

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 March 2025

DOCKET NUMBER: AR20240006499

APPLICANT REQUESTS:

- Reconsideration of her late husband's previous request for an upgrade of his characterization of service from under other than honorable conditions to honorable.
- A personal appearance hearing before the Board

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

- DD Form 149 (Application for Correction of Military Record), 21 May 2024
- Certificate of Birth (Service Member), 2 November 1949
- Certificate of Birth (Applicant), 17 December 1964
- Certificate of Birth (Applicant's Son), 29 September 1997
- State Marriage License, 19 July 2002
- Pension Fund Letter, 11 January 2002
- Medical Notes, 7 January 2017
- Computer Screenshot of Medical Procedure Notes, December 2018
- Certificate of Death, 7 July 2021
- Letter of Support, 3 June 2022

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 AR20160008173 on 14 November 2018.

2. The applicant, the surviving spouse of a deceased service member (SM), states, in effect, the SM deserves an honorable discharge because he was an honorable man and a good father. The SM was diagnosed with post traumatic stress disorder (PTSD) prior to his death from Parkinson's disease in 2021. Due to extraordinary circumstances and the situation the SM was in while fighting in the Vietnam war, which caused his mental illness and PTSD, he would have received an honorable discharge.

3. The applicant provided:

a. Three birth certificates for: the SM born on 2 November 1949, the applicant born on 17 December 1964, and the applicant's son born on 29 September 1997.

b. A state marriage license, showing the SM and the applicant were married 19 July 2002.

c. A pension fund letter, 11 January 2002, showing a summary of the SM's past service pension credits and estimated pension benefit for the plan year ending 3 September 2001.

d. Medical Notes, 7 January 2017, showing the SM was admitted to the hospital for worsening Parkinson's disease symptoms.

e. Medical Notes, 24 December 2018, showing the SM was examined by a doctor for his Parkinson's disease and secondary autonomic dysfunction with orthostatic hypotension.

f. Certificate of death, showing the SM died on 7 July 2021.

g. A letter of support from the business manager of Laborers' Local #165, 3 June 2022, wherein he states the SM worked for various contractors throughout his career and always displayed an exemplary work ethic. The SM was reliable, conscientious, hard working, and took pride in his trade.

4. A review the SM's record shows:

a. The SM was inducted into the Army of the United States on 19 September 1969.

b. The SM had foreign service in the Republic of Vietnam from 7 March 1970 through 6 March 1971.

c. The SM's DD Form 458 (Charge Sheet), 11 August 1970, shows the following court martial charges were preferred against the SM for:

- Two specifications of absent without leave (AWOL) on various date between on or about 23 July 1970 to on or about 26 July 1970
- One specification of failing to obey a lawful order on or about 10 August 1970

d. The SM's DD Form 458, 18 October 1970, shows the following court martial charges were preferred against the SM for:

- One specification of failing to obey a lawful order on or about 25 August 1970
- One specification of AWOL from on or about 9 September 1970 to on or about 17 October 1970

e. On 3 November 1970, the SM voluntarily requested discharge for the good of the service, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10.

f. On 9 November 1970, the SM's company-level commander recommended approval of the SM's request for discharge for the good of the service with issuance of an Undesirable Discharge Certificate.

g. On 10 November 1970, the SM's battalion and brigade-level commanders recommended approval of the SM's request for discharge for the good of the service with issuance of an Undesirable Discharge Certificate.

h. On 13 November 1970, the separation approval authority approved the SM's request for discharge for the good of the service under the provisions of Army Regulation 635-200, chapter 10, with issuance of an Undesirable Discharge Certificate. He further directed the applicant's immediate reduction to the rank/grade of private (PV1)/E-1.

i. The SM's DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged in the rank/grade of PVT/E-1 on 20 November 1970 under the provisions of Army Regulation 635-200. He completed 1 year, 2 months, and 2 days of net active service. His service was characterized as under other than honorable conditions. He was issued to separation program number "246" and the reenlistment code "3". Item 24 (Decorations, Medal, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized), shows he was awarded or authorized the following:

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

j. On 31 January 1972, the Army Discharge Review Board, after careful consideration of his military records and all other available evidence, determined the SM was properly and equitably discharged. Accordingly, the SM's request for a change in the type and nature of his discharge was denied.

k. On 14 November 2018, in Docket Number AR20160008173, the ABCMR denied the SM's previous request for and upgrade of his under other than honorable conditions characterization of service. The Board determined the evidence presented did not

demonstrate the existence of a probable error or injustice and the overall merits of this case were insufficient as a basis for correction of his records.

5. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

6. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

7. MEDICAL REVIEW:

a. Background: The applicant, the spouse of the deceased service member (SM), is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable. She 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 SM was inducted into the Regular Army on 19 September 1969, and he served in Vietnam from 7 March 1970 to 6 March 1971.
- The SM's DD Form 458 (Charge Sheet), dated 11 August 1970, shows the following court martial charges were preferred against the SM for: Two specifications of absent without leave (AWOL) on various date between 23 July 1970 and 26 July 1970; and one specification of failing to obey a lawful order.
- The SM's DD Form 458, dated 18 October 1970, shows the following court martial charges were preferred against the SM for: One specification of failing to obey a lawful order on or about 25 August 1970 and one specification of AWOL from 9 September 1970 to 17 October 1970.
- On 3 November 1970, the SM voluntarily requested discharge for the good of the service, in lieu of trial by court-martial, under the provisions of Army Regulation 635-200, chapter 10.
- The SM was discharged on 20 November 1970 and completed 1 year, 2 months, and 2 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts that her husband was diagnosed with PTSD by his doctor, and this condition contributed to his misconduct. She indicated PTSD and "other mental health" as issues or conditions related to her request. Several pages of medical documentation from 2017-2018 were reviewed and showed the SM's diagnosis and treatment of

Parkinson's Disease. A prescription for Xanax "for anxiety" was noted. 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 no records from DoD or VA (SM was not qualified for VA services), but documentation from Community Summaries showed a prescription history of an antidepressant (escitalopram) in September 2015 and July 2020. Additionally, diagnoses of Adjustment Reaction with Mixed Emotional Features in January 2017, Depression in October 2015, Agent Orange Exposure in January 2017, and Depressive Disorder in May 2013 were also noted. Of note, these Community Summaries are typically not comprehensive and only allow for a "snapshot" of an individual's treatment history.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the SM had a condition or experience that at least partially mitigates his misconduct. Mr. Harris was drafted into the Army in 1969 as an 11B, and he deployed to Vietnam six months after joining the Army. His wife discussed his experiences in Vietnam as very distressing to him and a contributor to his misconduct. Given the era of service, the deceased SM's physical health condition, including Agent Orange Exposure, and the likelihood of trauma exposure, it is the opinion of this BH Advisor that the board consider at least partial mitigation of his relatively minor misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the SM had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. There are no mental health records from his time in service, but health records dating back to 2013 showed diagnoses of Depression, Adjustment Reaction with Mixed Emotional Features, and Depressive Disorder. Additionally, there is evidence of prescriptions for antidepressant and anxiolytic medications from 2015 to 2018.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts the SM was experiencing a mental health condition while on active service. As an 11B in Vietnam in 1970, it is likely that he encountered exposure to trauma. Additionally, his medical records indicate Agent Orange Exposure, and his diagnosis of Parkinson's Disease has been linked to Agent Orange.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. There is insufficient evidence, beyond the report of his wife, that the SM was experiencing a mental health condition, PTSD, while on active service. However, there

is some evidence that he was treated by community providers for a mental health condition dating back to 2013, and because of his characterization of discharge, the applicant was ineligible for VA services. The applicant deployed to Vietnam as an 11B, and his wife reported combat exposure. Avoidant behavior, such as going AWOL, and misconduct related to failure to obey a lawful order can be natural sequelae to mental health conditions associated with exposure to traumatic and stressful events. Given the nexus between trauma exposure and avoidance and in accordance with liberal consideration, the basis for separation is considered at least partially mitigatable.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation, the Vietnam service of the FSM, and the guidance related to liberal consideration, the Board concluded there was sufficient evidence to grant clemency by upgrading the FSM's characterization of service to General, Under Honorable Conditions.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:XXX	:XXX	:XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

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 upgrading the applicant’s characterization of service to Honorable.

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

a. Chapter 10 provided that an individual whose conduct has rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge may submit a request for discharge for the good of the service. The request for discharge may be submitted at any time after court-martial charges are preferred against him. Commanders will ensure that there is no element of coercion in submitting a request for discharge for the good of the service. The member will be given a reasonable time to consult with counsel and to consider the wisdom of submitting such a request for discharge. If he elects to submit the request, the member will personally sign the written request, certifying that he understands that he may receive a discharge

under other than honorable conditions and that he understands the adverse nature of such a discharge and the possible consequences thereof. An undesirable discharge certificate was normally furnished to an individual who was discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge, if warranted.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and has been cooperative and conscientious in doing his assigned tasks, he may be furnished an honorable discharge.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An undesirable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for unfitness or misconduct. An undesirable discharge will be directed only by a commander exercising general court-martial jurisdiction, a general officer in command who has a judge advocate officer on his staff, or by higher authority, based on the approved recommendation of a board of officers, unless the member waives the board or requests discharge for the good of the Service.

2. 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.

3. 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.

4. 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. 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. 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.

5. 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//