

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 February 2024

DOCKET NUMBER: AR20240007003

APPLICANT REQUESTS:

- an upgrade of his characterization of service from under honorable conditions (General)
- an amendment of his separation code and narrative reason to presumably a more favorable outcome
- restoration of rank/grade to specialist fourth class/E-4

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 8 April 2024
- Air Medal Citation, 22 April 1970 to 9 May 1970
- Brave Eagle Coin award, 4 October 1970
- General Orders Number 12281, 4 October 1970
- Orders Number 03-1092328, 25 March 1975

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 he joined the Army in 1972 and proudly served in Vietnam. Upon his return from Vietnam to Fort Meade, Maryland, his unit said he was absent without leave (AWOL) although he was there the whole time. Fort Meade was chaotic, too many people were there with nothing to do, thousands of Soldiers were returning home, and he would be sent from one detail to the next. He tried to explain to his unit he had been there the whole time and was not AWOL, however they would not listen to him. He was given an Article 15 and dismissed from the Army.
3. On his DD Form 293, he annotates post-traumatic stress disorder (PTSD) is related to his request.

4. The applicant enlisted in the Regular Army on 30 April 1969. He was honorably discharged for the purpose of immediate reenlistment on 30 January 1970. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he served 9 months and 1 day of net active service this period with 2 months and 10 days foreign service to Vietnam. He was awarded the National Defense Service Medal and the Vietnam Service Medal.

5. He reenlisted on 31 January 1970. His DA Form 20 (Enlisted Qualification Record) shows the following:

a. The highest rank he attained was specialist fourth class/E-4 with a date of rank of 2 February 1970.

b. Item 31 (Foreign Service) shows service in Vietnam from 21 November 1969 to 5 November 1970.

c. Item 38 (Record of Assignments) shows he had all excellent conduct and efficiency ratings while serving with the following units:

(1) On 7 December 1969, serving with Headquarters and Headquarters Battery, 101st Airborne Division

(2) On 6 March 1970, Headquarters and Headquarters Company, 159th Aviation Battalion

(3) 17 April 1970, B Company, 159th Aviation Battalion

d. Item 44 (Time lost under Section 972, Title 10, United States Code, and subsequent to normal date ETS) from 7 April 1971 to 20 April 1974, 14 days reported AWOL.

6. The applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for the following:

a. On 19 September 1970, for disobeying a lawful order to wit: not to fire any weapon unless there was someone in the wire or you were under a ground attack on or about 18 September 1970 and Phu Bai Vietnam. His punishment imposed was reduction to the grade of E-1, restriction for 30 days, and extra duty for 30 days.

b. On 27 April 1971, for absenting himself without authority at Fort Meade on or about 7 April 1971 and remaining AWOL until on or about 21 April 1971. His punishment imposed was reduction to the grade of E-3, forfeiture of \$70.00 per month for two months, extra duty for 28 days, and restriction suspended until 30 July 1971.

c. On 18 October 1971, for violating a lawful general regulation by not complying with current haircut regulations on or about 18 October 1971 and for wrongfully appearing without name tapes and without unit crest attached to his field jacket on or about 19 October 1971. His punishment imposed was forfeiture of \$25.00 per month for one month.

7. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged on 15 May 1972, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 5, Separation for Convenience of the Government), XII (Erroneous Enlistments) in the grade of E-3. He received an under honorable conditions (General) characterization of service, with separation program number 377 (non-fulfillment of enlistment commitment), and reenlistment code of RE-3B. He completed 2 years and 3 months of active service. He was awarded or authorized:

- National Defense Service Ribbon
- Vietnam Service Medal
- Vietnam Campaign Medal
- two overseas service bars
- Air Medal

8. The applicant was issued a DD Form 215 (Correction to DD Form 214) adding the following decorations, medals, citations, and campaign ribbons:

- Air Medal with “V” Device and Numeral (Second Award)
- Republic of Vietnam Cross of Gallantry with Palm Unit Citation Badge
- Republic of Vietnam Civil Actions Honor Medal
- 1st Class Unit Citation Badge

9. He additionally provides his Air Medal with “V” Device Orders, two Air Medal Certificates, a Brave Eagle Coin letter recognizing his valorous actions, and his United States Army Reserve Control Group Reinforcement orders showing he was honorable discharged on 1 April 1975.

10. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

11. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his characterization of service from Under Honorable Conditions (General) to Honorable, amendment of his

separation code and narrative reason, and restoration of his rank to specialist/E-4. This opine will narrowly focus on his request for a discharge upgrade and will defer his additional requests to the Board. The applicant selected PTSD as related to his request.

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 in the Regular Army on 30 April 1969.
- He was honorably discharged for the purpose of immediate reenlistment on 30 January 1970.
- He reenlisted on 31 January 1970. His DA Form 20 (Enlisted Qualification Record) shows the following:
 - a. The highest rank attained was specialist fourth class/E-4 with a date of rank of 2 February 1970.
 - b. Item 31 (Foreign Service) shows service in Vietnam from 21 November 1969 to 5 November 1970.
 - c. Item 38 (Record of Assignments) shows he had all excellent conduct and efficiency ratings while serving with the following units:
 - 7 December 1969, serving with Headquarters and Headquarters Battery, 101st Airborne Division
 - 6 March 1970, Headquarters and Headquarters Company, 159th Aviation Battalion
 - 17 April 1970, B Company, 159th Aviation Battalion
- The applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for the following:
 - On 19 September 1970, for disobeying a lawful order to wit: not to fire any weapon unless there was someone in the wire or you were under a ground attack on or about 18 September 1970, Phu Bai Vietnam.
 - On 27 April 1971, for absencing himself without authority at Fort Meade on or about 7 April 1971 and remaining AWOL until on or about 21 April 1971.
 - On 18 October 1971, for violating a lawful general regulation by not complying with current haircut regulations on or about 18 October 1971 and for wrongfully appearing without name tapes and without unit crest attached to his field jacket on or about 19 October 1971.
- The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, his DD Form 214 shows he was discharged on 15 May 1972, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 5, Separation for Convenience of the Government), XII (Erroneous Enlistments) in the grade of E-3. He received an under honorable conditions (General) characterization of service, with separation program number 377 (non-fulfillment of enlistment commitment), and reenlistment code of RE-3B. He completed 2 years and 3 months of active service. He was awarded or authorized:

- National Defense Service Ribbon
- Vietnam Service Medal
- Vietnam Campaign Medal
- two overseas service bars
- Air Medal
- The applicant was issued a DD Form 215 (Correction to DD Form 214) adding the following decorations, medals, citations, and campaign ribbons:
 - Air Medal with “V” Device and Numeral (Second Award)
 - Republic of Vietnam Cross of Gallantry with Palm Unit Citation Badge
 - Republic of Vietnam Civil Actions Honor Medal
 - 1st Class Unit Citation Badge
- He additionally provides his Air Medal with “V” Device Orders, two Air Medal Certificates, a Brave Eagle Coin letter recognizing his valorous actions, and his United States Army Reserve Control Group Reinforcement orders showing he was honorably discharged on 1 April 1975.

c. Review of Available Records: The Army Review Board Agency’s (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant’s file. The applicant states, he joined the Army in 1972 and proudly served in Vietnam. Upon his return from Vietnam to Fort Meade, Maryland, his unit said he was absent without leave (AWOL) although he was there the whole time. Fort Meade was chaotic, too many people were there with nothing to do, thousands of Soldiers were returning home, and he would be sent from one detail to the next. He tried to explain to his unit he had been there the whole time and was not AWOL, however they would not listen to him. He was given an Article 15 and dismissed from the Army.

d. Due to the period of service no active-duty electronic medical records were available for review and no hardcopy documentation was submitted by the applicant.

e. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD and other medical conditions. The VA electronic medical record shows a C and P examination dated 5 November 1997 diagnosing the applicant with PTSD and indicating the following physical injuries: “shrapnel wounds left leg, bullet wound right upper arm, and crushing injury right arm with constant pain”. Another C and P examination, dated 17 October 2001, diagnosed the applicant with PTSD and reference two prior examinations which both diagnosed the applicant with PTSD.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating condition of PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant deployed to a combat zone and is currently service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, there is evidenced he accepted nonjudicial punishment (NJP) for disobeying a lawful order, absenting himself without authority on or about 7 April 1971 and remaining AWOL until on or about 21 April 1971, and violating a lawful general regulation by not complying with grooming and attire standards. The VA's Joint Legacy Viewer (JLV) indicates the applicant is 100% service connected for PTSD. Given the association between PTSD and avoidance, the applicant's misconduct of being AWOL is mitigated by his BH condition. In addition, given the association between PTSD and difficulty with authority, the applicant's disobedience of a lawful order and his violating a lawful general regulation is also mitigated by his BH condition.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. One potential outcome was to deny relief base on the applicant's character of service being proper based on the misconduct. However, upon review of the applicant's request, available military record and medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

2. Consideration was given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating condition of PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant deployed to a combat zone and is currently service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, there is evidenced he accepted nonjudicial punishment (NJP) for disobeying a lawful order, absenting himself without authority on or about 7 April 1971 and remaining AWOL until on or about 21 April 1971, and violating a lawful general regulation by not complying with grooming and attire standards. The VA's Joint Legacy Viewer (JLV) indicates the applicant is 100% service connected for PTSD. Given the association between PTSD and avoidance, the applicant's misconduct of being AWOL is mitigated by his BH condition. In addition, given the association between PTSD and difficulty with authority, the applicant's disobedience of a lawful order and his violating a lawful general regulation is also mitigated by his BH condition.

3. The Board acknowledged the applicant's contentions that upon returning from Vietnam to Fort Meade, Maryland, he was erroneously reported as absent without leave (AWOL) despite being present and assigned to various details during a period of post-deployment disorganization. He further asserts that his discharge was the result of misunderstanding and administrative error, and that his actions were influenced by undiagnosed post-traumatic stress disorder (PTSD), which he now associates with his service in Vietnam. The Board noted the applicant's service record, confirms honorable service from 1969 to 1970, including two tours in Vietnam, excellent conduct and efficiency ratings, and award of multiple decorations, including the Air Medal with "V" Device, Republic of Vietnam Gallantry Cross, and Civil Actions Honor Medal.

4. The Board determined the applicant's record reflects nonjudicial punishments and a brief period of AWOL, the absence of a complete separation packet limits the ability to fully assess the basis for his discharge. However, the Board found sufficient evidence of in-service mitigating factors to overcome the misconduct, given the applicant's combat service, valorous awards, and credible assertion of PTSD-related circumstances. Therefore, the Board granted relief to upgrade his characterization of service to honorable, amend his separation code and narrative reason to Secretary Authority and restore his rank to specialist fourth class (E-4).

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for 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 the applicant's characterization of service as honorable and the narrative reason as secretarial authority with an appropriate separation code and restoration of rank to SPC/E-4.

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, USC, 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.

3. Army Regulation 635-8 (Separation Processing and Documents), currently in effect, prescribes that separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It states the separation document is a synopsis of the Soldier's most recent period of continuous active duty and provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge. Paragraph 5-6 stated for Block 4: Grade, Rate, or Rank, verify that active-duty grade or rank and pay grade are accurate at time of separation.

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

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. An under honorable conditions (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 5 (Separation for Convenience of the Government) XII (Erroneous Enlistments) provided for the discharge of enlisted personnel when it was discovered that an individual's enlistment was erroneous because he failed to meet the qualification for enlistment or reenlistment. The unit commander would initiate action to obtain authority on the basis of erroneous enlistment.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records

(BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; 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 sexual assault or sexual harassment was unreported, or 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.

6. 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//