

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2025

DOCKET NUMBER: AR20240008185

APPLICANT REQUESTS: upgrade of his general, under honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Congressional Gold Medal Certificate, 22 June 2023, which was awarded by an Act of Congress in 2014, to the members of the 65th Infantry Regiment
- Veterans Affairs (VA) letter, 26 January 2024, showing the decision the VA made regarding his posttraumatic stress disorder increase from 50 to 100%
- Illegible DD Form 214 with VA ID Card

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 receipt of congressional gold medal awarded by act of Congress, to the members of the 65th Infantry Regiment known as the "Borinqueneers" in recognition to the unit's outstanding pioneering military service, devotion to duty and many acts of valor in the face of adversity while serving in the Korean war. After returning from war, he tried his best to continue with his life. Raising a family and working as a salesman in a family owned business. The memory of this injustice has haunted him through his life his wife (deceased) never allowed him to talk about the war and share his experience with others. Due to the strong emotional impact and to avoid this bad memory to emerge.
3. A review of the applicant's service record shows:
 - a. He was inducted into the Army of the United States on 18 September 1951.

b. He served overseas:

- Japan from 20 March 1952 – 22 March 1952
- Korea from 25 March 1952 – 24 September 1953

c. On 10 December 1952, he was found guilty by a general court martial (GCM) for on or about 29 October 1952, at outpost Jackson Heights, Hill North Korea, before the enemy, run away from his company and did not return until after his company had withdrawn from the said outpost. He was sentenced to dishonorable discharge, forfeiture of all pay and allowances, and to be confined at hard labor for seven years.

d. On 10 January 1953, the convening authority only so much of the sentence as provides for dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for seven years was approved.

e. The Record of Trial was forwarded to The Judge Advocate General of the Army for appellate review.

f. On 21 August 1953, he was restored to duty, awaiting final action on his record of trial. The unexecuted portion of sentence was remitted.

g. He was assigned to Cristobal Panama from 4 October 1953 – 26 June 1954.

h. GCM Order Number 90, issued on 19 October 1953, shows only so much of the sentence, as provides for confinement at hard labor for six months and forfeiture of \$55.46 pay per month for a like period, had been affirmed. Article 71(c) having been complied with; the sentence as thus modified was to be duly executed, but by order of the Secretary of the Army, dated 21 August 1953, the unexecuted portion of the sentence was remitted.

i. On 8 July 1954, he was released from active service and transferred to U.S. Army Reserve under honorable conditions under the provisions of Special Regulation (SR) 615-363-5 (released from active military service and transferred to the reserve components) & Section VI SR 635-360-5 (Enlisted Personnel—Special Separation Criteria). He completed 2 years of net service for pay purposes.

j. Special Orders Number 181, 17 September 1959, shows he was released from Standby Reserve and discharged under honorable conditions after having fulfilled his reserve obligation.

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 general, under honorable conditions discharge. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTS) was 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 was inducted into the Army on 18 September 1951, 2) he served overseas in Japan (20 March 1952 to 22 March 1952) and Korea (25 March 1952 to 24 September 1953), 3) he was found guilty by a General Court-Martial on 10 December 1952 for on or about 29 October 1952, at outpost Jackson Heights, Hill North Korea, before the enemy, run away from his company and did not return until after his company had withdrawn from the said outpost. He was sentenced to be dishonorable discharged, forfeiture of all pay and allowances, and to be confined at hard labor for seven years, 4) he was restored to duty on 21 August 1953, awaiting final action on his record of trial. The unexcused portion of his sentence was remitted, 5) he was assigned to Cristobal Panama from 04 October 1953 to 26 June 1954, 6) GCM Orders issued on 19 October 1953 shows only so much of the sentence, as provides for confinement at hard labor for six months and forfeiture of \$55.46 pay per month for a like period, had been affirmed. Article 71(c) having been complied with; the sentence as thus modified was to be duly executed, but by order of the Secretary of the Army, dated 21 August 1953, the unexecuted portion of the sentence was remitted, 7) on 8 July 1954, he was released from active service and transferred to U.S. Army Reserve under honorable conditions under the provisions of Special Regulation (SR) 615-363-5 (released from active military service and transferred to the reserve components) & Section VI SR 635-360-5 (Enlisted Personnel—Special Separation Criteria). He completed 2 years of net service for pay purposes, 8) Special Orders dated 17 September 1959, shows he was released from Standby Reserve and discharged under honorable conditions after having fulfilled his reserve obligation.

b. The Army Review Board Agency (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. The applicant's Soldier Qualification Card shows his PULHES as 111111 dated 07 July 1954, indicating he was not on profile at the time the card was completed. There were no in-service medical records available for review.

d. A VA Rating Decision dated 26 January 2024 shows the applicant's service connection for PTSD, which was previously rated at 50%, was increased to 100%,

effective 31 October 2023. Review of JLV shows he is also service-connected for Impaired Hearing (10%) and Tinnitus (10%). The VA Compensation and Pension (C&P) examination diagnosing him with PTSD was unavailable for review so the traumatic stressor leading to the service connection is unknown.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with PTSD, which is a potentially mitigating BH condition. This Advisor would contend that the applicant's misconduct of withdrawing from his post is mitigated by his diagnosis of PTSD.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 100% service-connected through the VA with PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 100% service-connected through the VA with PTSD. Service connection establishes that the condition existed in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There were no in-service medical records available for review. Since being discharged from the military, the applicant has been diagnosed and 100% service-connected through the VA with PTSD, which is a potentially mitigating BH condition. As there is an association between avoidance behaviors and trauma, there is a nexus between his misconduct of withdrawing from his post and his diagnosis of PTSD. Thus, BH mitigation is supported.

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 counsel's statement, 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 records and medical review, the Board noted the advisory opinion finding sufficient evidence that the applicant has been diagnosed with PTSD, which is a potentially mitigating BH condition. This Advisor would contend that the applicant's misconduct of withdrawing from his post is mitigated by his diagnosis of PTSD. However, notwithstanding this advisory, the

Board finds the misconduct—abandoning one’s post in the face of the enemy—to be of a nature that fundamentally undermines good order, discipline, and the trust essential to military service.

2. The Board acknowledged the applicant’s receipt of the Congressional Gold Medal awarded collectively to the members of the 65th Infantry Regiment, the “Borinqueneers,” in recognition of their distinguished service and valor during the Korean War, such recognition does not negate the applicant’s individual record of misconduct. The applicant’s service record clearly reflects that on 29 October 1952, while before the enemy at Outpost Jackson Heights, he abandoned his company and failed to return until after the unit had withdrawn. This grave dereliction of duty, adjudicated by general court-martial, resulted in a sentence of dishonorable discharge, forfeiture of pay, and confinement at hard labor. The Board recognized that the subsequent appellate review and administrative action remitted portions of the sentence and ultimately allowed the applicant to complete his service under honorable conditions, the underlying misconduct remains of such severity that it cannot be excused or recharacterized.

3. The applicant’s post-service conduct, family responsibilities, and civilian employment, while commendable, do not outweigh the seriousness of the offense. Therefore, the Board agreed that the applicant’s discharge, already under honorable conditions, appropriately reflects the balance of his service and misconduct, and relief is denied.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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. 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. Special Regulation (SR) 615-365 (Enlisted Personnel—Discharge—Convenience of the Government), in effect at the time, set forth the conditions under which enlisted personnel of the Army may be discharged or released from the active military service for the convenience of the Government. The discharge or release from the active military service of enlisted personnel for the convenience of the Government is the prerogative of the Secretary of the Army and will be effected only by his authority. Such authority may be given either in an individual case or by an order applicable to all cases specified in an order. An honorable discharge, or other type of discharge as indicated, will be given.
3. Special Regulation 615-360-5 (Enlisted Personnel—Special Separation Criteria), in effect at the time, established special criteria for the early separation of enlisted personnel on active duty in the Army. Section VI (Separation of Oversea Returnees), paragraph 31c(1) stated, in pertinent part, that personnel of the Regular Army and Reserve components having less than three months to serve upon return to the continental United States or to the Territory or possession of the United States in which enlisted, will be discharged (Convenience of the Government—PETS), released from

active duty and returned to former National Guard or Army Reserve status or released from active duty and transferred to the Army Reserve as required by law, as appropriate.

4. AR 615-360 (Enlisted Personnel—Discharge—General Provisions), in effect at the time, granted authority to certain commanders to order the discharge or release from active military service of enlisted and inducted persons prior to expiration of their terms of service and set forth criteria governing the issuance of honorable and general discharge certificates. Section III (Factors Governing Issuance of Honorable and General Discharge Certificates), paragraph 8 stated, in pertinent part, that an honorable discharge certificate will be furnished when the individual has character ratings of at least “very good”, has efficiency ratings of at least “excellent”, has not been convicted by a general court-martial, and has not been convicted more than once by a special court-martial. Paragraph 9 stated, in pertinent part, that individuals discharged under honorable conditions which do not qualify for an honorable discharge will be furnished a general discharge. Officers effecting discharge are authorized to deviate from this criteria and furnish an honorable discharge when, after considering all aspects of the individual’s service, it appears that furnishing a general discharge would not be in the best interest of the service or the individual.

5. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

6. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

7. 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.

8. 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//