

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240008048

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his discharge under other than honorable conditions, and a personal appearance hearing before the Board.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552).

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 AR20220011593 on 28 July 2023.

2. The applicant states he has been punished for over 50 years for a mistake he made when he was 19 years old. He finished basic combat training and advanced individual training, proving he was a good Soldier. He asks the Board for relief so he can receive medical treatment from the Department of Veterans Affairs (VA) hospital for his heart murmur, have peace of mind, and stop the nightmares. He notes post-traumatic stress disorder (PTSD) and other mental health issues as conditions related to his request.

3. A review of the applicant's service records show:

a. He enlisted in the Regular Army on 30 June 1967.

b. He accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on three occasions as follows:

- 23 September 1967 – absenting himself from his unit (Company C, 15th Battalion, 4th Training Brigade, Fort Jackson, SC) from on or about 18 September 1967 and remaining so absent until on or about 19 September 1967 – his punishment consisted of forfeiture of \$40 pay and restriction to the company area for 14 days

- 26 January 1968 – absenting himself from his unit (Company F, 1st Battalion, Student Brigade, Fort Gordon, GA) on or about 2 January 1968 and remaining so absent until on or about 25 January 1968 – his punishment consisted of forfeiture of \$50 pay, extra duties for 30 days, and restriction to the company area for 30 days
- 5 July 1968 – absenting himself from his unit (U.S. Army Overseas Replacement Station, Fort Lewis, WA) on or about 3 March 1968 and remaining so absent until on or about 27 June 1968 – his punishment consisted of reduction to the rank/grade of private first class/E-3 and forfeiture of \$68 pay for 2 months

c. Headquarters, Special Troops, U.S. Army Training Center and Fort Leonard Wood, Special Court-Martial Order Number 1902, 5 November 1968, shows the applicant was found guilty of one specification of absenting himself from his organization on or about 22 August 1968 and remaining so absent until on or about 4 October 1968. His sentence consisted of reduction in rank/grade to private first class/E-3 and was adjudged on 31 October 1968. The convening authority approved and ordered the sentence duly executed, but suspended execution of the sentence for 3 months, at which time, unless the suspension were sooner vacated, it would be remitted without further action.

d. The Fort Leonard Wood Form 107 (Report of Psychiatric Evaluation), 23 February 1969, shows he was diagnosed with severe passive-aggressive personality disorder and noted his condition did not require hospitalization, was not disabling, and presented no disqualifying mental or physical defect to warrant discharge. He was mentally responsible, able to distinguish right from wrong and adhere to the right, and had the mental capacity to understand and participate in board proceedings. He was cleared for any administrative action deemed appropriate by his command.

e. His service records are void of the complete facts and circumstances surrounding his separation processing. However, his records contain an action memorandum signed by the U.S. Army Training Center and Fort Leonard Wood Commanding General, 3 June 1969, approving his elimination from the service for unfitness under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability) and directing issuance of an undesirable discharge.

f. He was discharged in the rank/grade of private/E-1 on 11 June 1969. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows:

(1) He completed 1 year and 3 months of net active service during this period with 256 days of lost time.

(2) He performed no foreign service, and he was awarded no personal decorations.

(3) His service was characterized as under conditions other than honorable.

(4) He was assigned separation program number 28B (unfitness, frequent involvement in incidents of a discreditable nature with civil or military authorities) and issued an Undesirable Discharge Certificate.

4. On 20 December 1973, the Army Discharge Review Board (ADRB) reviewed his discharge processing and found it proper and equitable. The ADRB denied his request for an upgrade of his service characterization.

5. On 28 July 2023 in Docket Number AR20220011593, the ABCMR denied his request for an upgrade of his discharge. After reviewing the application and all supporting documents, the Board found relief was not warranted and the evidence presented did not demonstrate the existence of a probable error or injustice as a basis for upgrading his service characterization from under other than honorable conditions to general.

6. On 26 November 2024, the applicant was contacted by the Army Review Boards Agency (ARBA) Case Management Division, requesting copies of medical documentation supporting his claim of PTSD and other mental health issues. He was given 30 days (until 26 December 2024) to submit supporting documentation. He has not responded to date.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), and Other Mental Health Issues are related to his request. 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 30 June 1967, 2) he received nonjudicial punishment (NJP) on three occasions: on 23 September 1967 for absenting himself from his unit from on or about 18 September 1967 until on or about 19 September 1967; on 26 January 1968 for absenting himself from his unit from on or about 02 January 1968 until on or about 25 January 1968; and on 05 July 1968 for absenting himself from his unit from on or about 03 March 1968 until on or about 27 June 1968, 3) the applicant was found guilty by a Special Court-Martial on 05 November 1968 of one specification of absenting himself from his organization on or about 22 August 1968 until on or about 04 October 1968, 4) on 23 February 1969, the applicant was diagnosed with severe passive-aggressive personality disorder. He was cleared for

any administrative actions deemed appropriate by his command, 5) his service records are void of the complete facts and circumstances surrounding his separation processing. However, his records contain an action memorandum dated 3 June 1969 approving his elimination from the service for unfitness under the provisions of Army Regulation 635-212 and directing issuance of an undesirable discharge, 6) the applicant was discharged on 11 June 1969 under the provisions of AR 635-212, with a separation program number of 28B (unfitness, frequent involvement in incidents of a discreditable nature with civil or military authorities), 7) the ADRB denied the applicant's request for relief on 20 December 1973, 8) the ABCMR denied his previous request for relief on 28 July 2023 as summarized in Docket Number AR20220011593.

b. The ARBA Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A Report of Psychiatric Evaluation dated 25 February 1969 shows the applicant was diagnosed with Passive-Aggressive Personality Disorder, Severe [*Advisor's Note*: this diagnosis is outdated and no longer in use]. The evaluating provider documented that the condition did not require hospitalization, was not disabling, and that he did not have a disqualifying mental or physical defect sufficient to warrant discharge under the provisions of AR 635-40. It was recommended that the applicant be separated under the provisions of AR 635-212, and he was cleared for any administrative decision deemed appropriate by command.

d. The applicant's "Record of Assignments" on his Enlisted Qualification Record shows his conduct and efficiency were rated as 'excellent' while in Basic Combat Training (07 July 1967), Advanced Individual Training (01 September 1967), and Radio Operator School (23 October 1967).

e. A review of JLV shows the applicant is not service-connected through the VA for any conditions. There were limited VA medical records available for review showing he completed a Compensation and Pension (C&P) examination on 13 April 2023 pertaining to heart conditions. There were no BH records available for review. It is of note that his UOTHC discharge renders him ineligible for VA services.

f. The applicant's previous petition to the ABCMR requesting physical disability instead of discharge due to unfitness dated 08 December 2016 in Docket Number AR20150015705 was reviewed. The ARBA Medical Advisor opined that the applicant did not have an unfitting medical condition while serving in the Army that warranted disposition through medical channels. The Medical Advisory dated 28 July 2023 as

summarized in Docket Number AR20220011593 noted that no new documentation was submitted with the case opined that a change in his discharge remained unwarranted.

g. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. Review of his in-service medical records shows he was diagnosed with Passive-Aggressive Personality Disorder, which does not constitute a mitigating condition. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant's in-service medical records were void of any mitigating BH diagnosis or treatment history. He is not service-connected through the VA for any BH conditions, and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

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 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 conduct and the reason for separation. The applicant was separated for unfitness. The Board found no error or injustice in the separation proceedings under the regulation and subsequent

characterization of service assigned at separation. Based upon the conduct 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 not warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant's in-service medical records were void of any mitigating BH diagnosis or treatment history. He is not service-connected through the VA for any BH conditions, and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

2. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 to amend the decision of the ABCMR set forth in Docket Number AR20220011593 on 28 July 2023.

█

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 15-185 (Army Board for Correction of Military Records) prescribes policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Board members will review all applications that are properly before them to determine the existence of an error or injustice and direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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.

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

a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. An undesirable discharge was an administrative separation from the service under conditions other than honorable. It was generally issued for unfitness, misconduct, homosexuality, or security reasons.

3. Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), in effect at the time, provided the policy, procedures, and guidance for eliminating enlisted personnel for unfitness and unsuitability. Action would be taken to separate an individual for unfitness when it was clearly established that despite attempts to rehabilitate or develop them further efforts were unlikely to succeed, rehabilitation was impracticable, or they were not amenable to rehabilitation measures. Individuals were subject to separation by reason of unfitness when one or more of the following conditions existed: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. An

undesirable discharge was normally considered appropriate. However, an honorable or general discharge may have been awarded if the individual being discharged had been awarded a personal decoration or if warranted by the particular circumstances in a given case.

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 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 directed to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 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, 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. Title 10, U.S. Code, section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 ABCMR applicants (and/or counsel) prior to adjudication.

//NOTHING FOLLOWS//