

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240007371

APPLICANT REQUESTS: In effect an upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- Minnesota Certificate of Marriage
- Minnesota Certificate of Death
- Article: Psychiatric Disorders, Military Misconduct, and Discharge Status for U.S. Veterans
- Article: HHS Public Access
- California Law Review
- Article: Georgetown University Law Center

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 the former service member (FSM) was discharged under other than honorable conditions due to his undiagnosed post-traumatic stress disorder (PTSD), she feels the FSM's PTSD impacting his behavior and poor decision making. The veteran's surviving spouse is requesting a discharge upgrade.
3. The applicant provides:
  - a. The FSM's DD Form 214.

b. A certificate of marriage dated 29 October 1977 and a certificate of death dated 22 April 2020.

c. Four articles' pages 7 – 98.

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

a. He enlisted in the Regular Army on 11 June 1968.

b. On 21 November 1968, he accepted nonjudicial punishment for wrongful appropriation of a 3/4-ton vehicle. His punishment included forfeiture of \$50.00 pay for one month.

c. On 3 October 1969, he accepted nonjudicial punishment for sleeping on guard post on or about 29 September 1969 and for sleep on guard post on or about 3 October 1969. His punishment included forfeiture of \$50.00 pay for one month.

d. On 12 February 1970, he accepted nonjudicial punishment for specification 1: disobeying a lawful order by a superior commissioned officer. Specification 2; absent from place of duty. His punishment included reduction to private second class (PV2)/E-2 and forfeiture of \$35.00 pay for one month.

e. On 11 June 1970, he accepted nonjudicial punishment for he went absent without leave (AWOL) on or about 25 May 1970 to on or about 2 June 1970. His punishment included reduction to private (PVT)/E-1 and forfeiture of \$61.00 pay per month for two months (suspended for 6 months). The FSM appealed the punishment.

f. On 2 July 1970, the Post Judge Advocate considered the appeal. In his opinion the proceedings were conducted in accordance with law and regulation and the punishments imposed were not unjust.

g. Special Orders Number 207 dated 8 October 1970 shows the FSM was discharged on 15 October 1970 by authority of AR 635-200 (Enlisted Personnel) chapter 10(Discharge for the Good of the Service).

h. The FSM's separation packet is unavailable for review. However, the records contain a duly constituted DD Form 214, which is sufficient to provide a fair partial assessment of the case.

i. On 15 October 1970, the FSM was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 3 months, and 22 days of active service with 13 days of lost time. He was assigned separation code 246 and the narrative reason for separation listed as

“For the Good of the Service,” with reentry code 3b. It also shows he was awarded or authorized:

- National Defense Service Medal
- Vietnam Service Medal
- Combat Infantryman Badge
- Air Medal
- Vietnam Campaign Medal with 60 device
- 2 Overseas Bars

5. A review of the applicant’s record confirms he is eligible for awards and campaign credit that are not recorded on his DD Form 214. The entries will be added to his DD Form 214 as administrative corrections and will not be considered by the Board.

6. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

7. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

8. Department of the Army General Orders (DAGO) Number 2, dated 1971 awarded the Republic of Vietnam (RVN) Gallantry Cross with Palm to 1st BN, for service in Vietnam for the period of 23 September 1969 to 15 February 1970.

9. DAGO Number 53, dated 1970, awarded the Republic of Vietnam Civil Actions Honor Medal to 1st BN, for service in Vietnam for the period of October 1965 to 7 April 1970.

10. DAGO Number 53, dated 1970, awarded the Valorous Unit Award to Company A, 1st Battalion, 2nd Infantry, for service in Vietnam for the period of October 1965 to 7 April 1970.

11. MEDICAL REVIEW:

a. Background: The deceased former service member’s (FSM) spouse is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. She contends PTSD as related to this 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 deceased former service member (FSM) enlisted in the Regular Army on 11 June 1968.
- On 3 October 1969, he accepted nonjudicial punishment for sleeping on guard post on or about 29 September 1969 and for sleeping on guard post on or about 3 October 1969.
- On 12 February 1970, he accepted nonjudicial punishment for Specification 1: disobeying a lawful order by a superior commissioned officer; Specification 2: absent from place of duty.
- On 11 June 1970, he accepted nonjudicial punishment for being absent without leave (AWOL) on or about 25 May 1970 to on or about 2 June 1970.
- Special Orders Number 207, dated 8 October 1970, shows the FSM was discharged on 15 October 1970 by authority of AR 635-200 (Enlisted Personnel) Chapter 10 (Discharge for the Good of the Service). The FSM was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 3 months, and 22 days of active service with 13 days of lost time. He was assigned separation code 246 and the narrative reason for separation listed as "For the Good of the Service," with reentry code 3b. He was awarded or authorized:
  - National Defense Service Medal
  - Vietnam Service Medal
  - Combat Infantryman Badge
  - Air Medal
  - Vietnam Campaign Medal with 60 device
  - 2 Overseas Bars

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 states, she is requesting an upgrade of the former service member (FSM) who was discharged under other than honorable conditions due to his undiagnosed post-traumatic stress disorder (PTSD). The FSM was awarded the Combat Infantry Badge, which she believed indicates his stressor/trauma. She feels the FSM's PTSD impacted his behavior and poor decision-making.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed but contains no information in reference to the FSM.

f. Based on the information available, it is the opinion of this Agency Behavioral Health Advisor that there is minimal but sufficient evidence to support the applicant had an experience, two deployments to Vietnam, that may have contributed to his subsequent development of PTSD. This BH condition would mitigate his misconduct.

## g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant (spouse) asserts PTSD on behalf of the deceased FSM.

(2) Did the condition exist or experience occur during military service? Yes. The FSM's service record appears to indicate he served two tours in a combat zone, Vietnam.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The spouse's assertion of the FSM's PTSD is accepted given his two tours in a combat zone. The FSM was discharged due to failure to report (FTR), sleeping on guard post, disobeying a lawful order, and AWOL. Given the nexus between PTSD and avoidance, the applicant's incidents of AWOL, sleeping on guard post, and FTR are mitigated by his BH condition. In addition, given the association between PTSD and difficulty with authority, the applicant's disobedience of a lawful order is also mitigated by his BH condition.

**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 relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Although the medical review made the following findings related to mitigation:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes.

the Board concluded based upon the short term of honorable service completed prior to a pattern of misconduct, including the wrongful appropriation of a 3/4 ton vehicle, any mitigation for the misconduct is outweighed by the seriousness of the misconduct leading to the separation.

BOARD VOTE:

Mbr 1    Mbr 2    Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. 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.
2. Prior to closing the case, the Board noted the administrative notes below and recommended those changes be completed to more accurately reflect the FSM's military service.

**//SIGNED//**

**X**

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's service records show he is authorized additional campaign credit not annotated on his DD Form 214. As a result, amend his DD Form 214 to show the following:

- three bronze service stars with his previously awarded Vietnam Service Medal
- Sharpshooter Marksmanship Qualification Badge with Rifle Bar
- Republic of Vietnam Gallantry Cross with Palm
- Republic of Vietnam Civil Actions Honor Medal
- Valorous Unit Award

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 635-200 (Enlisted Personnel), in effect at the time, sets forth the basic authority 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 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 (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
  - c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.
3. 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.
4. 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.

5. 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.

6. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register) assist commanders and personnel officers in determining or establishing the eligibility of individual members for campaign participation credit, assault landing credit, and unit citation badges awarded during the Vietnam Conflict.

a. Department of the Army General Orders (DAGO) Number 2 dated 1971 awarded the Republic of Vietnam (RVN) Gallantry Cross with Palm to 1st BN, for service in Vietnam for the period of 23 September 1969 to 15 February 1970.

b. DAGO Number 53, dated 1970, awarded the Republic of Vietnam Civil Actions Honor Medal to 1st BN, for service in Vietnam for the period of October 1965 to 7 April 1970.

c. DAGO Number 53, dated 1970, awarded the Valorous Unit Award to Company A, 1st Battalion, 2nd Infantry, for service in Vietnam for the period of October 1965 to 7 April 1970.

//NOTHING FOLLOWS//