

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240007104

APPLICANT REQUESTS: a reconsideration of his prior request for an upgrade to his characterization of service of under conditions other than honorable discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Administration Form 21-4138 (Statement in Support of Claim)
- Extract of DA Form 20
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), effective 10 December 1968
- DD Form 214, effective 23 February 1972
- Witness statement ([REDACTED] dated 26 April 2017
- Vietnam Campaign Information Sheet
- Medical Records (240 pages)
- Army Board for Corrections of Military Records (ABCMR) Ex Parte Request dated 4 September 2019
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20150012152 – Board Decision Packet (Awards)

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 AR20170012511 on 10 August 2020.

2. The applicant states he is requesting an upgrade of his character of service.

a. His last DD Form 214 shows numerous times he was charged for being absent without leave (AWOL). He was in Vietnam, not Fort Knox, performing the duties that he was assigned to do by his superiors. He was on a special mission in Cambodia and Laos. He noticed the error on his DD Form 214 the day he was discharged and has been attempting to get it corrected since then. The applicant marked post-traumatic stress disorder (PTSD) on his DD Form 149 as a condition related to his request.

b. His VA Form 21-4138 states since his separation from the Army, he has had many problems, both physical and mental. He reviewed his DD Form 214 several times and remains in disbelief that he was released from the Army with an under other than honorable discharge. There are nine different dates while he was in Vietnam where he was identified as AWOL. He has reviewed his personnel records numerous times and is puzzled on a group of entries that states he was AWOL from Fort Knox, KY. He has never been to Fort Knox, KY. When he left Vietnam, he was reassigned to Fort Campbell, KY. During his time in Vietnam, he was attached to the 319th Artillery as a cannoneer for three months and was subsequently transferred to be a cook with the 173rd Airborne Brigade where he served on special missions in Cambodia and Laos.

3. The applicant provides:

a. The below listed documents to be referenced in the service record:

- DA Form 20
- DD Form 214, effective 10 December 1968
- DD Form 214, effective 23 February 1972

b. A witness statement from Mr. R_ M_, dated 26 April 2017, wherein he confirmed the applicant was stationed in Vietnam and he ran into him right before he departed Vietnam on or about 14 October 1970.

c. The Vietnam Campaign information sheet listing the names and dates of the campaigns.

d. On 4 October 2016, the ABCMR rendered a decision in Docket Number AR20150012152. The Board determined that the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommended that all Department of the Army records of the individual concerned be corrected by adding to his DD Form 214 for the period ending on 23 February 1972:

- Parachutist Badge
- Bronze Star Medal
- National Defense Service Medal
- Vietnam Service Medal with one silver service star
- Vietnam Campaign Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- five overseas service bars
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

e. On 4 September 2019, the applicant was notified by the Army Review Boards Agency that he was required to provide a copy of medical documentation to support his medical and mental health issues.

f. As new evidence, the applicant provides 240 pages of medical records for consideration.

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 3 April 1968.

b. His DA Form 20 shows the applicant served in Vietnam from 4 March 1969 to 25 August 1971.

c. An Extract Copy of Enlisted Qualification Record lists 14 periods of time lost for a total of 106 days.

d. On 7 April 1971, he was convicted by a special court-martial of six specifications of being absent without leave (AWOL) from on or about 28 September 1970 to 4 November 1970, from on or about 21 November 1970 to 28 November 1970, from on or about 27 December 1970 to 2 January 1971, from on or about 24 January 1971 to 5 February 1971, from on or about 9 February 1971 to 10 February 1971, and from on or about 26 February 1971 to 15 December 2006. His sentence included confinement for two months, forfeiture of \$50.00 pay per month for two months, and reduction to private (PVT), E-1.

e. On 19 April 1971, the convening authority approved confinement for two months, forfeiture of \$50.00 pay per month for two months, and reduction to private (PVT), E-1.

f. Special Court-Martial Order Number 277 dated 26 April 1971, the unexecuted portion of the approved sentence to confinement at hard labor for two months, adjudged on 7 April 1971, and promulgated in Special Court Martial Number 279, this headquarters, 19 April 1971, is suspended for two months, at which time, unless the suspension is sooner vacated, the suspended portion of the sentence will be remitted without further action.

g. On 8 November 1971, he accepted nonjudicial punishment for being absent without authority from 1 November 1971 to 2 November 1971. His punishment included forfeiture of \$25.00 pay per month for one month.

h. A DA Form 2496 (Disposition Form - Mental Status Evaluation), shows the applicant completed a mental status evaluation. The applicant was considered mentally responsible, able of distinguish right from wrong, able to adhere to the right, and had he

mental capacity to understand and participate in board proceedings. The examiner stated he met the retention standards prescribed in Chapter 3, AR 40-501.

i. On 3 February 1972, the applicant's immediate commander notified the applicant he was considering the applicant for elimination from military service for unfitness, under the provisions of Army Regulation (AR) 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability). He recommended an undesirable characterization of service.

j. On 3 February 1972, having been advised by counsel, the applicant acknowledged the basis for contemplated action to separate him for unfitness under AR 635-212. He waived consideration of his case by a board of officers and a personal appearance before a board of officers. He elected not to submit statements in his own behalf and waived representation by counsel. He acknowledged that:

- he may expect to encounter substantial prejudice in civilian life in the event a general discharge under honorable conditions was issued to him
- he may be ineligible for all benefits as a Veteran under both Federal and State laws
- he may expect to encounter substantial prejudice in civilian life

k. On 22 February 1972, the separation authority approved the discharge under the provisions of AR 635-212 with the issuance of an Undesirable Discharge Certificate.

l. On 23 February 1972, the applicant was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 2 years, 8 months, and 29 days of active service with 167 days of lost time.

5. On 27 May 1982, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. On 10 August 2020, the ABCMR rendered a decision in Docket Number AR20170012511. The Board found based upon the lengthy period of AWOL leading to the applicant's separation, with no mitigating reasons provided by the applicant for that AWOL offense, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the characterization of service.

7. By regulation, action will be taken to separate an individual for unfitness when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier further effort is unlikely to succeed. An individual separated by reason of unfitness will be furnished an Undesirable Discharge Certificate.

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

9. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request for an upgrade of his under other than honorable conditions discharge. He contends PTSD as related to his request. The applicant further requests corrections to his service record which this opine will not address.

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 3 April 1968.
- His DA Form 20 shows the applicant served in Vietnam from 4 March 1969 to 25 August 1971.
- On 7 April 1971, he was convicted by a special court-martial of six specifications of being absent without leave (AWOL) from on or about 28 September 1970 to 4 November 1970, from on or about 21 November 1970 to 28 November 1970, from on or about 27 December 1970 to 2 January 1971, from on or about 24 January 1971 to 5 February 1971, from on or about 9 February 1971 to 10 February 1971, and from on or about 26 February 1971 to 15 December 2006. His sentence included confinement for two months, forfeiture of \$50.00 pay per month for two months, and reduction to private (PVT), E-1.
- On 8 November 1971, he accepted nonjudicial punishment for being absent without authority from 1 November 1971 to 2 November 1971. His punishment included forfeiture of \$25.00 pay per month for one month.
- On 23 February 1972, the applicant was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 2 years, 8 months, and 29 days of active service with 167 days of lost time.
- On 27 May 1982, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade.
- On 4 October 2016, the ABCMR determined the evidence presented was sufficient to warrant relief. As a result, the Board recommended adding the following to his DD Form 214:
 - Parachutist Badge
 - Bronze Star Medal
 - National Defense Service Medal

- Vietnam Service Medal with one silver service star
- Vietnam Campaign Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- five overseas service bars
- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- On 10 August 2020, the ABCMR rendered a decision in Docket Number AR20170012511. The Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the characterization of service.

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 his last DD Form 214 shows numerous times he was charged for being absent without leave (AWOL). He was in Vietnam, not Fort Knox, performing the duties that he was assigned to do by his superiors. He was on a special mission in Cambodia and Laos. He noticed the error on his DD Form 214 the day he was discharged and has been attempting to get it corrected since then. His VA Form 21-4138 states since his separation from the Army, he has had many problems, both physical and mental. He reviewed his DD Form 214 several times and remains in disbelief that he was released from the Army with an under other than honorable discharge. There are nine different dates while he was in Vietnam where he was identified as AWOL. He has reviewed his personnel records numerous times and is puzzled on a group of entries that states he was AWOL from Fort Knox, KY. He has never been to Fort Knox, KY. When he left Vietnam, he was reassigned to Fort Campbell, KY. During his time in Vietnam, he was attached to the 319th Artillery as a cannoner for three months and was subsequently transferred to be a cook with the 173rd Airborne Brigade where he served on special missions in Cambodia and Laos.

d. Due to the period of service no active-duty electronic medical records were available for review. A DA Form 2496 (Disposition Form - Mental Status Evaluation), shows the applicant completed a mental status evaluation. The applicant was found mentally responsible, met retention standards, and had the mental capacity to understand and participate in board proceedings.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of his discharge. The applicant initially connected with the VA in April 2015 when he was brought in by his probation officer, since he was placed in Veteran's Court and was experiencing homelessness. He participated in a same-day psychosocial assessment and reported a long-standing history of depression with multiple prior suicide attempts, along with four prior periods of homelessness. He reported three psychiatric hospitalizations due to suicide attempts and shared ongoing feelings of helplessness/ hopelessness that led to thoughts of self-harm. The applicant further shared a long-standing history of mental health treatment

via a community mental health provider. During this encounter he was diagnosed with Adjustment Disorder with Mixed Disturbance of Emotions and Conduct; Rule-Out Bipolar Disorder; Rule-Out Post Traumatic Stress Disorder; Problems Related to Other Legal Circumstances; Exposure to Disaster, War or other Hostilities; and Homelessness. The applicant was receiving SSI benefits, and this was his main source of income. The electronic record shows he was provided with case management support in obtaining housing, ongoing VJO support for his legal issues, individual psychotherapy starting in May 2015, and medication management starting July 2015. In January 2016, he was recommended for a Men's Depression Group. A group note dated 12 April 2016 shows the applicant was diagnosed with Major Depressive Disorder. A note dated 14 May 2016, states the applicant was seen in his home following discharge from the hospital due to a Cerebral Infarction (stroke). In October 2016, the applicant submitted an application to move into an assisted living facility due to his health care needs and was moved on 18 October 2016. The record shows the applicant continues to live in an assisted living facility and receives ongoing clinical support and medication management via the VA.

f. A C and P examination dated 30 January 2018 diagnosed the applicant with Major Depressive Disorder (MDD). The evaluator opined that although the applicant met diagnostic criteria for PTSD, since the record confirmed he had received ongoing care for MDD, this diagnosis was more consistent with the applicant's presentation.

g. 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.

h. 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's service record indicates he deployed to a combat zone, the Republic of Vietnam.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was court-martialed due to being absent without leave (AWOL) on multiple occasions. Although, there are no service records showing the applicant was diagnosed with a behavioral health condition while in service, medical documentation indicates he has been repeatedly psychiatrically hospitalized signaling the possibility that he was experiencing symptoms of his BH condition while in service. The medical documentation indicates the applicant has been diagnosed with Major Depressive Disorder (MDD) and a C and P examination dated 30 January 2018 indicated possible

service connection for the disorder. Given the association between Major Depressive Disorder and avoidance, there is a nexus between his depression and his periods of AWOL which would mitigate his misconduct.

i. Per Liberal Consideration, the applicant's assertion of PTSD, along with his service in the Republic of Vietnam, is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

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 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 unfitness. The Board majority reviewed and concurred with the medical advisor's review finding sufficient evidence the applicant had a behavioral health condition during military service that mitigates his misconduct. The Board minority determined there was insufficient evidence to warrant an upgrade of his discharge. 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 warranted.

(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's service record indicates he deployed to a combat zone, the Republic of Vietnam.


(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was court-martialed due to being absent without leave (AWOL) on multiple occasions. Although, there are no service records showing the applicant was diagnosed with a behavioral health condition while in service, medical documentation indicates he has been repeatedly psychiatrically hospitalized signaling the possibility that he was experiencing symptoms of his BH condition while in service. The medical documentation indicates the applicant has been diagnosed with Major Depressive Disorder (MDD) and a C and P examination dated 30 January 2018 indicated possible service connection for the disorder. Given the association between Major Depressive Disorder and avoidance, there is a nexus between his depression and his periods of AWOL which would mitigate his misconduct.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 23 February 1972 to show an honorable characterization of service.



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.

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. Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), in effect at the time, set forth the policy for administrative separations for unfitness.

a. Paragraph 3 (Policy) states action will be taken to separate an individual for unfitness when it is clearly established that:

- Despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort is unlikely to succeed
- Rehabilitation is impracticable (as in cases of confirmed drug addiction) or he is not amenable to rehabilitation measures (as indicated by the medical and/or personal history record)
- An unfitting medical condition is not the direct or substantial contributing cause of his unfitness

b. Paragraph 4 (Types of Separation) states an individual separated by reason of unfitness will be furnished an Undesirable Discharge Certificate except that an honorable or general discharge certificate may be awarded if the individual being discharged has been awarded a personal decoration or if warranted by the particular circumstances in a given case.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), currently in effect, provides the policy and procedures for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable discharge) states an honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 (General discharge) states 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.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions 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.

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 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, traumatic brain injury, sexual assault, or sexual harassment. 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. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6. 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 (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 based on equity, injustice, or clemency grounds, BCM/NRs 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.

7. 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//