

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240009121

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable
- a video/telephonic appearance before the Board

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), 30 March 1971
- Medical Records (17 pages), in support of his application

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 while serving at Fort Bragg, he was in a car wreck and does not believe he was properly treated.

a. His records proved he was a good Soldier until after the wreck. He had a broken collar bone and bad rash that until they dried, they would come in and have to run him through the shower to try to get the dressings off which was very painful. He was 18 going through all of this. Since leaving the Army, he has always had back and neck pain, and to this day, has a large knot on his collar bone.

b. His niece urged him to try to get his discharge upgraded because she says he talks too much about the wreck and believes he may have post-traumatic stress disorder (PTSD).

c. After the wreck, something changed in him, he loved the Army but after the wreck he felt he could die at any time.

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

a. He enlisted in the Regular Army on 30 March 1967 for three years.

b. On 7 October 1968, the applicant was found guilty by a special court-martial of:

- Being absent without leave (AWOL) from his unit from on or about 14 August 1968 to on or about 7 September 1968
- The court sentenced him to be confined at hard labor for three months and to forfeit \$73.00 per month for three months (no previous convictions considered)

c. The convening authority approved the sentence and, only so much of the sentence as provided for confinement at hard labor for two months, hard labor without confinement for 30 days and forfeiture of \$73.00 per month for three months was approved and ordered executed but the execution of that portion thereof adjudging confinement at hard labor for two months was suspended, at which time unless the suspension was sooner vacated, the sentence would be remitted without further action.

d. He received non-judicial punishment on 10 January 1969, for being AWOL from on or about 30 December 1968 to on or about 1 January 1969.

e. DD Form 458 (Charge Sheet) shows court-martial charges were preferred on 10 March 1971, for:

- Specification 1: being AWOL from on or about 18 March 1970 to on or about 29 January 1971
- Specification 2: being AWOL from on or about 8 February 1971, to on or about 16 February 1971

f. On 2 March 1971, he voluntarily requested discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, in lieu of court-martial.

g. His chain of command recommended approval and recommended an under other than honorable conditions discharge.

h. On 19 March 1971, the separation authority approved separation under the provisions of AR 635-200, chapter 10. He directed his character of service be under other than honorable conditions and that he be reduced to the lowest enlisted grade.

i. Accordingly, he was discharged on 30 March 1971, under other than honorable conditions, under the provisions of AR 635-200, chapter 10. His DD Form 214 shows he

completed 2 years, 3 months, 11 days of net service this period. He had 307 days of lost time under 10, USC 972 and 313 days lost subsequent to normal expiration time of service.

4. On 2 February 1982, the Army Discharge Review Board after careful consideration of his military records and all other available evidence, determined that he was properly and equitably discharged. Accordingly, his request for a change in the type and nature of his discharge was denied.

5. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions. He contends he was experiencing PTSD 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 30 March 1967; 2) On 27 September 1968, the applicant was found guilty by a special court-martial of being AWOL from 14 August-7 September 1968; 3) The applicant received non-judicial punishment on 10 January 1969, for being AWOL from 30 December 1968-1 January 1969; 4) Court-martial charges were preferred against the applicant on 10 March 1971 for being AWOL from 18 March 1970-29 January 1971 and 8-16 February 1971; 5) On 30 March 1971, the applicant was discharged, Chapter 10- in lieu of court-martial. His service was characterized as under other than honorable conditions. He completed 2 years, 3 months, 11 days of net service this period. He had 307 days of lost time under 10, USC 972 and 313 days lost subsequent to normal expiration time of service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The Veterans Affairs (VA) Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experiencing PTSD, which mitigates his misconduct. There was insufficient evidence the applicant reported or was diagnosed with a mental health condition, including PTSD during his active service.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a mental health condition including PTSD by the VA, and he does not receive any service-connected disability for a mental health condition including PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a mental health condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did repeatedly go AWOL, which could be avoidant behavior and a natural sequela to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration the contention alone is sufficient for 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 misconduct and the reason for separation. The applicant was charged with being absent without leave from 18 March 1970 to 29 January 1971 and 8 to 16 February 1971, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board reviewed and concurred with the medical advisor's review finding insufficient evidence the applicant had a mental health condition or experience that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded the characterization of service the applicant received upon separation was not in error or unjust.

2. The applicant's request for a video/telephonic hearing was carefully considered. In this case, 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 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.

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

a. Chapter 10 provided that an individual whose conduct has rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge may submit a request for discharge for the good of the service. The request for discharge may be submitted at any time after court-martial charges are preferred against him. Commanders will ensure that there is no element of coercion in submitting a request for discharge for the good of the service. The member will be given a reasonable time to consult with counsel and to consider the wisdom of submitting such a request for discharge. If he elects to submit the request, the member will personally sign the written request, certifying that he understands that he may receive a discharge under other than honorable conditions and that he understands the adverse nature of such a discharge and the possible consequences thereof. An undesirable discharge certificate was normally furnished to an individual who was discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge, if warranted.

b. 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. Where a member has served faithfully and performed to the best of his ability and has been cooperative and conscientious in doing his assigned tasks, he may be furnished an honorable discharge.

c. 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.

d. An undesirable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for unfitness or misconduct. An undesirable discharge will be directed only by a commander exercising general court-martial jurisdiction, a general officer in command who has a judge advocate officer on his staff, or by higher authority, based on the approved recommendation of a board of

officers, unless the member waives the board or requests discharge for the good of the 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; TBI; sexual assault; sexual harassment. Boards were 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 that misconduct which 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

5. 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.

6. Army Regulation 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.

//NOTHING FOLLOWS//