

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2025

DOCKET NUMBER: AR20240009837

APPLICANT REQUESTS: an upgrade of his under conditions other than honorable 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), 25 April 2024
- Applicant's After Visit Summary, 31 January 2024
- Department of Veteran Affairs Form 21-4138 (Statement in Support of Claim), 25 April 2024
- Two supporting letters, 8 May 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 he was given an undesirable discharge and subsequently a clemency discharge. He spent one year in Vietnam. When he came back, he was suffering from undiagnosed post traumatic stress disorder (PTSD). He was involved in the Tet Offense in 1968. On 25 September 1968, he was referred for mental hygiene, for loss of emotional control. He had been drinking heavily and begging for help in the wrong manner. At the time, PTSD was not a recognized diagnosis. He still has problems dealing with what he did and what happened during that time.
3. The applicant provided:
 - a. His after visit summary, showing he was seen by a doctor on 31 January 2024 for multiple medical issues. The full six-page summary is available for the Board to review in the supporting documents.

b. Two supporting letters, 8 May 2024, from his pastor and brother wherein they acknowledge the applicant has suffered from mental and physical issues associated with his service in Vietnam.

4. A review of the applicant's record shows:

a. He enlisted in the Regular Army on 19 July 1966.

b. His DA Form 20 (Enlisted Qualification Record), Item 31 (Foreign Service) shows he received overseas tour credit for service in Vietnam from 11 December 1967 to 10 December 1968

c. On 17 April 1967, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for failing to report to kitchen patrol on 16 April 1967. His punishment included forfeiture of \$10.00.

d. On 17 July 1967, he accepted NJP under the provisions of Article 15, UCMJ, for failing to go at the time prescribed to his appointed place of duty on 14 July 1968. His punishment included reduction to the rank/grade of private first class (PFC)/E-3 (suspended for 30 days) and forfeiture of \$15.00 for one month.

e. On 24 September 1968, he accepted NJP under the provisions of Article 15, UCMJ, for being drunk and disorderly in quarters by tearing up books, magazines, and calendars. His punishment included reduction to the rank/grade of PFC/E-3.

f. On 17 February 1969, he accepted NJP under the provisions of Article 15, UCMJ, for, on or about 8 February 1969, absenting himself from his unit and did remain so absent until on or about 13 February 1969 His punishment included reduction to the rank/grade of private/E-2, 14 days restriction, and 14 days extra duty.

g. On 27 February 1969, he accepted NJP under the provisions of Article 15, UCMJ, for, on or about 17 February 1969, absent himself from his unit and did remain so absent until on or about 20 February 1969 His punishment included reduction to the rank/grade of private/E-1 and 30 days extra duty.

h. The complete facts and circumstances surrounding the applicant's discharge are not available for the Board to review with this case.

i. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged in the rank/grade of private/E-1 on 23 May 1969 under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge Unfitness and Unsuitability). He completed 2 years, 9 months, and 12 days of net active service with lost time from 8 February 1969 to 12 February 1969, 17 February 1969 to

19 February 1969, 8 April 1969 to 9 April 1969, and 3 May 1969 to 15 May 1969. His service was characterized as under conditions under than honorable. He was issued the separation program number "28B" and the reenlistment code "3 and "3b". Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized), shows he was awarded or authorized the following:

- Vietnam Campaign Medal with two bronze service stars
- Republic of Vietnam Campaign Medal
- Vietnam Unit Citation
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)

j. His DD Form 215 (Correction to DD Form 214), 8 July 1976, added an entry to item 30 (Remarks) of DD Form 214. This entry indicated he was issued a Clemency Discharge in recognition of satisfactory completion of alternate service pursuant to Presidential Proclamation 4313.

5. On an unspecified date, the Army Discharge Review Board denied his application for review of his discharge from the Army and notified him that his request should be made to the Army Board of Correction of Military Records.

6. 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.

7. Presidential Proclamation 4313, issued on 16 September 1974, provided for the issuance of a clemency discharge to members of the Armed Forces who were in an unauthorized absence status and certain former Soldiers who voluntarily entered into and completed an alternate restitution program specifically designed for former Soldiers who received a less than honorable discharge for AWOL-related incidents between August 1964 and March 1973.

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

9. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his Under Other Than Honorable Conditions (UOTHC) characterization of service. 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 19 July 1966.
- DA Form 20 (Enlisted Qualification Record), Item 31 (Foreign Service) shows he received overseas tour credit for service in Vietnam from 11 December 1967 to 10 December 1968.
- On 17 April 1967, he accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for failing to report to kitchen patrol on 16 April 1967. His punishment included forfeiture of \$10.00.
- On 24 September 1968, he accepted NJP under the provisions of Article 15, UCMJ, for being drunk and disorderly in quarters by tearing up books, magazines, and calendars.
- On 17 February 1969, he accepted NJP under the provisions of Article 15, UCMJ, for, on or about 8 February 1969, absenting himself from his unit and did remain so absent until on or about 13 February 1969.
- On 27 February 1969, he accepted NJP under the provisions of Article 15, UCMJ, for, on or about 17 February 1969, absent himself from his unit and did remain so absent until on or about 20 February 1969.
- The complete facts and circumstances surrounding the applicant's discharge are not available for the Board to review with this case.
- His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged in the rank/grade of private/E-1 on 23 May 1969 under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge Unfitness and Unsuitability). He completed 2 years, 9 months, and 12 days of net active service with lost time from 8 February 1969 to 12 February 1969, 17 February 1969 to 19 February 1969, 8 April 1969 to 9 April 1969, and 3 May 1969 to 15 May 1969. His service was characterized as under conditions other than honorable. He was issued the separation program number “28B” and the reenlistment code “3 and “3b”.
- His DD Form 215 (Correction to DD Form 214), 8 July 1976, added an entry to item 30 (Remarks) of DD Form 214. This entry indicated he was issued a Clemency Discharge in recognition of satisfactory completion of alternate service pursuant to Presidential Proclamation 4313.

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 was given an undesirable discharge and subsequently a clemency discharge. He spent one year in Vietnam. When he came back, he was suffering from undiagnosed post-traumatic stress disorder (PTSD). He was involved in the Tet Offense in 1968. On 25 September 1968, he was referred for mental hygiene, due to loss of emotional control. He had been drinking heavily and begging for help in the wrong manner. At the time, PTSD was not a recognized

diagnosis. He still has problems dealing with what he did and what happened during that time.

d. Due to the period of service no active-duty electronic medical records were available for review and no hardcopy medical documentation was submitted by the applicant.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 60% service connected, including 50% for PTSD.

f. 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.

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 deployed to a combat zone and is currently service connected for PTSD.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The complete facts and circumstances surrounding the applicant's discharge are not available for review. However, there is evidence the applicant engaged in the following: FTR, being drunk and disorderly, and being AWOL. The applicant is 50% service-connected for combat related PTSD. Given the association between PTSD and avoidance, the applicant's misconduct of being AWOL and his failure to report are mitigated by his BH condition. In addition, given the association between PTSD and the use of substances to alleviate the symptoms of the disorder, his misconduct of being drunk and disorderly is also mitigated by his BH condition.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 Board reviewed and concurred with the behavioral health advisor's review finding sufficient evidence to support the applicant had a behavioral health condition during military service that mitigated his misconduct. The Board also noted the punishment was too harsh for the misconduct.

2. The Board considered the following Kurta questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating condition of PTSD.

b. Did the condition exist or experience occur during military service? Yes. The applicant deployed to a combat zone and is currently service connected for PTSD.

c. Does the condition or experience actually excuse or mitigate the discharge? Yes. The complete facts and circumstances surrounding the applicant's discharge are not available for review. However, there is evidence the applicant engaged in the following: FTR, being drunk and disorderly, and being AWOL. The applicant is 50% service-connected for combat related PTSD. Given the association between PTSD and avoidance, the applicant's misconduct of being AWOL and his failure to report are mitigated by his BH condition. In addition, given the association between PTSD and the use of substances to alleviate the symptoms of the disorder, his misconduct of being drunk and disorderly is also mitigated by his BH condition.

3. Prior to the closing of the Board it was noted the applicant's DA Form 20 showed he served in Vietnam and his service in Vietnam authorized him additional awards not listed on his DD Form 214, ending on 23 May 1969. The awards will be administratively added to his DD Form 214.

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 his DD Form 214, ending on 23 May 1969, be amended to show his character of service as under honorable conditions (general).

2. The applicant's DA Form 20 shows he served in Vietnam from 11 December 1967 through 10 December 1968 and was authorized additional awards not listed on his DD Form 214, ending on 23 May 1969. Amend the applicant's DD Form 214 by:

- adding the Republic of Vietnam Gallantry Cross with Palm Unit Citation
- deleting two bronze service stars on his already awarded Vietnam Service Medal and adding on silver service star

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, 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. Presidential Proclamation 4313, issued on 16 September 1974, provided for the issuance of a clemency discharge to members of the Armed Forces who were in an unauthorized absence status and certain former Soldiers who voluntarily entered into and completed an alternate restitution program specifically designed for former Soldiers who received a less than honorable discharge for AWOL-related incidents between August 1964 and March 1973. Alternate service was to be performed under the supervision of the SSS. When the period of alternate service was completed satisfactorily, the SSS would notify the individual's former military service. The military services issued the actual clemency discharges. The clemency discharge is a neutral discharge, neither honorable nor less than honorable. The clemency discharge did not affect the underlying discharge and did not entitle the individual to benefits administered by the VA. Soldiers who were AWOL entered the program by returning to military control and accepting a discharge for the good of the service in lieu of trial by court-martial.

//NOTHING FOLLOWS//