

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 May 2025

DOCKET NUMBER: AR20240009445

APPLICANT REQUESTS:

- Upgrade of his Under Other Than Honorable Conditions discharge
- Awards for service in Vietnam
- Appearance before the Board via telephone/video

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), 10 July 2024
- DD Form 149 (Application for Correction of Military Record), 22 August 2024
- DD Form 149, 15 October 2024

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 service from 12 July 1971 to 30 July 1972 was honorable. He prays that the Board understands the honors of war, and the issues of seeing death daily, follow soldiers wounded and killed the type of mental state a human exposed to. He is requesting that his discharge be upgraded to no less than general, under honorable conditions and hopeful for honorable. He is also requesting his service ribbons and medal be provided to him for the time he served in Vietnam.

a. While serving there he experienced death, wounded veterans, friends killed and near death himself. Due to seeing the horrors of war, he was completely spooked, nervous, anxious and psychotic. He was granted leave and while home, he experienced nightmares, sweats and was antisocial and leery of anyone that presented a threat. He ended up going absent without leave (AWOL) and eventually back to the Army.

b. Upon return he was issued an Article 15 and sent to Leavenworth, LS. There he was discharged under other than honorable conditions. Correction and upgrade to his military service should be made because he has suffered long enough. He served his country and was exposed to conditions he does not wish on his worst enemy. He believes correction also be changed because since his discharge, he has lived an honorable life. He is engaged with the community, church, and other activities that enhance the quality of life to young children and adults.

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

a. He was inducted into the Army of the United States on 12 February 1970. He held military occupational specialty 11B (Infantryman).

b. He served in Vietnam from 30 July 1970 until 16 November 1970. He was assigned to Company A, 1st Battalion, 52nd Infantry.

c. DA Form 20 (Enlisted Qualification Record) shows in block 44 (Time Lost Under Section 972, Title 10, USC and Subsequent to Normal Expiration Term of Service) he was AWOL from 13 July 1971 until on or about 21 August 1973.

d. DD Form 458 (Charge Sheet) is void of his record.

e. On 21 September 1973, 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.

f. On 11 October 1973, his commander recommended disapproval and trial by general court martial (GCM).

g. On 11 October 1973, at Fort Benning, GA, the applicant was found guilty by a GCM of on or about 13 July 1971, without authority, absent himself from his unit, and did remain so absent until on or about 22 August 1973. The court sentenced him to a BCD, forfeiture of all pay and allowances, reduction to the grade of private/E-1, and confinement at hard labor for seven months.

h. On 28 November 1973, the convening authority approved the sentence.

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

j. The record is void of the appellate review and GCM Orders showing the appellate review was affirmed and Article 71(c) had been complied with.

k. The applicant's DD Form 214 wrongfully shows the applicant was discharged on 18 January 1974 with an Under Other Than Honorable Conditions discharge. His DD Form 214 (Report of Separation from Active Duty) shows he completed 1 year, 5 months, and 9 days net active service this period. It also shows 214 days lost time from 13 July 1971 thru 11 February 1972 and 699 days lost subsequent to normal ETS from 12 February 1972 thru 21 August 1973 and 30 August 1973 thru 18 January 1974.

4. Review of the Awards and Decorations Computer-Assisted Retrieval System (ADCARS), an index of general orders issued during the Vietnam era between 1965 and 1973 maintained by the Awards and Decorations Branch of the U.S. Army Human Resources Command, failed to reveal any orders for CIB.

5. The applicant's records do not contain orders or any other documentation showing he was awarded the CIB. The applicant did not provide any orders showing he was awarded the CIB.

6. 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.

MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his Bad Conduct Discharge (BCD). He contends PTSD and OMH 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 was inducted into the Army of the United States on 12 February 1970.
- Applicant served in Vietnam from 30 July 1970 until 16 November 1970.
- DA Form 20 (Enlisted Qualification Record) shows he was AWOL from 13 July 1971 until on or about 21 August 1973.
- On 21 September 1973, 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.
- On 11 October 1973, at Fort Benning, GA, the applicant was found guilty by a GCM of on or about 13 July 1971, without authority, absent himself from his unit, and did remain so absent until on or about 22 August 1973. The court sentenced him to a BCD, forfeiture of all pay and allowances, reduction to the grade of private/E-1, and confinement at hard labor for seven months.
- Applicant was discharged on 18 January 1974 and his service was characterized as Under Other Than Honorable Condition. His DD Form 214 confirms he was

discharged under the provisions of Army Regulation 635-200, para 11-2, with SPD 292 and RE 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, his service from 12 July 1971 to 30 July 1972 was honorable. He prays the Board understands the horrors of war, and the issues of seeing death daily. While serving there he experienced death, wounded veterans, friends killed and near death himself. Due to seeing the horrors of war, he was completely spooked, nervous, anxious and psychotic. He was granted leave and while home, he experienced nightmares, sweats and was antisocial and leery of anyone that presented a threat. He ended up going absent without leave (AWOL) and eventually back to the Army. Upon return he was issued an Article 15 and sent to Leavenworth, KS. There he was discharged under other than honorable conditions. Correction and upgrade of his military service should be made because he has suffered long enough. He served his country and was exposed to conditions he does not wish on his worst enemy. He also believes correction should be made because since his discharge he has lived an honorable life. He is engaged with his community, church, and other activities that enhance the quality of life of young children and adults.

d. Due to the period of service no active-duty electronic medical records were available for review and the applicant did not provide any hardcopy medical documentation from his time in service. However, a memorandum dated 21 September 1973 regarding the applicant's request for discharge states, he "was hospitalized in Okinawa (reason unknown) and reassigned to, Fort Hood, Texas". The memo does not provide clarity on the reason for his hospitalization.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of his service. In addition, there is no evidence the applicant has participated in any behavioral health services or has been diagnosed with any condition.

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. However, his service record indicates the applicant deployed to a combat zone and this experience could potentially mitigate 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 PTSD and OMH as related to his request.

(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. In addition, a memo dated 21 September 1973 indicates the applicant was hospitalized in Okinawa for an unknown reason.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant did not provide any medical documentation substantiating his assertion of PTSD and OMH. There is no evidence of any in-service BH diagnosis, and the VA has not service-connected the applicant for any BH condition. In addition, there are no VA electronic records indicating he has been treated for any mental health condition. However, the applicant deployed to a combat zone, the Republic of Vietnam, and his misconduct occurred after returning from his deployment, potentially indicating his experience of combat may have contributed to mental health issues. Given the association between multiple behavioral health conditions and avoidance, there is a likelihood the applicant's post-combat mental status contributed to his misconduct of AWOL.

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

BOARD DISCUSSION:

1. 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 warranted. Based upon the applicant's Vietnam service, the misconduct leading to his separation and the mitigation for such misconduct found in the medical review, the Board concluded there was sufficient evidence to upgrade the applicant's characterization of service to General, Under Honorable Conditions.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

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

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

2. Prior to closing the case, the Board noted the administrative notes below from the analyst of record and recommended those changes also be completed to more accurately reflect the military service of the applicant.

//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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in block 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized). As a result, amend the DD Form 214 by adding in item 26 by adding the following awards:

- Vietnam Service Medal
- Vietnam Campaign Medal with 1960 device
- Republic of Vietnam Gallantry Cross with Palm Unit Citation

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) 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.

3. AR 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for separation of enlisted personnel.

a. Chapter 11 states a member will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial, after completion of appellate review and after such affirmed sentence has been ordered duly executed.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier'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.

c. 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.

4. AR 600–8–22 (Personnel-General Military Awards) provides Department of the Army policy, criteria, and administrative instructions concerning individual military decorations, Army Good Conduct Medals, service medals and rib-bons, combat and special skill badges and tabs, unit decorations, trophies, and similar devices awarded in recognition of accomplishments. It prescribes the policies and procedures concerning U.S. Army awards to foreign military personnel and foreign decorations to U.S. Army personnel. Paragraph 8–6 provides the criteria for award of the Combat Infantryman Badge. For award of the CIB a Soldier must meet the following three requirements:

a. Be an infantry Soldier satisfactorily performing infantry duties.

(1) A Soldier must be an Army infantry or SF officer (CMF or AOC 11 or 18) in the grade of COL/O–6 or below, or an Army enlisted Soldier or warrant officer with an infantry or SF MOS who, subsequent to 6 December 1941, has satisfactorily performed duty while assigned or attached as a member of an infantry, ranger, or SF unit of either a brigade, regimental, or smaller size during any period such unit was engaged in active ground combat.

(2) Eligibility for SF personnel in MOSs 18B, 18C, 18E, 18F, and 18Z (less 18D–SF medical sergeant) accrues from 20 December 1989. Retroactive awards of the CIB to SF personnel are not authorized prior to 20 December 1989.

b. Be assigned to an infantry unit during such time as the unit is engaged in active ground combat.

(1) A recipient must be personally present and under hostile fire while serving in an assigned infantry or SF primary duty, in a unit actively engaged in ground combat with the enemy. The unit in question must be a brigade, regiment, or smaller size. For example, personnel possessing an infantry MOS in a rifle squad of a cavalry platoon in a cavalry troop would be eligible for award of the CIB. Battle or CPC alone is not sufficient; the unit must have been in active ground combat with the enemy during the period.

(2) Personnel with other than an infantry or SF MOS are not eligible, regardless of the circumstances. The infantry or SF CMF, AOC or MOS does not necessarily have to be the Soldier's primary specialty, as long as the Soldier has been properly trained in infantry or SF tactics, possesses the appropriate skill code, and is serving in that specialty when engaged in active ground combat as described above. Commanders are not authorized to make any exceptions to this policy.

(3) Awards will not be made to general officers or to members of headquarters companies of units larger in size than brigade.

c. Actively participate in such ground combat. Campaign or battle credit alone is not sufficient for award of the CIB.

5. Department of the Army Pamphlet 672-3 (Unit Citation and Campaign Participation Credit Register), shows DAGO Number 8, dated 19 March 1974, announced award of the Republic of Vietnam Gallantry Cross with Palm Unit Citation to Headquarters, U.S. Military Assistance Command and its subordinate units during the period 8 February 1962 to 28 March 1973 and to Headquarters, U.S. Army Vietnam and its subordinate units during the period 20 July 1965 to 28 March 1973.

6. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, U.S. Code, 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.

7. 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.

8. 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.

9. 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.

10. 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//