approved and ordered to be duly executed.

6. The applicant was subsequently assigned to a unit at Fort Hood, TX. On 16 January 1970, the Commanding General of Fort Hood, TX was informed the applicant had been arrested on 5 December 1969 and was in the custody of the Killen, TX, Police Department. He was charged with the theft of property a value over \$50.00.

7. A DA Form 188 (Extract Copy of Morning Report), dated 21 May 1970, shows the applicant's duty status was changed as follows on the dates shown:

- From Present for Duty (PDY) to AWOL effective 13 February 1970
- From AWOL to PDY after surrendering to military authorities effective 18 February 1970
- From PDY to AWOL effective 21 February 1970
- From AWOL to Dropped from Rolls (DFR) effective 23 February 1970
- From DFR to PDY after surrendering to military authorities effective 31 March 1970
- From PDY to AWOL to DFR effective 4 April 1970
- From DFR to Confined by Civilian Authorities (CCA) effective 9 April 1970
- From CCA to PDY effective 13 April 1970
- From PDY to CCA effective 13 April 1970
- From CCA to PDY effective 20 May 1970 upon his release from jail and return to military control

8. On 1 June 1970, the applicant underwent a separation medical examination and was found to be qualified for administrative separation.

9. The applicant's available record is void of the specific facts and circumstances surrounding the court-martial charges that were preferred against him. The relevant DD Form 458 (Charge Sheet) and his subsequent voluntary request for administrative discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, for the good of the service - in lieu of trial by court-martial are not available for review.

10. Orders show the applicant was reduced from E-3 effective 13 July 1970. The reason for this action was the applicant's discharge under the provisions of Chapter 10 of Army Regulation 632-200.

11. Orders and the applicant's original DD Form 214 confirm he was discharged in the rank/grade of private/E-1 on 23 July 1970, for the good of the service in lieu of court-martial, under the provisions of Army Regulation 635-200, Chapter 10. His service was characterized as Under Conditions Other than Honorable. He was issued Separation Program Number "246" and Reenlistment Codes "3 and 3B." He was credited with completion of 2 years, 9 months, and 11 days of net active service. He had time lost from 14 February 1970 to 17 February 1970 and from 21 February 1970 to 18 May 1970. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized (All periods of service)) show he was awarded or authorized the Vietnam Service Medal with 1 Silver Service Star (indicating his participation in five campaigns), Republic of Vietnam Campaign Medal, and the Sharpshooter Marksmanship Qualification Badge with Rifle Bar.

12. The applicant's available record is void of evidence nor does he provide evidence showing he was awarded the Silver Star or any other medal that is not reflected on his DD Form 214.

13. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, the applicant would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

14. The Department of Defense (DoD) directed the Services, on 4 April 1977, to review all less than fully honorable administrative discharges issued between 4 August 1964 and 28 March 1973. In the absence of compelling reasons to the contrary, this program, known as the DoD Special Discharge Review Program (SDRP), required that a discharge upgrade to either under honorable conditions or honorable be issued in the case of any individual who had either completed a normal tour of duty in Southeast Asia, been wounded in action, been awarded a military decoration other than a service medal, had received an honorable discharge from a previous period of service, or had a record of satisfactory military service of 24 months prior to discharge. Consideration of other factors, including possible personal problems that may have contributed to the acts that led to the discharge and a record of good citizenship since the time of discharge, would also be considered upon application by the individual.

15. On 26 April 1977, the applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge under the provisions of the DoD SDRP. By letter, dated 12 July 1977, the applicant was informed that after reviewing the findings and conclusion of the ADRB, the Secretary of the Army directed he be informed that his

discharge UOTHC had been upgraded to Under Honorable Conditions (General). As a result, the applicant was provided a revised DD Form 214 and a General Discharge Certificate.

16. On 18 May 1978, the Military Review Boards Agency, informed the applicant that a preliminary review of his discharge had been completed by the ADRB as required by Public Law 95-126. As a result of this review, the ADRB had made a preliminary determination that he would not qualify for upgrade under the new uniform standards for discharge review. He was advised this action would not change the character of discharge awarded to him under the SDRP. However, under the law, their preliminary determination meant that he may not be automatically eligible for benefits from the VA. The applicant was advised that he had an opportunity to submit a reclama before this determination became final.

17. On 18 July 1978, The ADRB informed the applicant that the ADRB could not affirm his DoD upgraded discharge under review standards required by Public Law 95-126. He was advised that this action did not change the discharge he now had, but it may impact on his ability to acquire VA benefits.

18. By letter, dated 8 August 1978, the applicant was provided a DD Form 215 (Correction to DD Form 214) reflecting the appropriate change in his military records. He was advised the DD Form 215 in no way changed or modified the upgraded discharge he previously received. However, because of a new law, he would not be able to use that discharge to qualify for benefits under the VA.

19. In addition to the previously discussed evidence, the applicant provides:

a. Headquarters, 2d Armored Division, Office of the Division SJA, Fort Hood, TX memorandum, Subject: Discharge for the Good of the Service [Applicant], dated 7 July 1970, shows the applicant submitted a voluntary request for discharge under the provisions of Army Regulation 635-200, Chapter 10, in lieu of court-martial. He was charged with being AWOL from 13 February 1970 until 18 February 1970, from 21 February 1970 until 31 March 1970, and from 4 April 1970 until 9 April 1970. His personnel file indicated that the unauthorized absence beginning on 4 April 1970 continued until 19 May 1970. During the additional 40 days, the applicant was in the Bell County, TX jail awaiting a trial which resulted in a conviction for a civilian offense. Although he could be properly charged with unauthorized absence for this period, his unit chose not to carry him in the status of AWOL. It was noted, in part, the applicant was authorized to wear the National Defense Service Medal, the Vietnam Service Medal, and the Republic of Vietnam Campaign Medal. It was further noted that his chain of command recommended that his request for separation be approved and that he be issued a discharge UOTHC. The applicant was counselled at length regarding the

meaning and effect of an undesirable discharge, nevertheless, he persisted in his desire to get out of the Army immediately with whatever discharge he could get.

b. A letter from the VA, dated 6 October 1981, shows the applicant was informed the characterization of his discharge was unfavorable. His discharge from military service on 23 July 1970 was found to have been issued under conditions which constituted a bar to the payment of VA benefits. As a consequence, the period of service upon which the discharge was based did not qualify him for the benefit for which he applied, or for any gratuitous benefit under laws administered by the VA.

c. A VA Form 21-4138, dated 25 September 2009, shows the applicant once again, asked the VA to consider upgrading his characterization of service for the purpose of becoming eligible to receive VA benefits.

d. A letter from the VA, dated 13 December 2018, shows the applicant was informed they received a claim for service connection compensation benefits from the applicant on 26 July 2018, and every effort was made to see that his claim received complete consideration. They decided that his military service for the period of 13 July 1967 through 23 July 1970 was dishonorable for VA purposes. Although his characterization of service was upgraded to "under honorable conditions" by the U.S. Army under Public Law 95-126 and was deemed warranted by DoD directives, it was not upgraded on the required second review. The VA determined under their directives that his service is not honorable for VA purposes.

e. Pages 3 and 5 extracted from a VA "Statement of the Case" list some of the criteria used by the VA to determine a Veteran's eligibility for the receipt of benefits.

f. The first page of a letter from the VA, dated 6 July 2023, shows the applicant was advised that he needed to submit his request for review of his medical conditions on the proper form before the VA would consider his request.

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

21. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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:

- The applicant enlisted into the Regular Army on 13 July 1967. He served in Vietnam from 2 December 1967 to 1 December 1968.
- The applicant accepted NJP on 27 April 1968 for violating a lawful general regulation by being in an off limits area.
- Before a special court-martial on 9 January 1970, the applicant was found guilty of two specifications of willfully disobeying lawful orders issued by two superior NCOs on 1 November 1969.
- On 16 January 1970, the Commanding General of Fort Hood, TX was informed the applicant had been arrested on 5 December 1969 and was in the custody of the Killen, TX, Police Department. He was charged with the theft of property a value over \$50.00. Subsequently, he had three occasions of being AWOL between 13 February and 20 May 1970 as well as occasions of confinement by civilian authorities.
- The applicant's available record is void of the specific facts and circumstances surrounding the court-martial charges that were preferred against him. The relevant DD Form 458 (Charge Sheet) and his subsequent voluntary request for administrative discharge under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial are not available for review.
- The applicant was discharged on 23 July 1970 and was credited with completion of 2 years, 9 months, and 11 days of net active service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts the pressure of PTSD, racial tension, unfair treatment, and financial struggles are related to his periods of being AWOL, and he indicated PTSD as a mitigating factor in his misconduct. A Report of Medical Examination dated 1 June 1970 showed no indication of any psychiatric symptoms. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant initiated mental health services through the VA in September 2018 and reported symptoms of depression, anxiety, and PTSD. He reported trauma exposure including "firefights, constant incoming, collected bodies, went on recon, was a tunnel rat," and he was diagnosed with Depressive Disorder and PTSD. A thorough and comprehensive evaluation for PTSD was conducted on 27 December 2018, and the applicant was diagnosed with PTSD and referred for trauma-focused treatment. Through June 2019, he engaged in 15 individual therapy sessions before requesting termination citing preference to utilize

services through a Vet Center and VA's Whole Health program. He was started on an antidepressant medication and continued with psychiatry services while also engaging in alternative therapies. He has continued with medication management and supportive therapy and at his most recent visit on 22 January 2025, it was noted that his PTSD symptom "remain in partial control" with an antidepressant medication.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to fully opine on the change of his characterization of discharge because of the absence of the specific facts and circumstances surrounding his discharge processing.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. VA records show he was diagnosed with PTSD in 2018 and has utilized mental health services, primarily medication management and supportive therapy, since then.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. DoD records showed he deployed to Vietnam from December 1967 to December 1968.

(3) Does the condition or experience actually excuse or mitigate the discharge? NA. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service, but there is evidence of a PTSD diagnosis by the VA dating back to 2018. Records related to misconduct indicate the applicant was found guilty of willfully disobeying lawful orders on two occasions, was arrested for theft of property, and was AWOL on three occasions. Minor infractions, such as disobeying an order, and being AWOL can be natural sequelae to mental health conditions associated with exposure to traumatic and stressful events. However, in the absence of a Charge Sheet, no opinion regarding mitigation under liberal consideration can be made.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 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 charged with offenses punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service and noted the applicant had previously been upgraded. The Board also noted the medical advisor's review finding insufficient evidence to fully opine on the change of his characterization of discharge because of the absence of the specific facts and circumstances surrounding his discharge processing.

2. 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XX	:XX	:XX	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 //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.

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 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 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. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. The Department of Defense (DoD), on 4 April 1977, directed the Services to review all less than fully honorable administrative discharges issued between 4 August 1964 and 28 March 1973. This program, known as the DoD Discharge Review Program (Special) (SDRP) required, in the absence of compelling reasons to the contrary, that a discharge upgrade to either honorable or general be issued in the case of any individual who had either completed a normal tour of duty in Southeast Asia, been wounded in action, been awarded a military decoration other than a service medal, had received an honorable discharge from a previous period of service, or had a record of satisfactory military service of 24 months prior to discharge. Consideration of other factors, including possible personal problems which may have contributed to the acts which led to the discharge and a record of good citizenship since the time of discharge, would also be considered upon application by the individual.
5. In October 1978, Public Law 95-126 was enacted. This legislation denied Department of Veterans Affairs (VA) benefits to any former service member who had

been AWOL for more than 180 consecutive days, or who had been classified as a deserter or a conscientious objector. Further it required the DoD to establish historically consistent, uniform standards for discharge reviews. Reconsideration using these uniform standards was required for all discharges previously upgraded under the SDRP and certain other programs were required. Individuals whose SDRP upgrades were not affirmed upon review under these historically consistent uniform standards were not entitled to VA benefits, unless they had been entitled to such benefits before their SDRP review.

6. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided 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.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

7. 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.

8. 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.

9. 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//