

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 March 2025

DOCKET NUMBER: AR20240009379

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), undated
- Self-authored statement, undated
- Eleven Letters of Recommendation (All eleven letters are available for the Board's review in supporting documents)

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, during his tour in Vietnam, he faced severe mental health challenges, largely from witnessing numerous casualties among his fellow service members. This exposure deeply affected his mental well-being. At first, he resisted the use of drugs within his squad, a decision that led to his ostracization. However, as time passed and the pressure mounted, he succumbed to using drugs to regain acceptance from his squad. This decision negatively impacted his life for which he takes full responsibility. He is seeking a discharge upgrade, which would enable him to access the benefits provided under the new Promise to Address Comprehensive Toxics Act.
3. A review of the applicant's record shows:
 - a. He enlisted in the Regular Army on 2 September 1969.

b. He had foreign service in the Republic of Vietnam from 8 March 1971 to 7 March 1972.

c. He received non-judicial punishment on:

- 3 February 1970, for on or about 1 February 1970, did, without authority, absent himself from his prescribed place of duty; his punishment included forfeiture of \$15.00 for on month, 14 days restriction and extra duty
- 16 February 1970, for failing to go to his appointed place of duty on seven separate occasions; his punishment was forfeiture of \$50.00
- 7 March 1970, he did, on or about 6 March 1970, unlawfully strike Private (PVT) B____ J. C____ with his fist; his punishment included forfeiture of \$29.00 and 14 days restriction and extra duty
- 2 December 1970, for on or about 28 November 1970, did, without authority, absent himself from his unit; his punishment included forfeiture of \$25.00 for one month and 14 days restriction and extra duty
- 8 September 1971, for failing to go to his appointed place of duty and disobeying a lawful order on two separate occasions; he was reduced to the grade of PVT/E-1

d. On 6 April 1970, at Fort Sam Houston, TX, the applicant was convicted by a summary court-martial of, on or about 27 March 1970, fail to go at the time prescribed to his appointed place of duty. His punishment, adjudged on 1 April 1970, included forfeiture of \$50.00 for one month and 30 days restriction. The sentence was approved on 6 April 1970.

e. On 19 August 1970, at Fort Bragg, NC, the applicant was convicted by a special court-martial of:

- Charge I (Absent Without Leave (AWOL)), specification: for, on or about 8 April 1970, absent himself from his unit and did remain absent until 10 June 1970
- Additional Charge I (AWOL), specification: for, on or about 16 July 1970, fail to go to his appointed place of duty
- Additional Charge III (Failure to Obey and Order or Regulation), specification: having knowledge of a lawful order, to wait in the Company Orderly Room for an interview with the Company Commander, fail to obey the same on 16 July 1970.
- The sentence, adjudged on 12 August 1970, included confined at hard labor for three months and forfeiture of \$50.00 for three months.
- The sentence was approved on 19 August 1970

f. On 11 September 1971, his immediate commander notified him of his intent to separate him under the provisions of Army Regulation (AR) 635-212 (Personnel Separations – Discharge Unfitness and Unsuitability), for unfitness, and that an undesirable discharge certificate be issued.

g. On 15 September 1971, his battalion level commander submitted a formal recommendation for discharge for unfitness under the provisions of AR 635-212, paragraphs 6a(1) and 6a(2), and that an undesirable discharge certificate be issued.

h. On 25 September 1971, he acknowledged he was advised by consulting counsel of the basis for the contemplated action to separate him for unfitness under the provisions of Army Regulation 635-212.

i. On 28 September, his brigade level commander concurred with the recommendation for discharge for unfitness under the provisions of AR 635-212, paragraphs 6a(1) and 6a(2), and that an undesirable discharge certificate be issued.

j. On 15 October 1971, the separation approval authority approved the recommended discharge under the provisions of Army Regulation 635-212 and directed issuance of an undesirable discharge certificate.

k. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged in the rank/grade of PVT/E-1 on 22 October 1971 under the provisions of Army Regulation 635-212. He completed 1 year, 11 months, and 17 days of net active service with lost time from 8 April 1970 to 9 June 1970 and from 5 July 1970 to 5 July 1970. His service was characterized as under other than honorable conditions. He was issued to separation program number "386" and the reenlistment code "4". His DD Form 214 does not list any individual awards or decorations. Item 24 (Decorations, Medal, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized), shows he was awarded or authorized the following:

- National Defense Service Medal
- Vietnam Service Medal
- Combat Action Badge
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)

4. On 9 April 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. Regulatory guidance states when an individual is discharged under the provisions of Chapter 14, AR 635-212 for unfitness, an under other than honorable conditions characterization of service is normally appropriate.

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

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions discharge. 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:

- Applicant enlisted in the Regular Army on 2 September 1969.
- Applicant served in the Republic of Vietnam from 8 March 1971 to 21 October 1971.
- Applicant received non-judicial punishment on:
- 3 February 1970, for on or about 1 February 1970, did, without authority, absent himself from his prescribed place of duty.
- 16 February 1970, for failing to go to his appointed place of duty on seven separate occasions.
- 7 March 1970, he did, on or about 6 March 1970, unlawfully strike Private (PVT) B ____ J. C ____ with his fist.
- 2 December 1970, for on or about 28 November 1970, did, without authority, absent himself from his unit.
- 8 September 1971, for failing to go to his appointed place of duty and disobeying a lawful order on two separate occasions.
- On 6 April 1970, at Fort Sam Houston, TX, the applicant was convicted by a summary court-martial of, on or about 27 March 1970, fail to go at the time prescribed to his appointed place of duty.
- On 19 August 1970, at Fort Bragg, NC, the applicant was convicted by a special court-martial of:
- Charge I (Absent Without Leave (AWOL)), specification: for, on or about 8 April 1970, absent himself from his unit and did remain absent until 10 June 1970.
- Additional Charge I (AWOL), specification: for, on or about 16 July 1970, fail to go to his appointed place of duty.
- Additional Charge III (Failure to Obey an Order or Regulation), specification: having knowledge of a lawful order, to wait in the Company Orderly Room for an interview with the Company Commander, fail to obey the same on 16 July 1970.

- His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged in the rank/grade of PVT/E-1 on 22 October 1971 under the provisions of Army Regulation 635-212. He completed 1 year, 11 months, and 17 days of net active service with lost time from 8 April 1970 to 9 June 1970 and from 5 July 1970 to 5 July 1970. His service was characterized as under other than honorable conditions. He was issued separation program number "386" and reenlistment code "4".

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 during his tour in Vietnam, he faced severe mental health challenges, largely from witnessing numerous casualties among his fellow service members. This exposure deeply affected his mental well-being. At first, he resisted the use of drugs within his squad, a decision that led to his ostracization. However, as time passed and the pressure mounted, he succumbed to using drugs to regain acceptance from his squad. This decision negatively impacted his life for which he takes full responsibility. He is seeking a discharge upgrade, which would enable him to access the benefits provided under the new PACT Act.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant has an extensive medical history with the VA showing ongoing care since February 2008. A mental health consult dated 12 June 2009, due to medical complications, provided a provisional diagnosis of Alcohol Dependence. During this screening assessment the applicant denied any mental health concerns or history of behavioral health treatment; he shared being "psychologically evaluated" while in prison and was not found to have any mental health concerns. The note goes on to indicate "a history of over 10 DUI's". The applicant declined any behavioral health service for his alcohol use. Ongoing screening during medical appointments show the applicant did not endorse any mental health concerns and there is no evidence of any behavioral health treatment. A distress screening on 6 May 2021, shows the applicant indicated "no distress" and follow-up screenings continued to indicate "no distress". On 29 March 2024, the applicant contacted the crisis line because he was upset that he decided to apply for compensation for his medical conditions but due to his other than honorable discharge was denied. He shared the VA covers his medical care and treatment, as service connected, but he cannot get compensation.

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 asserts the mitigating condition of PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant's service record indicates he deployed to a combat zone, the Republic of Vietnam.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant's service record shows much of his misconduct occurred prior to his service in the Republic of Vietnam, including several NJP's and two court-martial convictions. In addition, there is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there are no VA electronic records indicating he has been treated for any mental health condition. The applicant's extensive medical treatment history with the VA shows he has been screened repeatedly, and he has denied any mental health concerns and there is no evidence of any behavioral health treatment.

h. Per Liberal Consideration, the applicant's assertion of PTSD is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the pattern of misconduct leading to the applicant's separation, including some of a violent nature against others, and the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No,

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

//SIGNED//

X

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. 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 considers individual applications that are properly brought before it. 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 members will 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.

3. Army Regulation 635-212, in effect at the time, set forth the basic authority for the elimination of enlisted personnel for unfitness and unsuitability. Paragraph 6b provided that an individual was subject to separation for unsuitability when one or more of the following conditions existed:

a. inaptitude, applicable to those person who are best described as inapt, due to lack of general adaptability, want of readiness and skill, unhandiness, or inability to learn;

b. character and behavior disorders, as determined by medical authority, character and behavior disorders and disorders of intelligence; or

c. apathy (lack of appropriate interest), defective attitudes, and inability to expend effort constructively.

d. When separation for unsuitability was warranted, an undesirable discharge was normally considered appropriate.

4. Army Regulation 635-200 (Personnel Separation), the regulation currently in effect, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b states that a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the 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; 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.

6. 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 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 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//