

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 February 2025

DOCKET NUMBER: AR20240006444

APPLICANT REQUESTS: an upgrade of his under honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record), 9 April 2024
- Patient Inquiry, 4 April 2024

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 it was his post-traumatic stress disorder (PTSD) he suffered while in Vietnam that caused his careless behavior while in the Army.
3. The applicant provides his Patient Inquiry which shows he has a 100% service-connected disability for PTSD.
4. A review of the applicant's record shows:
 - a. He enlisted in the Regular Army on 27 December 1967.
 - b. His DA Form 20 (Enlisted Qualification Record) shows in:
 - (1) Item 31 (Foreign Service) shows he served in U.S. Army Pacific - Vietnam (USARPAC) from 2 June 1968 to 21 December 1969

(2) Item 18 (Record of Assignments) – during his service in Vietnam he was assigned to the following units:

- Company A, 1st Engineer Battalion, 1st Infantry Division USARPAC, from 12 June 1968 to 12 August 1969
- On 13 August 1969, his duty status was changed to “Dropped from Rolls – Deserter”
- Company A, 1st Engineer Battalion, 1st Infantry Division USARPAC, from 14 August 1969 to 2 December 1969

(3) Item 41 (Awards and Decorations):

- National Defense Service Medal
- Vietnam Service Medal
- Republic of Vietnam Campaign Medal
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Two overseas service bars
- Expert Marksmanship Qualification Badge with rifle bar

(4) Item 40 (Wounds): no entries

c. On 22 January 1969, the applicant accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for, on or about 13 January 1969, in the Republic of Vietnam, was found sleeping upon post. His punishment included reduction to the rank/grade of private first class/E-3.

d. On 9 November 1969, the applicant’s immediate commander notified him that he was initiating action to separate him from service under the provisions of Army Regulation (AR) 635-212 (Discharge Unfitness and Unsuitability) for unsuitability with a general discharge. He advised the applicant:

(1) He had the right to present his case before a board of officers.

(2) He may submit statements on his own behalf.

(3) He had the right to be represented by counsel.

e. On 10 November 1960, the applicant acknowledged receipt of his immediate commander’s separation notification and after being advised by his consulting counsel of the basis for the contemplated action to separate him for unsuitability, under the provisions of AR 635-212:

(1) He waived his right to have his case considered by a board of officers.

(2) He waived his right for a personal appearance before a board of officers.

(3) He elected not to submit statements on his own behalf.

(4) He understood that he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him.

f. On 13 November 1969, the applicant's immediate commander submitted a formal recommendation for discharge under the provisions of AR 635-212, paragraph 6b(3), for unsuitability. His commander noted, in part: "Discharge is recommended for unsuitability due to [Applicant's] repeated unwillingness to work productively. Since returning from extension leave [Applicant] has been a detriment to the functioning of any group in which he works."

g. Headquarters, 1st Engineer Battalion, 1st Infantry Division, Summary Court-Martial Number 3, 17 November 1969, shows the applicant was found guilty of the following charges/specifications:

(1) Charge 1: Violation of Article 86 (Absent Without Leave). Specification: In that he did, on or about 11 October 1969, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: Company police call formation.

(2) Charge 2: Violation of Article 92 (Failure to Obey and Order or Regulation). Specification: In that he did, having knowledge of a lawful order issued by Captain J____ E. B____, to wit: Company A, 1st Engineer Battalion Personal Appearance Standard Operating Procedure, dated 5 May 1969, an order which it was his duty to obey, did fail to obey the same by reporting to work unshaven on or about 11 October 1969.

(3) His sentence, adjudged on 16 November 1969, included forfeiture of \$70.00 per month for one month and reduction to the rank/grade of private (PVT)/E-1.

(4) On 17 November 1969, the sentence was approved and ordered executed.

h. On 23 November 1969, the applicant underwent a psychiatric evaluation. The examining official noted the applicant was mentally responsible and able to distinguish right from wrong and adhere to right. He had the mental capacity to understand board and judicial proceedings and participate in his own defense. He was not suffering from an incapacitated mental illness that warranted medical separation. The examining official recommended the applicant be administratively separated under the provision of AR 635-212.

i. On 24 November 1969, the separation authority approved the recommended discharge, under the provisions of AR 635-212, for unsuitability, character and behavior disorders. Additionally, he directed the applicant be issued a general discharge certificate.

j. The applicant was discharged from active duty on 4 December 1969. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of AR 635-212, in the rank/grade of PVT/E-1, and his service was characterized as under honorable conditions. He completed 1 year, 10 months, and 18 days of net active service with lost time from 25 July 1969 to 13 August 1969. He was assigned the separation program number of 264 and the RE code of 4. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded or authorized the following:

- National Defense Service Ribbon
- Vietnam Campaign Medal
- Vietnam Service Medal

5. There is no indication the applicant petitioned the Army Discharge Review Board for a review of his discharge within that board's 15-year statute of limitations.

6. AR 635-212, in effect at the time, set forth the policy for administrative separation for unfitness. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions discharge. On his DD Form 149, the applicant indicated 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 enlisted in the Regular Army (RA) on 27 December 1957, 2) the applicant served in Vietnam from 02 June 1968 to 21 December 1969, 3) during his service in Vietnam he was assigned to the following units: Company A, 1st Engineer Battalion, 1st Infantry Division USARPAC, from 12 June 1968 to 12 August 1969; On 13 August 1969, his duty status was changed to "Dropped from Rolls – Deserter"; Company A, 1st Engineer Battalion, 1st Infantry Division USARPAC, from 14 August 1969 to 2 December 1969, 4) he received an Article 15 on 22 January 1969 as he was found sleeping upon post, 5) On 13 November 1969, the applicant's immediate commander submitted a recommendation for discharge

under the provisions of AR 635-212, paragraph 6b(3), for unsuitability. More specifically, it was noted that "Discharge is recommended for unsuitability due to [Applicant's] repeated unwillingness to work productively. Since returning from extension leave [Applicant] has been a detriment to the functioning of any group in which he works." 6) Summary Court-Martial Number 3 dated 17 November 1969 shows the applicant was found guilty of on or about 11 October 1969 failing to go at the prescribed time to his place of duty and failing to obey a lawful order on or about 11 October 1969, 7) the applicant underwent a psychiatric evaluation on 23 November 1969 and it was recommended that he be separated under the provisions of AR 635-212, 8) on 24 November 1969, the separation authority approved the recommended discharge, under the provisions of AR 635-212, for unsuitability, character and behavior disorders. The applicant was discharged on 04 December 1969 under the provisions of AR 635-212, with a separation program number of 264 and reentry code of 4.

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. An in-service psychiatric evaluation conducted on 23 November 1969 shows the evaluating provider noted the impressions as "Immature Personality" and recommended separation under the provisions of AR 635-212 [*Advisor's Note*: this diagnosis is outdated and is no longer used]. It was noted that he was mentally responsible and was able to distinguish between right and wrong and adhere to the right. The provider further noted that he was not suffering from an incapacitating mental illness that warranted medical disposition.

d. A review of JLV shows the applicant is 100% service-connected through the VA, 70% for PTSD. The applicant underwent a Compensation and Pension (C&P) examination on 02 November 2002 showing he was diagnosed with PTSD, Chronic, Moderate, Combat Related, Primary diagnosis. The stressors associated with his diagnosis of PTSD were documented as exposure to numerous combat-related incidents, to include witnessing the deaths of many Soldiers while deployed to Vietnam. A review C&P examination conducted on 08 April 2014 showed that his diagnosis of PTSD was reaffirmed. It was documented that he endorsed continued re-experiencing symptoms (intrusive thoughts and nightmares), avoidance behaviors, negative alterations in cognitions and mood, and hyperarousal (problems with sleep, irritability/anger, difficulty concentrating, and exaggerated startle response).

e. Review of the applicant's DA Form 20 shows his conduct and efficiency were rated as 'excellent' for assignments from 27 December 1967 through 12 June 1968. The remaining assignments were rated as 'unknown' and 'unsatisfactory.'

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with a mitigating BH condition, PTSD. This Advisor would contend that the applicant's discharge 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 has been diagnosed and 70% service-connected through the VA with PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 70% service-connected through the VA with PTSD. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of in-service medical records show that the applicant was diagnosed with Immature Personality. Since being discharged from the military, the applicant has been diagnosed and 70% service-connected through the VA with PTSD due to his service in Vietnam. As there is an association between motivation, decreased energy, difficulty with authority figures, sleep problems, avoidance behaviors, and trauma/exposure to combat, there is a nexus between the totality of the conduct that led to the recommendation to be separated due to unsuitability, failing to go at the prescribed time to his place of duty, failure to obey a lawful order, and his diagnosis of PTSD. As such, BH mitigation is supported.

It is of note that under today's standards, the applicant's discharge would fall under the provisions of AR 635-200, Chapter 5-14 Other Designated Physical or Mental Conditions. Therefore, consideration of updating the narrative reason for separation to "Condition, Not a Disability" would be consistent with the current regulation.

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 separated for unsuitability with the commander citing repeated unwillingness to work productively. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. The Board noted the applicant provided no documentation to support his request, including post-service achievements or letters of reference to support clemency. 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 not warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 70% service-connected through the VA with PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 70% service-connected through the VA with PTSD. Service connection establishes that the condition existed during service.

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2. Prior to closing the discussion, the Board reviewed and concurred with the administrative notes below.

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
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.

ADMINISTRATIVE NOTE(S): A review of the applicant's records shows he is authorized additional awards not listed on his DD Form 214 for the period ending 4 December 1969. As a result, amend his DD Form 214 by:

- a. Delete: Vietnam Service Medal
- b. Add:
 - Vietnam Service Medal with one silver service star and once bronze service star
 - Republic of Vietnam Gallantry Cross with Palm Unit Citation
 - Meritorious Unit Commendation

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. AR 635-212, in effect at the time, set forth the policy for administrative separation for unfitness. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts.

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.

8. Army Regulation 600-8-22 (Military Awards) prescribes Army policy, criteria, and administrative instructions concerning individual and unit military awards.

a. The Vietnam Service Medal was awarded to all service members of the Armed Forces of the United States for qualifying service in Vietnam after 3 July 1965 through 28 March 1973. Qualifying service included attachment to or assignment for one or more days with an organization participating in or directly supporting military operations. One bronze service star is authorized with the Vietnam Service Medal for each campaign during which a member was assigned or attached to and present for duty with a unit during the period in which it participated in combat. Campaign participation credit was awarded for the following relevant campaigns:

- Vietnam Counteroffensive, Phase IV – 2 April 1969 – 30 June 1968
- Vietnam Counteroffensive, Phase V – 1 July 1968 – 1 November 1968
- Vietnam Counteroffensive, Phase VI – 2 November 1968 – 22 February 1969
- TET 69 Counteroffensive – 23 February 1969 – 8 June 1969
- Vietnam Summer-Fall – 9 June 1969 – 31 October 1969
- Vietnam Winter-Spring – 1 November 1969 – 30 April 1970

c. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) lists the unit awards received by units serving in Vietnam. It shows the 1 Engineer Battalion was cited for the Meritorious Unit Commendation by order of the Department of the Army General Order Number 50, 1971, for the period 3 June 1968 to 5 June 1969.

//NOTHING FOLLOWS//