

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2025

DOCKET NUMBER: AR20240009515

APPLICANT REQUESTS: an upgrade of his character of service from under conditions other than honorable to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), 21 May 2024
- self-authored statement, 21 May 2024
- Department of Veterans Affairs (VA) medical letter, 21 May 2024
- character reference statement, from J.R.H., 21 May 2024

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 he was drafted into the Army in 1969 when he served in Germany and reenlisted while serving in Vietnam. Approximately 3 or 4 months into his Vietnam tour he was given a cigarette from another Soldier, he thought it was only a cigarette; however, he found out it was laced with heroin. This is when his drug use started. He had never used drugs before his encounter with a heroin laced cigarette. He spiraled out of control, and had an attitude when he began his drug use.

a. In March of 1971, he was arrested for possession of heroin and assault, the assault stemmed from him pushing the vehicle door open and the door hitting an officer. While he was in the stockade, in Long Binh, he asked his lawyer to try and get him discharged so he could go home to his wife and son. He was discharged and thought his problems were over, but it was just the beginning.

b. He continued using drugs at home and it cost him his spouse and son. Since being discharged over 51 years, he spent years in and out of prison. He has since made it a full year out of prison. He no longer uses drugs and in September he will have hit 5 years that he has been out. His military service might not have been the greatest, but

he hopes the Board will take into account the suffering he endured and how he suffered in and out of prison all because he received a heroin laced cigarette while serving in Vietnam.

3. On his DD Form 149, the applicant indicates mental health is related to his request.

4. The applicant was inducted into the Army of the United States on 22 April 1969. He was honorably discharged for immediate reenlistment on 30 December 1969. He reenlisted on 31 December 1969 and again on 27 March 1970.

5. The applicant's DA Form 20 (Enlisted Qualification Record) shows the highest rank he attained was specialist four/E-4. He served in Vietnam with the 98th Transportation Detachment from 10 July 1970 until 3 April 1971.

6. The applicant accepted nonjudicial punishment under Article 15, of the Uniform Code of Military Justice (UCMJ) on:

a. On 5 October 1970, for wrongfully appropriating a half ton vehicle, while serving in Vietnam. His punishment included reduction to the grade of E-1.

b. On 23 January 1971, for absenting himself without authority from his unit on or about 1 December 1970 to on or about 10 December 1970, while serving in Vietnam. His punishment included reduction to the grade of E-1.

7. Court-martial charges were preferred against the applicant, for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with:

- resisting being lawfully apprehended on or about 15 March 1971
- assaulting Captain M___ by striking him with his fist on or about 15 March 1971
- wrongfully appropriating a three-quarter ton truck on or about 15 March 1971
- wrongfully communicating a threat to Captain M___ on or about 15 March 1971
- violating a general regulation by possessing heroin on 15 March 1971

8. He consulted with legal counsel on 17 March 1971, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of a under other than honorable conditions character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. He acknowledged that he may be deprived of many rights and benefits as a Veteran under both Federal and State law. Additionally, he elected to not submit a statement in his own behalf.

9. On 17 March 1971, the applicant's immediate and intermediate commander's recommended approval of his request for separation and further recommended issuance of an undesirable discharge.

10. On 28 March 1971, the separation authority approved the applicant's request for discharge for the good of the service. He further directed the applicant be furnished an Undesirable Discharge Certificate and reduced to the lowest enlisted grade of E-1.

11. The applicant was discharged accordingly on 5 April 1971. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of AR 635-200, for the good of the service, in the grade of E-1. His characterization of service was under conditions other than honorable. He was credited with 1 year, 11 months, and 14 days of net active service this period.

12. The applicant was issued a DD Form 215 (Correction to DD Form 214) updating his time in service to reflect 1 year and 9 days.

13. The Army Discharge Review Board denied the applicant's request for a change in the type and nature of his discharge on 2 October 1978 and 2 February 1979..

14. The applicant additionally provides:

a. A letter from the VA dated 21 May 2024, stating he was admitted to the Mental Health Residential Rehabilitation Treatment Program. He had reported struggling with self-destruction behavior since the military and is working on health coping skills to help work on healthy thinking patterns and not going back to life he was living.

b. A character reference statement, from J.R.H., dated 21 May 2024 having known the applicant for over 15 years. J.R.H. summarized the applicant as a hard worker, a baker, a dear friend, a man who would give you the shirt off his back if you asked. While in Vietnam he states the applicant would volunteer in a position which took guts, teasing

the enemy to shoot at him so he could drop smoke grenades and mark their location for gunship hovering high above. He was introduced to drugs while serving in Vietnam, but he is getting his addictions and life back under control.

15. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his character of service from under conditions other than honorable (UOTHC) to under honorable conditions (general). On his DD Form 149, the applicant indicated Other Mental Health Issues are 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 of the United States on 22 April 1969. He was honorably discharged for immediate reenlistment on 30 December 1969 and reenlisted on 31 December 1969 and again on 27 March 1970, 2) the applicant served in Vietnam with the 98th Transportation Detachment from 10 July 1970 until 03 April 1971, 3) he received two Article 15s, the first on 05 October 1970 for wrongfully appropriating a half ton vehicle while serving in Vietnam, and on 23 January 1971 for absenting himself without authority from his unit from 01 December 1970 to on or about 10 December 1970 while serving in Vietnam, 4) Court-martial charges were preferred against the applicant, for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with: resisting being lawfully apprehended on or about 15 March 1971, assaulting a Captain by striking him with his fist on or about 15 March 1971, wrongfully appropriating a three-quarter ton truck on or about 15 March 1971, wrongfully communicating a threat to a Captain on or about 15 March 1971, and violating a general regulation by possessing heroin on 15 March 1971, 5) The applicant was discharged on 5 April 1971 under the provisions of AR 635-200, chapter 10, for the good of the service, 6) The ADRB denied the applicant's previous request(s) for a change in the type and nature of his discharge on 2 October 1978 and 2 February 1979.

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. There were no in-service medical records available for review. Review of the applicant's service records shows that on his DA Form 20, his conduct and efficiency were rated as 'excellent' in July 1969 and August 1969. His assignment rating for 15

November 1969 was not legible and his assignment dated 10 July 1970 was rated as 'poor.'

d. A review of JLV shows the applicant is not serviced-connected through the VA for any conditions. The applicant's VA medical records shows that he has sought BH treatment through the VA on-and-off since September 2020, primarily for treatment related to alcohol use. A Substance Abuse Treatment Program (SATP) consult note dated 29 September 2020 shows the applicant reported a history of heroin use which started in Vietnam and lasted until 2004. It was also noted that alcohol use became problematic after he stopped using illicit drugs in 2004. The provider noted that he denied a history of mental illness and that his concerns over his alcohol use have made him feel anxious and depressed. It was also documented that he reported alcohol use "due to difficulty adjusting to life outside prison, isolation with COVID, boredom, and anxiety." A letter included as part of his application from the St. Cloud VA dated 21 May 2024 shows the applicant was admitted to the Mental Health Residential Rehabilitation Treatment Program (MHR RTP) on 24 April 2024 noting that he had been struggling with self-destructive behaviors since leaving the military and was working towards healthy coping skills. A biopsychosocial assessment note dated 25 April 2024 shows he was diagnosed with Alcohol Use Disorder (AUD), Severe, Other Specified Depressive Disorder vs. Substance-Induced Depressive Disorder; Unspecified Anxiety Disorder, and Opioid Use Disorder (In Full Remission). It was documented that he reported his onset of depressive symptoms occurred when he began drinking again following his release from prison in 2019. Regarding symptoms of anxiety, the provider noted that "he has felt stressed out for as long as he can remember." Psychosocial stressors included legal problems and homelessness. A MHR RTP Screening Summary Note dated 05 March 2025 shows the provider documented he has previously received a mental health diagnosis and noted "nightmares, anxiety, depression, PTSD" in the comments section. The PTSD screen noted that he endorsed a history of a traumatic event and was willing to discuss during his residential stay; however, additional details were not provided. His diagnoses were noted as Alcohol Abuse, Alcohol Dependence, Uncomplicated, Major Depressive Disorder, Single Episode, Severe Without Psychotic features. The MHR RTP initial medical clearance dated 05 March 2024 shows the mental health diagnoses listed under the reason for referral as PTSD, Depression, and Substance use/dependence.

e. In his self-authored letter to the Board dated 21 May 2024, the applicant reported he unintentionally used heroin while in Vietnam via a cigarette given to him by someone else that was laced with heroin unbeknownst to him, and once he began using drugs his 'attitude changed, and his life began to spiral out of control.' He reported that even after he was discharged from the military, he continued to use substances, which he reported ultimately cost him his relationships with his wife and son. He reported that in the 53 years since returning home, he spent approximately 41 years in-in-out of prison. As of the date of the letter, the applicant reported that as of September 11 [2024] he will have 5 years of sobriety.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience in-service that mitigated his misconduct. Although review of his VA medical records show that he has been diagnosed with several potentially mitigating BH conditions, MDD, Unspecified Anxiety Disorder, and PTSD, he has not been service-connected for these conditions and the onset of these conditions was not associated with his military service. This Advisor would contend that BH mitigation is unclear due to the lack of association of his potentially mitigating BH conditions with his military service and the behaviors that led to his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was due to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. There were no in-service medical records available for review. He has not been service-connected through the VA for any conditions. Since being discharged from the military, VA medical records show that the applicant has been diagnosed with PTSD, MDD, Unspecified Anxiety Disorder, Alcohol Abuse, Alcohol Dependence, Uncomplicated, Alcohol Use Disorder (AUD), Severe, and Opioid Use Disorder, In Full Remission). It is of note that alcohol and substance use disorders do not constitute mitigating conditions. Although the applicant has been diagnosed with several potentially mitigating BH conditions through the VA, the onset of some of these conditions were noted to have occurred following his discharge and appear to be unrelated to his military service (e.g., MDD), while the onset of his diagnoses of Unspecified Anxiety Disorder and PTSD were not specified nor associated with his military service. While it is of note that his conduct and efficiency were rated as poor following his deployment to Vietnam, and his diagnoses of PTSD and Unspecified Anxiety Disorder would otherwise provide a basis to support partial BH mitigation for his misconduct of resisting lawful apprehension and possession of heroin use, there is insufficient evidence that this change in behavior was due to a mitigating BH condition. As such, BH mitigation is unclear.

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 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 record and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience in-service that mitigated his misconduct.

2. The Board noted the applicant's contentions that his misconduct stemmed from involuntary exposure to heroin during his Vietnam service and provides evidence of current rehabilitation efforts. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the serious pattern of misconduct during his enlistment. To include multiple nonjudicial punishments, charged with assault, wrongful appropriation of vehicles, possession of heroin, and resisting lawful apprehension. The Board acknowledged the applicant's post-service struggles and recent efforts toward recovery; however, these factors do not outweigh the severity of his in-service misconduct. The characterization of service he received was commensurate with the offenses committed and remains appropriate. Therefore, the Board denied relief.

3. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was due to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. There were no in-service medical records available for review. He has not been service-connected through the VA for any conditions. Since being discharged from the military, VA medical records show that the applicant has been diagnosed with PTSD, MDD, Unspecified Anxiety Disorder, Alcohol Abuse, Alcohol Dependence, Uncomplicated, Alcohol Use Disorder (AUD), Severe, and Opioid Use Disorder, In Full Remission). It is of note that alcohol and substance use disorders do not constitute mitigating conditions. Although the applicant has been diagnosed with several

potentially mitigating BH conditions through the VA, the onset of some of these conditions were noted to have occurred following his discharge and appear to be unrelated to his military service (e.g., MDD), while the onset of his diagnoses of Unspecified Anxiety Disorder and PTSD were not specified nor associated with his military service. While it is of note that his conduct and efficiency were rated as poor following his deployment to Vietnam, and his diagnoses of PTSD and Unspecified Anxiety Disorder would otherwise provide a basis to support partial BH mitigation for his misconduct of resisting lawful apprehension and possession of heroin use, there is insufficient evidence that this change in behavior was due to a mitigating BH condition. As such, BH mitigation is unclear.

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, 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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. Army Regulation 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 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under conditions other than honorable is normally considered appropriate.
 - b. 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.
 - 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. 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

Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; traumatic brain injury; 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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.

//NOTHING FOLLOWS//