

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 March 2025

DOCKET NUMBER: AR20240007988

APPLICANT REQUESTS:

- Upgrade of his under other than honorable conditions discharge
- Personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Lay/Witness Statement described below as applicant states
- Discharge initiation showing he was being separated for frequent incidents of a discreditable nature with military authorities; he had a psychiatric diagnosis of a passive, aggressive personality disorder
- Clinical Record (Psychiatry) in support of his claim showing a diagnosis of passive aggressive personality disorder
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge)
- (3) Support letters M.B.; J.N.; C.A. from a fellow Vietnam Veteran; Director of Transformative Reentry In reach/Outreach Specialist; and friends defining his character and qualities (The letters are available for the Board's review in supporting documents)
- Civil litigation Certificate awarded in January 2018
- Digital Literacy Certificate awarded in November 2017
- Paralegal Studies Certificate awarded in July 2017
- Seminar Sessions Certificate for his participation in four seminar sessions of Milatti Islami (The Path of Peace), a 12-step recovery program for problems associated with addictions
- Electronic Technician Certificate awarded in June 2006
- Operation of Wastewater Treatment Plants Certificate awarded in December 1997

**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 regrets the mistakes of his youth which he has admitted to including missing curfew on more than one occasion and changing a check to him from \$9.92 to \$19.92. He feels that these are minor charges for a veteran who served in Vietnam for about 13 months. In the record of his special court-martial, it says that he wrote to Senator W.M. He has been diagnosed with post-traumatic stress disorder (PTSD) since he left the service. He believes his PTSD contributed to his conduct at the time. He also states in his VA Form 21-10210 (Lay/Witness Statement):
  - a. In the Army he was in the 500-Intelligence Group and had a top-secret clearance. He volunteered and went to Vietnam and was assigned to headquarters area command. The described the whole area was a combat zone. He described being fearful of his life because of the environment. While in Vietnam his personality slowly changed. He started drinking a lot of alcohol. He would have black outs where he would wake up and did not know where he had been or what he had done.
  - b. He did not know, but recently found out that in his personnel records he was given a diagnosis of Passive Aggressive Personality Disorder and did not receive any type of treatment. He thinks if he had been given mental health treatment his path might have been different.
  - c. After Vietnam my life started spiraling out of control. When he got out of the Army he first went to prison in 1972. He had nightmares about Vietnam, was not able to have or keep intimate relationships, he had difficulty with family not having good relationships with his wife or children. He went in and out of prison. He went back to prison in 1999 for 23 years during which he came into realizations about not being able to keep his mind right. He went through AA and NA while he was in prison which helped give him more self-realization.
  - d. He went to the veterans transition center after he got out of prison and had further realizations about how his mental health had been impacting his life. He describes how mental health counseling would have assisted him in his return from war.
  - e. He feels that racial bias came into play with his character of discharge. He has a great deal of remorse and feels that he ruined his life. He believes that in the interest of justice he should be given a discharge upgrade since today's standards were not

applied to his situation. (The entire statement is available for the Board's review in supporting documents).

3. The applicant's service records are not available for review. An exhaustive search was conducted to locate the service records, but they were charged out to another agency. The only documents available were the documents provided by the applicant. These documents are sufficient for the Board to conduct a fair and impartial review of this case.

- a. He enlisted in the Regular Army on 21 July 1965.
- b. He served in Vietnam for 11 months and 2 days. The exact dates are unknown.
- c. He was discharged under other than honorable conditions on 30 July 1967, under the provisions of Army Regulation 635-212 (Discharge Unfitness and Unsuitability) with a separation program number of 264. His DD Form 214 shows he completed 1 year, 4 months, and 4 days net service this period. He had lost time of 246 days from 8 October 1966 – 3 March 1967 and 5 April – 24 July 1967.

4. 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.

##### **5. MEDICAL REVIEW:**

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. He contends that he experienced post-traumatic stress disorder (PTSD) and reprisal based on racial bias/whistleblower status that mitigates his misconduct. 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: 1) The applicant enlisted in the Regular Army on 21 July 1965; 2) The applicant served in Vietnam for 11 months and 2 days on unknown dates; 3) The applicant's service record and the circumstances of the applicant's discharge were unavailable for review; 4) The applicant was discharged on 30 July 1967, under the provisions of Army Regulation 635-212 (Discharge Unfitness and Unsuitability) with a separation program number of 264. His character of service was under other than honorable conditions. He completed 1 year, 4 months, and 4 days of net active service with 246 days of lost time.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) and hardcopy military medical and VA records provided by the applicant

were also reviewed. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD and reprisal due to his race/whistleblower status during his time in service that mitigate his misconduct. The applicant's service record, including his charge sheet leading to separation were unavailable for review.

d. A review of JLV indicated that he was initially connected with the VA as a part of a prison transition program in between prison sentences beginning on 01 July 1996. The applicant was connected with HUD and physical medicine services beginning on 07 June 2022 until the present. There is insufficient evidence that the applicant is currently VA service-connected for any condition. He submitted hardcopy military and medical service records that included a psychiatric mental status report dated 28 March 1967 that diagnosed the applicant with "passive aggressive personality disorder" with no additional reported mental health symptoms or condition. The applicant was subsequently psychologically cleared for continued administrative proceedings.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence the applicant was experiencing a mitigating mental health condition including PTSD or evidence of reprisal due to racism/whistleblower status while on active service. In addition, there is insufficient evidence surrounding the complete events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of a mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No, there is insufficient evidence the applicant was experiencing a mitigating mental health condition including PTSD or evidence of reprisal due to racism/whistleblower status while on active service. In addition, there is insufficient evidence surrounding the complete events which resulted in the applicant's discharge to provide an appropriate opine on possible mitigation as the result of a mental health condition including PTSD or evidence of reprisal due to racism/whistleblower status. However, the applicant contends he experienced PTSD and evidence of reprisal while on active service, which mitigates his discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

**BOARD DISCUSSION:**

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising official finding insufficient evidence the applicant was experiencing a mitigating mental health condition including PTSD or evidence of reprisal due to racism/whistleblower status while on active duty. The opine noted the fact and circumstances surrounding the applicant's discharge are void and prevent an appropriate opine on possible mitigation as the result of a mental health condition.
2. The Board noted, the applicant accepts responsibility for his actions and was remorseful with his application, demonstrating he understands his actions were not that of all Soldiers. The Board applauds the applicant's post service accomplished through the various certificates of achievements and your character letters of support attesting to your veteran community service, character and integrity. However, the Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board found your accomplishments noteworthy, but they could not outweigh the length of your AWOL and various infractions. Based on the preponderance of evidence, the Board denied relief.
3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

**BOARD VOTE:**

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

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

[REDACTED]

[REDACTED]

[REDACTED]

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 NOTES:

A review of the applicant's records shows he was awarded or authorized the following award not listed on his DD Form 214, for the period ending 30 July 1967 by adding: Republic of Vietnam Gallantry Cross with Palm Unit Citation.

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 (AR) 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.
  - a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. AR 635-212 (Discharge Unfitness and Unsuitability), in effect at the time, set forth the basic authority for the elimination of enlisted personnel for unfitness and unsuitability. An individual was subject to separation for unfitness when one or more of the following conditions existed: (1) because of frequent incidents of a discreditable nature with civil or military authorities; (2) sexual perversion including but not limited to lewd and lascivious acts, indecent exposure, indecent acts with or assault on a child; (3) drug addiction or the unauthorized use or possession of habit-forming drugs or marijuana; (4) an established pattern of shirking; (5) an established pattern of dishonorable failure to pay just debts; and (6) an established pattern showing dishonorable failure to contribute adequate support to dependents (including failure to comply with orders, decrees or judgments). When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.

a. An SPN is a number used in statistical accounting to represent the specific authority and reason for separation. SPNs are an integral part of the authority for separation shown in orders and on the DD Form 214.

b. For SPN 264 it states the authority is Army Regulation 635-212, and the reason is unsuitability due to a character and behavior disorder.

4. Department of the Army Pamphlet (DA PAM) 672-3 (Unit Citation and Campaign Participation Credit Register) shows, per Department of the Army General Order (DAGO) Number 8, dated 1974, all units that served in Vietnam received the Republic of Vietnam Gallantry Cross with Palm Unit Citation.

//NOTHING FOLLOWS//