

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 April 2025

DOCKET NUMBER: AR20240009570

APPLICANT REQUESTS:

- upgrade of his (general) under honorable conditions discharge
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Report of Transfer or Discharge), 25 February 1970
- DD Form 214 (Report of Separation from Active Duty), 22 April 1971
- DD Form 215 (Correction to DD Form 214, Report of Separation from Active Duty), 21 July 1971
- Medical documents (12 pages) in support of his claim related to his posttraumatic stress disorder (PTSD) and other ailments
- Initial PTSD Disability Benefits Questionnaire (9 pages) in support of his claim
- (4) Character Affidavit speaking to his character, service in the community, employment, accolades, change in the positive direction (success story), etc. (The affidavits are available for the Board's review in supporting documents)
- Self-authored letter to the board (5 pages) addressed below (Available in supporting documents for the Board's review)
- Anniversary letter, 9 January 1969, with IBM computer systems prior to being drafted into the Army (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 he believes that prior to his deployment to Vietnam he was an honorable draftee. Graduating basic and advance individual training close to the top of his class.

- a. He was one of four out of 265 to be deployed to Vietnam. He was subjected to things he had never been involved with. It took a toll on him, and he did not want to be involved with the horror of war, death, dying, killing or anything of that nature. He has been diagnosed with PTSD.
- b. He received a discharge upgrade in 1977. To his knowledge that was permanent. He did not know of any new laws, nor did he receive a letter asking for reasons to his absence from service from April of 1978 to December of 1978. He was in NJ driving trucks.
- c. In a 5-page self-authored letter which is available for the Board's review in supporting documents he explains his time in service. He also discusses:

- Being drafted into service
- His memories of being in a war zone in Vietnam
- The effects the war took on him
- Drinking and drugs used to cope with his PTSD
- His employment prior to being drafted
- Segregation in FL even after fighting in Vietnam for this country
- Reduction of his upgraded discharge
- Employment post-service

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

- a. Having had prior honorable service after being drafted into the Army of the United States he reenlisted on 26 February 1970. He served in Vietnam from on or about 9 November 1969 – on or about 7 March 1970.
- b. On 22 June 1970, at Fort Stewart, GA, the applicant was found guilty by a special court-martial (SPCM) of being absent without leave (AWOL) from 8 April 1970 – 19 May 1970. He was sentenced to forfeit \$60.00 per month for 3 months, to be confined at hard labor for 45 days, and to be reduced to the grade of E-1.
- c. On 9 July 1970, the convening authority approved, only so much of the sentence that provided for confinement at hard labor for 45 days, forfeiture of \$35.00 per month for 3 months, and reduction to the grade of E-1, and will be duly executed, but the execution of that portion thereof adjudging confinement at hard labor for 45 days was suspended for 3 months.
- d. DA Form 20 (Enlisted Qualification Record) item 44 (Time Lost) shows he was AWOL from 22 July 1970 – 31 March 1971.

e. The applicant's record is void of the complete facts and circumstances that led to his separation. However, his service record contains a DD Form 214 that shows he was discharged on 22 April 1971, for the good of the service under the provisions (UP) of Army Regulation 635-200, chapter 10 with a characterization of service of under conditions other than honorable.

4. On 25 May 1977, the Army Discharge Review Board (ADRB) after careful consideration of his military records and all other available evidence, determined that he met the criteria of the Special Discharge Review Program (SPRD). His character of service was upgraded to under honorable conditions (general). His previous DD Form 214 was voided, and he was reissued a DD Form 214 changing his character of service to under honorable conditions.

5. On 25 April 1978, the ADRB re-reviewed his discharge as required by Public Law (PL) 95-126 and voted unanimously not to affirm the applicant's upgrade under SDRP for the following reasons. The applicant was AWOL from July 1970 to March 1971 and was discharged in April of 1971 at his own request. The Board presumes that this request was for discharge in lieu of court-martial for this specified period of AWOL. He was on leave from Vietnam and failed to return. The board decided to issue a DD Form 215 (Correction to DD Form 214) which shows his discharge was reviewed under the provisions of PL 95-126. On 3 August 1978, he was notified that his upgraded discharge was not affirmed under the special review program.

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.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his (general) under 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:

- With prior honorable service after being drafted into the Army of the United States, he reenlisted on 26 February 1970. The applicant served in Vietnam from on or about 9 November 1969 to on or about 7 March 1970.
- On 22 June 1970, at Fort Stewart, GA, the applicant was found guilty by a special court-martial (SPCM) of being absent without leave (AWOL) from 8 April 1970 – 19 May 1970.
- DA Form 20 (Enlisted Qualification Record) item 44 (Time Lost) shows he was AWOL from 22 July 1970 – 31 March 1971.

- The applicant's record is void of the complete facts and circumstances that led to his separation. However, his service record contains a DD Form 214 that shows he was discharged on 22 April 1971, for the good of the service under the provisions (UP) of Army Regulation 635-200, Chapter 10 with a characterization of service of under conditions other than honorable.
- On 25 May 1977, the Army Discharge Review Board (ADRB) after careful consideration of his military records and all other available evidence, determined he met criteria for the Special Discharge Review Program (SPRD). His character of service was upgraded to general, under honorable conditions. His previous DD Form 214 was voided, and he was reissued a DD Form 214.
- On 25 April 1978, the ADRB re-reviewed his discharge as required by Public Law (PL) 95-126 and rescinded the applicant's upgrade under SDRP.

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 prior to his deployment to Vietnam he was an honorable draftee. Graduating basic and advance individual training close to the top of his class. He was one of four out of 265 to be deployed to Vietnam. He was subjected to things he had never been involved with. It took a toll on him, and he did not want to be involved with the horror of war, death, dying, killing or anything of that nature. He has been diagnosed with PTSD. He received an upgraded discharge in 1977. To his knowledge that was permanent. He did not know of any new laws, nor did he receive a letter asking for reasons to his absence from service from April of 1978 to December of 1978. He was in NJ driving trucks.

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

e. The Veterans Affairs (VA) Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected, likely due to the characterization of his discharge. The applicant initially connected with the VA in October 2008 and received intermittent behavioral health care. There is evidence in the medical record the applicant has been diagnosed with PTSD.

f. The applicant provides hardcopy documentation of a Compensation and Pension examination dated 27 September 2023 diagnosing the applicant with PTSD related to his combat experience.

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

h. 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? Yes. The applicant was court-martialed due to being absent without leave (AWOL) on multiple occasions. Although, there are no service records showing the applicant was diagnosed with a behavioral health condition while in service, medical documentation indicates he has been diagnosed with PTSD. Given the association between PTSD and avoidance, there is a nexus between his BH condition and his periods of AWOL which would mitigate his misconduct.

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 charged with being absent without leave from 6 April 1970 to 18 May 1970 and from July 1970 to March 1971, an offense punishable under the Uniform Code of Military Justice with a punitive discharge. The Board majority found no error or injustice in the separation proceedings and designated characterization of service. In 1978, the applicant's service characterization was reviewed as required by Public Law, and was subsequently upgraded to under honorable conditions (general). On 3 August 1978, the applicant was notified that his upgraded discharge was not affirmed under the Special Review Program. The Board majority found insufficient evidence the applicant was diagnosed with a condition that would mitigate his misconduct while in service. The Board minority found there was sufficient evidence to support the applicant had a behavioral health condition that mitigates his misconduct. The Board majority concluded the applicant has not demonstrated by a preponderance of the evidence that any further discharge upgrade is warranted.

2. Prior to closing the discussion, the Board reviewed and concurred with the administrative note below.

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
- ■ ■ : 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.

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):

The applicant is authorized administrative correction of his DD Form 214 for the period ending 22 April 1971 without Board action to show the following awards:

- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Bronze Service Star to his previously awarded Vietnam Service Medal

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 the separation of enlisted personnel. 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 other than honorable conditions is normally considered appropriate.
 - a. An honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

4. 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.

5. 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.

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 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.

7. 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//