

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 April 2025

DOCKET NUMBER: AR20240009864

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions discharge
- a video/telephonic 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)
- DD Form 215 (Correction to DD Form 214, Report of Separation from Active Duty)
- DD Form 4 (Enlistment Record – Armed Forces of the United States)
- Medical Documents (13 pages) in support of his claim

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 has received no assistance, medical or other benefits, no burial benefits, survivor benefits for served time in an active conflict.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 16 February 1967.
 - b. On 3 August 1967, at Fort Leonard Wood, MO, the applicant was found guilty by a special court-martial (SPCM) of being absent without leave (AWOL) from on or about 15 June 1967 until on or about 14 July 1967. He was sentenced to confinement at hard labor for two months and to forfeit \$60.00 pay per month for two months.

c. On 7 August 1967, the convening authority approved the sentence, and ordered it duly executed.

d. SPCM Order number 144, issued at Fort Leonard Wood, MO, on 15 August 1967, shows his sentence was suspended until 7 October 1967, unless the suspension is sooner vacated, the unexecuted portion of the sentence will be remitted.

e. He served in Vietnam from 14 September 1967 to 13 September 1968.

f. He received nonjudicial punishment (NJP) on/for:

- On 8 August 1968, on or about 29 July 1968, in the Republic of Vietnam, did wrongfully have in his possession four cigarettes, more or less, of marijuana; he was reduced to private first class (suspended until 7 October 1968)
- 12 January 1969, on or about 22 December 1968, without authority, fail to go at the time prescribed to his appointed place of duty; he was reduced to private first class (suspended for 120 days)
- On 14 May 1969, on or about 0145 hours, 12 May 1968, be absent without leave (AWOL) until on or about 0430 hours, 14 May 1968; he was reduced to private/E-2

g. 1 December 1969, at Fort Ord, CA, the applicant was found guilty by a SPCM of on or about 22 July 1969, being AWOL until on or about 16 November 1969. He was sentenced to confinement at hard labor for 60 days, to forfeit \$50.00 pay per month for four months, and to be reduced to private/E-1.

h. On 8 December 1969, the convening authority approved the sentence and ordered it duly executed, but the execution of that portion thereof adjusting confinement at hard labor in excess of thirty days was suspended for 60 days.

i. SPCM Order number 928, issued at Fort Ord, CA, on 4 August 1970, shows his sentence was vacated. The unexecuted portion of the sentence to confinement was duly executed.

j. DD Form 458 (Charge Sheet) shows court martial charges were preferred on 4 August 1970, for on or about 22 January 1970, was AWOL, until on or about 29 July 1970.

k. On 9 September 1970, he 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.

l. His chain of command recommended approval and recommended an Undesirable Discharge Certificate be issued.

m. On 24 September 1970, the separation authority approved separation under the provisions of AR 635-200, chapter 10. He directed he be issued an Undesirable Discharge Certificate and that he be reduced to the lowest enlisted grade.

n. He was discharged on 30 September 1970, under other than honorable conditions. His DD Form 214 shows he completed 2 years, 4 months, and 28 days of service this period.

4. The Army Discharge Review Board (ADRB) after careful consideration under the Department of Defense (DOD) (Special) Discharge Review Program (SDRP), upgraded his characterization to under honorable conditions (General) effective 18 May 1977. He was reissued a DD Form 214, upgrading his character of service to under honorable conditions (General).

5. On 6 November 1978, the ADRB did not affirm his DOD SDRP upgraded discharge under review standards required by Public Law (PL) 95-126. This action does not change the discharge that he held but may impact on his ability to acquire VA benefits.

6. On 12 December 1978, the applicant was notified that Court Order Number 76-0530, dated 23 August 1978, that he might be entitled to a new review of his case.

7. On 4 January 1979, he was notified that the ADRB could not affirm his DOD SDRP upgraded discharge under review standards required by PL 95-126.

8. On 15 January 1979, a DD Form 215 (Correction to DD Form 214) was issued correcting item 27 (Remarks) to reflect his discharge was reviewed under the provisions of PL 95-126 and a determination made that characterization of service was warranted under the provisions of DOD SDRP 4 April 1977.

9. On 25 January 1979, the applicant was notified that the previous upgrading of his discharge has been re-reviewed by the ADRB as required by PL 95-126. As a result of this review, the Board determined that he did not qualify for upgrading under the new uniform standards for discharge review. Accordingly, his upgraded discharge under the DOD SDRP was not affirmed.

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 consideration for requesting upgrade of discharge characterization of service. Upon review of the applicant's petition and available military records, the Board found insufficient evidence of in-service mitigating factors for the misconduct and the applicant provided no evidence of post-service achievements or letters of support to weigh a clemency determination. Based upon a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

2. 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.

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. 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.

//NOTHING FOLLOWS//