

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2025

DOCKET NUMBER: AR20240007738

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

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)

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 AC97-08167 on 17 December 1997.

2. The applicant states during his time in Vietnam, he was extremely stressed from the environment and was not able to cope with the effects of war. He was also subjected to many different forms of racism during his time in service. He wanted to serve his country honorably but was prevented from doing that due to the political climate. He annotates post-traumatic stress disorder (PTSD) and other mental health as conditions and/or issues related to his request.

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

a. He enlisted in the Regular Army on 18 August 1967.

b. He served in Thailand from 30 November 1969 to 31 October 1970.

c. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on the following occasions:

(1) 15 July 1968 for without proper authority failing to repair at the proper place at the proper time on 10 July 1968; his punishment consisted of reduction to the grade of private (PVT)/E-2.

(2) 1 August 1969 for without proper authority absenting himself from his unit from 3 July 1969 to 14 July 1969; his punishment consisted of reduction to the grade of PVT/E-1 and restriction to the limits of the company area for 30 days.

(3) 19 September 1969 for being drunk and disorderly and wearing unauthorized insignia; his punishment consisted of forfeiture of \$15.00.

(4) 30 December 1969 for missing movement and absenting himself from his appointed place of duty from 13 December 1969 to 29 December 1969; his punishment consisted of 14 days restriction to area of assigned duties, billets, mess hall, and post chapel, 14 days extra duty to run concurrently with restriction, and forfeiture of \$30.00.

d. On 24 March 1969, he was convicted by special court-martial for absenting himself from his unit from 28 December 1968 to 4 January 1969. His sentence consisted of confinement at hard labor for one month, forfeiture of \$73.00 per month for one month, and reduction to the grade of PVT/E-1.

e. On 25 March 1970, he was convicted by summary court-martial for:

- one specification of absenting himself from his unit from 18 April 1970 to 19 April 1970
- one specification of absenting himself from his unit from 23 April 1970 to 25 April 1970
- one specification of unlawfully striking another Soldier in face with a liquor bottle

His sentence consisted of reduction to the grade of PVT/E-1 and confinement to hard labor for 30 days.

f. On 19 August 1970, court-martial charges were preferred against the applicant for:

- one specification of on or about 12 April 1970, conspire with another Soldier to commit an offense under the UCMJ, to wit: forgery, of a value of \$50.00, the property of DKS, and in order to effect the object of the conspiracy, another Soldier prepared in tote a personal check forging DKS' signature and the applicant did endorse same
- two specifications of with intent to defraud, falsely make a certain check
- four specifications of failing to go at the time prescribed to his appointed place of duty
- one specification of possession traces of marijuana

g. On 9 September 1970, the applicant consulted with counsel and requested discharge for the good of the service in lieu of trial by court-martial under the provisions of Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel).

(1) He understood that if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an undesirable discharge.

(2) He understood that as a result of the issuance of such a discharge, he shall be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veterans Administration and that he may be deprived of his rights and benefits as a veteran under both Federal and state law. He also may expect to encounter substantial prejudice in civilian life by reason of an undesirable discharge.

(3) Statements in his own behalf are not submitted herewith.

h. On 2 October 1970, consistent with the chain of command recommendations, the separation authority approved the applicant's discharge under the provisions of Chapter 10, Army Regulation 635-200. The application would be reduced to PV1. A DD Form 258A (Undesirable Discharge Certificate) would be issued.

i. On 26 October 1970, he was discharged under the provisions of Chapter 10, Army Regulation 635-200 with an under other than honorable conditions characterization of service and issued a DD Form 258A. His DD Form 214 shows he completed 2 years, 11 months, and 18 days of active service. It also shows he was awarded or authorized the National Defense Service Medal, Vietnam Service Medal, and the Vietnam Campaign Medal.

4. The applicant petitioned the ABCMR for a discharge upgrade. On 17 December 1997, in Docket Number AC97-08167, the Board denied the applicant's request finding the applicant failed to submit sufficient relevant evidence to demonstrate the existence of probable error or injustice.

5. By regulation, a Soldier who has committed an offense or offenses, the punishment for which under the Uniform Code of Military Justice, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial.

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

## 7. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC). He contends he experienced undiagnosed mental health conditions, PTSD and other mental health conditions 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 applicant enlisted into the Regular Army on 18 Aug 1967
- The applicant had special court-martial charges preferred against him on 24 Mar 1969 for violations of the Uniform Code of Military Justice. The applicant was charged with going AWOL 28 Dec 1968-4 Jan 1969. He was subsequently convicted in a summary court-martial of additional AWOL episodes 23-25 Apr 1970 and 23-25 Apr 1970, along with striking another soldier in the face with a beer bottle.
- Applicant accepted NJP punishment under Article 15 of UCMJ for failure to repair (10 Jul 1968), AWOL (3-14 Jul 1969), drunk and disorderly with unauthorized insignia (19 Sep 1969), missing movement and AWOL (13-29 Dec 1969).
- Court-martial charges were preferred a third time on applicant for conspiracy, forgery, defrauding with false check and possession of marijuana traces.
- Applicant requested discharge (9 Sep 1970) for the good of the service in lieu of trial by court-martial under Chapter 10 which was subsequently approved.
- The applicant was discharged on 26 Oct 1970, and he was credited with 2 years, 11 months and 18 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was very stressed and not able to cope from his exposure to the Vietnam war. He also noted being subjected to varied forms of racism which left him disillusioned with the Army. The applicant did not submit any medical or mental health documentation with his application. There was insufficient evidence that the applicant was diagnosed with any mental health conditions while on active service.

d. The VA's Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA was also reviewed and showed some history of mental health related treatment or diagnoses. This BH session (10 Sep 2024) was applicant's first engagement with a Care Coordinator. Applicant indicated he was recently found to be service connected for PTSD based on his Army deployment to Thailand and was interested in the race group. He acknowledged fleeting suicidal ideation without a plan. He claimed to have sobriety from alcohol for 30 years and to be an active participant in AA. He agreed to pursue PACT care. The PTSD screening test he took was negative. A

Psychiatry Report (29 Nov 2024) noted applicant's interest in joining the Race Based Stress and Trauma group. He referred to his time in the military as very stressful due to "being black." He expressed an interest in talking in the group about his issues. A psychotherapy group note (29 Jan 2025) indicated that applicant had attended his third session of a Race Based Stress, Trauma & Resilience Group. He came to the group with a noted history of discrimination. The psychologist had him diagnosed with PTSD. He attended the fourth session of the same group on 5 Feb 2025 and actively participated. He was diagnosed with both PTSD and Major depressive disorder this session. A medical note with Cleveland Clinic (6 Feb 2025) indicated that applicant was not at risk for depression based on the low screening test score. The consult section of JLV provided some indication of a service-connected disability for PTSD, but no specific ratings were identified.

e. An Initial PTSD Disability Benefits Questionnaire (15 May 2024) revealed applicant's contention that he encountered an extreme degree of racist-driven mistreatment especially during his deployment to Thailand. This often entailed both officers and enlisted soldiers picking on him because of his skin color and smaller size, bullying and threatening him as well. He was required to perform extra work on multiple occasions which ultimately led to him coping poorly and resorting to heavy drinking and arrests for driving while intoxicated. Also, as a cook untrained for combat, he was ordered to guard the perimeter with an M-60. This was to keep Thai communists from attacking their compound with the use of various methods to include "satchel charges" (mini bombs). He found this to be very traumatizing as well. The provider evaluating him concluded he met the criteria for diagnoses of PTSD, Unspecified Anxiety Disorder and Alcohol Abuse Disorder, Severe, In Sustained Remission.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor there is evidence to support that the applicant had a condition or experience, PTSD, which partially mitigates his misconduct. VA records include a diagnosis for PTSD from applicant's service in Thailand, even though it remains unclear whether a SC disability had been determined. The mitigation applies to his specific misconduct of AWOL episodes, missing required duties and substance abuse. In addition, it is more likely than not that applicant experienced discrimination during his time in service which contributed to his PTSD symptoms and psychological instability. This contention is further supported by his group therapy, indicated in the VA notes, that focused on the negative impact of racial discrimination and co-existing trauma. As there is an association between PTSD and self-medication (alcohol and marijuana) and avoidant behavior, there is a nexus between this condition and his AWOL episodes, substance abuse and not showing up for duty. However, assaulting a soldier, wearing false insignia on uniform and forgery are not part of the normal sequela of PTSD and therefore cannot be mitigated.

## g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed behavioral health condition, PTSD, at the time of the misconduct. Furthermore, PTSD was diagnosed by VA providers following his time in service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service, particularly fueled by his service in the theater of operations, Vietnam.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. There is sufficient evidence that the applicant experienced a behavioral health condition, PTSD, that partially mitigates for his misconduct while on active service. VA records indicate a PTSD diagnosis linked to combat experiences in the Vietnam theatre of operations, and further substantiated by his assertion of racial discrimination – this being quite common during his time in service and clinically associated with PTSD. The mitigation applies to his specific misconduct of AWOL episodes, missing required duties and substance abuse. However, assaulting a soldier, wearing false insignia on uniform and forgery are not part of the normal sequela of PTSD and therefore cannot be mitigated. That said, per Liberal Consideration applicant's contention in concert with available evidence of PTSD is sufficient for the board's consideration.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service, the frequency and nature of his misconduct, the outcomes of multiple NJP and court-martial, the 19 August 1970 charges against him, his request for discharge and the reason for his separation. The Board considered the applicant's statement and the review and conclusions of the medical reviewer. The Board found: (1) the applicant asserts he had an undiagnosed behavioral health condition, PTSD, at the time of the misconduct and he was diagnosed with PTSD by VA providers following his time in service; (2) the applicant asserts he experienced PTSD while on active service, particularly fueled by his service in the theater of operations, Vietnam theater of operations; (3) the Board determined that the applicant had a behavioral health condition that mitigated his AWOL episodes, missing required duties and substance abuse but did not mitigate not the more serious misconduct of assaulting a soldier,

wearing false insignia on uniform and forgery as these are not part of the normal sequela of PTSD. Based on a preponderance of evidence, the Board determined that the applicant's discharge was not in error or unjust and that the mitigation evidence was insufficient to upgrade the applicant's character of service as a matter of liberal consideration.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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

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

a. Paragraph 1-13a (Honorable Discharge) states 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.

b. Paragraph 1-13b (General Discharge) states 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.

c. Chapter 10 (Discharge for the Good of the Service) states a member who has committed an offense or offenses, the punishment for any of which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service.

2. 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.

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, 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.

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 (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.

//NOTHING FOLLOWS//