

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 March 2025

DOCKET NUMBER: AR20240009167

APPLICANT REQUESTS:

- upgrade of his under other than honorable discharge to an honorable discharge
- a personal appearance hearing before the Board via video/telephone

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)
- four Military Medical Documents, various dates
- DA Form 26 (Record of Court Martial Conviction)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 21 November 1961

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 that as a result of a broken wrist he was unable to comply with orders from a superior. This injury coupled with the constant racism, physical and verbal abuse, and being forced to do hard physical labor with a broken wrist contributed to his discharge.
3. On his DD Form 149, the applicant indicates post-traumatic stress disorder (PTSD) is related to his request.
4. With the consent of his parents at the age of 17, the applicant enlisted in the Regular Army on 16 December 1959 for a period of 3 years.
5. Court-martial charges were preferred against the applicant on 25 June 1960, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge

Sheet) shows, he was charged with one specification of violation of Article 86, in that he did on or about 23 June 1960, without proper authority, absent himself from his unit, and did remain so absent until on or about 25 June 1960 (a period of 3 days).

6. On 27 June 1960, in a Summary Court-Martial Number 18, he plead guilty and was found guilty of the specification and was reduced to the grade of recruit (E-1); forfeiture of \$45 pay for one month; and to perform hard labor without confinement for 30 days. The convening authority approved and ordered the sentence to be executed on 28 June 1960.

7. Special Court-Martial Order Number 45, issued by Headquarters, 41st Artillery Group, Fort Sill, OK on 10 September 1960, shows he pleaded guilty and was found guilty of violating Article 86 of the UCMJ; specifically, in that he did, on or about 26 July 1960, without proper authority absent himself from his unit, and did remain so absent until on or about 19 August 1960 (a period of 25 days). He was sentenced to confinement at hard labor for 3 months and forfeiture of \$50 pay per month for a like period. The sentence was adjudged on 6 September 1960. The sentence was approved and ordered to be duly executed on 10 September 1960. It further noted he would be confined in the Post Stockade, Fort Sill, OK and the confinement will be served therein, or elsewhere as competent authority may direct.

8. Special Court-Martial Order Number 60, issued by Headquarters, 41st Artillery Group, Fort Sill, OK on 10 September 1960, shows the unexecuted portion of his sentence to be confined at hard labor for 3 months, as promulgated in Special Court-Martial Order Number 45, is suspended for 2 months, at which time, unless the suspension is sooner vacated, the unexecuted portion of the sentence will be remitted without further action.

9. Special Court-Martial Order Number 1, issued by Headquarters, 41st Artillery Group, Fort Sill, OK on 3 January 1961, shows he pleaded not guilty and was found guilty of violating the following two articles of the UCMJ, while a member of A Battery, 3d Howitzer Battalion, 30th Field Artillery, Fort Sill, OK, specifically:

a. in that he did, on or about 0005 hours 15 December 1960, without proper authority, absent himself from his unit, and did remain so absent until on or about 1415 hours 15 December 1960 in violation of Article 86 and

b. in that he did having knowledge of a lawful order issued by First Lieutenant J \_\_\_\_\_ L. S\_\_\_\_\_, his Battery Commander, to be in his barracks by 2400 hours 14 December 1960, and order which it was his duty to obey, did on or about 2400 hours 14 December 1960 fail to obey same.

c. He was sentenced to confinement at hard labor for 6 months and forfeiture of \$50 pay per month for a like period. The sentence was adjudged on 26 December 1960. The sentence was approved and ordered to be duly executed on 10 September 1960.

10. Special Court-Martial Order Number 46, issued by Headquarters, 41st Artillery Group, Fort Sill, OK on 7 April 1961, shows the unexecuted portion of his sentence to be confined at hard labor for 6 months and forfeiture of \$50 per month for a like period, as promulgated in Special Court-Martial Order Number 1, is suspended for 3 months, at which time, unless the suspension is sooner vacated, the unexecuted portion of the sentence will be remitted without further action.

11. General Court-Martial Order Number 87, issued by Headquarters, U.S. Army Artillery and Missile Center, Fort Sill, OK on 25 September 1961, shows he pleaded guilty and was found guilty of violating the following two articles of the UCMJ, specifically:

a. in that he did, on or about 9 July 1961, without proper authority, absent himself from his unit, and did remain so absent until on or about 9 August 1961 (a period of 35 days) in violation of Article 86;

b. in that having been duly restricted to the limits of Building 3428 and mess hall in Building 3429, Fort Sill, OK, did on or about 9 July 1961 break said restriction in violation of Article 134; and

c. in that having knowledge of a lawful order issued by Specialist Four [REDACTED] [REDACTED] Acting Sergeant, to report to Specialist Five [REDACTED] in the mess hall to perform kitchen police, an order which it was his duty to obey, did on or about 12 August 1961, fail to obey the same in violation of Article 92.

d. He was sentenced to be discharged from the service with a bad conduct discharge, confinement at hard labor for 6 months and forfeiture of all pay and allowances. The sentence was adjudged on 14 September 1961. The sentence was approved, and the forfeitures shall apply to pay and allowances becoming due on and after the date of this action on 25 September 1961. The record of trial was forwarded for appellate review.

12. General Court-Martial Order Number 110, issued by Headquarters, U.S. Army Artillery and Missile Center, Fort Sill, OK on 17 November 1961, shows the sentence and punishments as promulgated in General Court-Martial Order Number 87 has been affirmed pursuant to Article 66. The provisions of Article 71c having been complied with, the sentence was ordered to be duly executed.

13. Headquarters, U.S. Army Artillery and Missile Center, Fort Sill, OK, Special Orders Number 278, 17 November 1961 discharged him from military service and that he be issued a bad conduct discharge certificate (DD Form 259A) effective 21 November 1961.

14. The applicant was discharged on 21 November 1961 under the provisions of Army Regulation 635-204 (Personnel Separations – Dishonorable and Bad Conduct Discharge) by reason of other than desertion (courts-martial). His DD Form 214 shows he completed 11 months and 12 days of total active service. He accrued 360 days of lost time during his period of active service, he received an under other than honorable conditions characterization of service upon his discharge, and he was to be issued a DD Form 259A Bad Conduct Discharge Certificate. (Note: A discharge under other than honorable conditions would be the type of separation for enlisted personnel).

15. The applicant provides medical documents that shows he broke his right wrist as the result of having a howitzer's brace block close on it on 7 June 1961. He further provided DA Form 26 that summarizes his General Court-Martial Order Number 87 and General Court-Martial Order Number 110.

16. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

17. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

18. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable discharge to honorable. He contends PTSD as related to his request.

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:

- With the consent of his parents, at the age of 17, the applicant enlisted in the Regular Army on 16 December 1959.
- Court-martial charges were preferred against the applicant on 25 June 1960, for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows, he was charged with one specification of violation of Article 86, in that he did on or about 23 June 1960, without proper authority,

absent himself from his unit, and did remain so absent until on or about 25 June 1960 (a period of 3 days).

- Special Court-Martial Order Number 45, issued by Headquarters, 41st Artillery Group, Fort Sill, OK on 10 September 1960, shows he pleaded guilty and was found guilty of violating Article 86 of the UCMJ; specifically, in that he did, on or about 26 July 1960, without proper authority absent himself from his unit, and did remain so absent until on or about 19 August 1960 (a period of 25 days).
- Special Court-Martial Order Number 1, issued by Headquarters, 41st Artillery Group, Fort Sill, OK on 3 January 1961, shows he was found guilty of violating two articles of the UCMJ.
- Applicant was discharge on 21 November 1961 under the provisions of Army Regulation 635-204 (Personnel Separations – Dishonorable and Bad Conduct Discharge) by reason of other than desertion (courts-martial). His DD Form 214 shows he completed 11 months and 12 days of total active service. He accrued 360 days of lost time during his period of active service, he received an under other than honorable conditions characterization of service upon his discharge, and he was to be issued a DD Form 259A Bad Conduct Discharge Certificate.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states because of a broken wrist he was unable to comply with orders from a superior. This injury coupled with the constant racism, physical and verbal abuse, and being forced to do hard physical labor with a broken wrist contributed to his discharge.

d. Due to the period of service, no active-duty electronic medical records were available for review. The applicant provides hardcopy medical documents showing he broke his right wrist as the result of having a howitzer's brace block close on it on 7 June 1961. The medical record further evidence follow-up care for his injury.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and has not been treated by the VA for any behavioral health condition. JLV contains a problem list showing an extensive medical history via civilian providers but no documented mental health history. On 3 May 2024, over sixty years post military service, the applicant presented for a walk-in screening appointment with his grandson who reported the applicant was requesting to be seen due to his mental health. He had recently had his gallbladder and a benign tumor removed from his prostate. He noted he was previously living with his sister but was now living with his daughter and son-in-law. His grandson reported the applicant had symptoms of depression and anxiety, which he believed were related to the applicant's military service. However, the applicant had experienced health issues and a change in residence that could account for his symptoms, and he had no prior history of

behavioral health services, denied ever having been prescribed any psychotropic medication or having participated in counseling. The applicant further provided medical documentation showing he began therapy on 20 May 2024, over six decades post-military service, and has no prior history of any behavioral health treatment.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant indicates his wrist injury as a factor related to his misconduct, the available record contradicts his assertion since much of his misconduct predates his wrist injury. Overall, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. The applicant provides a letter to the Board indicating he started therapy on 20 May 2024, over six decades post-military service.

h. Per Liberal Consideration guidelines, his assertion of PTSD on his application is sufficient to warrant consideration by the Board.

#### 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 separated for conviction by court-martial. The Board found no error or injustice in the separation proceedings. Based on a preponderance of the evidence, the Board concluded that the characterization of

service the applicant received upon separation was appropriate. Based upon the misconduct 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 selected PTSD on his application as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant indicates his wrist injury as a factor related to his misconduct, the available record contradicts his assertion since much of his misconduct predates his wrist injury. Overall, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, and the VA has not service-connected the applicant for any BH condition. The applicant provides a letter to the Board indicating he started therapy on 20 May 2024, over six decades post-military service.

2. The applicant was given a bad conduct discharge pursuant to an approved sentence of a court-martial. The appellate review was completed and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process and the rights of the applicant were fully protected.

3. The applicant's request for a personal appearance 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 |
| :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

Signed by:

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, USC, 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 15-185 (Army Board for Correction of Military Records) 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. The applicant has the burden of proving an error or injustice by a preponderance of 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.
  
3. Title 10, USC, Title 10, Section 1552 provides court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the Army Board for Correction of Military Records is not empowered to set aside a conviction. Rather it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy, or instance of leniency, to moderate the severity of the punishment imposed.
  
4. Title 10, USC, Section 866: Article 66 (Review by Court of Criminal Appeals), directs each Judge Advocate General to establish a Court of Criminal Appeals for the purpose of reviewing court-martial cases.
  
5. Article 71(c) of the UCMJ stipulates that if a sentence extends to death, dismissal, or dishonorable or bad-conduct discharge and if the right of the accused to appellate review is not waived and an appeal is not withdrawn, that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may not be executed until there is final judgment as to the legality of the proceedings. A judgement as to legality of the proceedings is final in such cases when review is completed by a Court of Military Review.
  
6. Army Regulation 635-204 (Personnel Separations - Dishonorable and Bad Conduct Discharges), provided for separation of enlisted personnel with dishonorable and bad conduct discharges. This regulation stated that an enlisted person would be discharged with a dishonorable discharge pursuant only to an approved sentence of general court-martial and a bad conduct discharge based on an approved sentence of a

general court-martial or a special court-martial imposing a bad conduct discharge.

7. Army Regulation 635-200 (Personnel Separations – General Provisions for Discharge and Release), in effect at the time, provided the basic authority for separation of enlisted Soldiers. It stated a member may be awarded an honorable or general discharge, if during the current enlistment period of obligated service, he has been awarded a personal decoration or if warranted by the particular circumstances of a specific case:

a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was conditioned upon proper military behavior and proficient and industrious performance of duty, giving due regard to the rank or grade held and the capabilities of the individual concerned.

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.

8. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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.

9. 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 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.

10. The Under-Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, 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 grounds.

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, 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.

//NOTHING FOLLOWS//