

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 March 2025

DOCKET NUMBER: AR20240009526

APPLICANT REQUESTS: reconsideration of his earlier request for upgrade of his undesirable discharge.

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

DD Form 149 (Application for Correction of Military Record), 15 May 2024.

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC85-02183 on 18 December 1985.

2. The applicant states he struggled mentally and emotionally during his active service, and it was not undesirable. On his application, he notes post-traumatic stress disorder (PTSD) as an issue or condition related to his request.

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

a. On 12 November 1969, he enlisted in the Regular Army for 3 years.

b. He was reported absent without leave (AWOL):

- 33 days; 3 February 1970 to 7 March 1970
- 75 days; 14 March 1970 to 27 May 1970
- 26 days; 1 June 1970 to 26 June 1970
- 39 days; 27 June 1970 to 4 August 1970
- 3 days; 2 October 1970 to 4 October 1970

c. Unit Orders Number 78, dated 29 September 1971, reflect he accepted nonjudicial punishment (NJP) and was reduced to private 2 for failure to repair. The record of NJP is not in the available records.

d. On 2 December 1971 he deployed to Vietnam.

e. Special Orders Number 29 reflect he accepted NJP on 20 January 1972 and he forfeited of \$35.00 pay for 1 month. The record of NJP is not in the available records.

f. On 4 March 1972 he was promoted to specialist 4.

g. On 12 August 1972, he departed Vietnam and returned to the continental United States.

h. He was reported AWOL:

- 8 days, 29 August 1972 to 5 September 1972
- 2 days, 15 September 1972 to 16 September 1972

i. On 15 September 1972, he was reported AWOL from his unit; on 17 September 1972, he was dropped from the rolls.

j. On 7 November 1972, he was apprehended by military authorities.

k. After consulting with legal counsel on 9 November 1972, he voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under the provisions of Chapter 10, Army Regulation 635-200 (Personnel Separations – Enlisted Personnel). In doing so, he acknowledged that the charges preferred against him under the UCMJ, authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions, furnished an undesirable certificate, and he could be ineligible for many, or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many, or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and elected to do so

l. His written statement is not in the available records.

m. On 16 November 1972, his Commanding Officer, Personnel Control Facility, recommended approval of his request for discharge with issuance of an undesirable discharge; and on the same date, his intermediate commander also recommended approval of his request.

n. On 28 November 1972, the separation authority approved his discharge for the Good of the Service with issuance of an Undesirable Discharge Certificate and directed he be reduced to the lowest rank.

o. On 28 November 1971, he was discharged. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10. He completed 2 years, 4 months, and 22 days of net service this period.

4. On 18 December 1980, the Army Discharge Review Board considered his request for an upgrade and voted not to grant relief after finding his discharge was both proper and equitable.

5. On 18 December 1985, in Docket Number AC85-01283, the ABCMR denied his request for upgrade finding he failed to submit sufficient relevant evidence to demonstrate the existence of probable material error or injustice.

6. On 21 November 2024, the Chief, Case Management Division requested the applicant provide copies of medical or psychiatric documentary evidence supporting the issues he raised regarding PTSD, and placed his case on hold for 30 days to give him an opportunity to respond. He did not respond.

7. 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.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his undesirable 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 into the Regular Army on 12 November 1969.
- He was reported absent without leave (AWOL):
- 33 days; 3 February 1970 to 7 March 1970
- 75 days; 14 March 1970 to 27 May 1970

- 26 days; 1 June 1970 to 26 June 1970
- 39 days; 27 June 1970 to 4 August 1970
- 3 days; 2 October 1970 to 4 October 1970
- On 2 December 1971 he deployed to Vietnam. On 12 August 1972, he departed Vietnam and returned to the continental United States.
- On 15 September 1972, he was reported AWOL from his unit; on 17 September 1972, he was dropped from the rolls.
- On 7 November 1972, he was apprehended by military authorities.
- On 28 November 1972, he was discharged from active duty with an under conditions other than honorable characterization of service.
- On 18 December 1980, the Army Discharge Review Board considered his request for an upgrade and voted not to grant relief after finding his discharge was both proper and equitable.
- On 18 December 1985, in Docket Number AC85-01283, the ABCMR denied his request for upgrade finding he failed to submit sufficient relevant evidence to demonstrate the existence of probable material error or injustice.

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 he struggled mentally and emotionally during his active service, and it was not undesirable.

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 and there is no evidence he has been diagnosed with or has participated in treatment of any behavioral health condition. On 21 November 2024, the ARBA Case Management Division requested the applicant provide copies of medical documentation supporting his contention of PTSD. No response was provided by the applicant.

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 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 or post-discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant asserted PTSD as related to his request, 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 VA electronic record indicates the applicant has not been diagnosed or treated for any mental health condition. And while the applicant selected PTSD on his application, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his 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 short term of honorable service completed prior to the pattern of misconduct leading to the applicant's separation, as well as the following findings and recommendations 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? No.

(2) 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. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. 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. 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. Chapter 10 provided that a member who had committed an offense or offenses for which, under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition), the authorized sentence included a punitive discharge, could submit a request for discharge for the good of the service for conduct triable by court-martial. The request could be submitted at any time after charges were preferred. Although an honorable or general discharge could be directed, an Undesirable Discharge Certificate would normally be furnished to an individual who was discharged for the good of the service.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

2. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that would be furnished each individual who was separated from

the Army. It also listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program number "246" corresponded to "Discharge For the Good of the Service," and the authority, Army Regulation 635-200, Chapter 10.

3. 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 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.

4. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

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. 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. 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.

6. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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//