

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 June 2025

DOCKET NUMBER: AR20240010140

APPLICANT REQUESTS:

- on behalf of her deceased husband, a Servicemember, upgrade of his under other than honorable conditions discharge
- a video or telephone hearing with the Board

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

- DD Form 149 (Application for Correction of Military Record), 12 August 2024
- Marriage License, State of NY, 1985
- Marriage Certificate, 1989
- Certificate of Death, State of NC, 2017
- Congressional letter, 2017
- letter, Department of Veterans Affairs (VA), 9 February 2017
- letter, National Personnel Records Center, 24 March 2017
- three letters of support, 21 July 2017, 15 October 2020, 27 September 2022
- VA National Cemetery Administration letter, 12 May 2023

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, on behalf of her deceased husband, a Servicemember:
 - he did not get medical care at the VA because he did not have a discharge document
 - he was not given a chance to apply for an upgrade of his discharge or a chance to prove that his mental health changed
 - his health started to fail in 2004; he was on dialysis and died of cancer in 2017
3. A review of the servicemember's service records show the following:

a. On 24 September 1970, he enlisted in the Regular Army for 3 years. He attained the rank of specialist 4 (SP4).

b. He served in Vietnam from 14 July 1971 to 4 April 1972.

c. He accepted nonjudicial punishment (NJP) on:

- 16 November 1970, for failing to go to his place of duty
- 15 June 1971, for being absent without leave (AWOL) from his unit from 15 May 1971 to 8 June 1971 (24 days); he was reduced to private/E-1 and forfeited some pay
- 12 October 1971, for losing his M-16 Rifle and for driving his vehicle in a negligent manner; he forfeited some pay
- 20 March 1972, for while riding in a truck, throwing one round of M-60 ammunition at Mr. SJC___, a Vietnamese national, causing injury to him; he forfeited some pay
- 27 July 1972, for being AWOL from his unit from 11 July 1972 to 18 July 1972; for being AWOL from same unit from 21 July 1972 to 21 July 1972; he was reduced to private first class (PFC)
- 3 August 1972, for being disobedience of a lawful order and failing to go to his place of duty; he forfeited some pay, and he received suspended restriction
- 27 October 1972, for being AWOL from 6 September 1972 to 20 October 1972; he received as suspended reduction to PFC, and forfeited some pay

d. A DD Form 458 (Charge Sheet) reflects court-martial charges were preferred against him, and he was charged with two specifications of AWOL:

- 7 November 1972 to 6 January 1973 (60 days)
- 12 January 1973 to 7 March 1973 (54 days)

e. On 13 March 1973, his unit commander notified him of his intent to separate him for unfitness under the provisions of Army Regulation 635-200, chapter 13 for unfitness and advised him of his rights. He understood he may be ineligible for many or all Veteran's benefits under both Federal and State laws and may expect to encounter substantial prejudice in civilian life.

f. On 27 April 1973, his unit commander recommended his elimination from the service by reason on unfitness with issuance of an Undesirable Discharge Certificate. His commander noted his performance was characterized by repeated incidents of AWOL and he did not have the capacity to become a satisfactory Soldier. His intermediate commander recommended approval of his elimination.

g. On 15 May 1973, the separation authority approved his elimination under the provisions with issuance of an Undesirable Discharge Certificate and directed his reduction to the lowest rank.

h. On 6 June 1973, he was discharged. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) reflects he was discharged under the provisions of Army Regulation 635-200, chapter 13-5a (1) with an under other than honorable conditions characterization of service. He completed 2 years, 2 months, and 28 days with 165 days' time lost.

4. In reaching its determination, the Board can consider the servicemember's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

5. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her late husbands under other than honorable conditions (UOTHC) characterization of service. On the DD Form 149, the applicant indicated Other Mental Health Issues are related to the request. More specifically, the applicant contends that the Service Member was not able to receive medical care through the VA due to being unable to produce a DD Form 214, which was not found until after he passed away. Moreover, she contends that the Service Member was unable prove that his life and mental health had been changed and was never granted the opportunity to have his discharge upgraded. 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 Service Member (SM) enlisted in the Regular Army on 24 September 1970, 2) he served in Vietnam from 14 July 1971 to 04 April 1972, 3) he accepted nonjudicial punishment (NJP) on numerous occasions for the following reasons: failing to go to his place of duty (16 November 1970), being absent without leave (AWOL) (15 June 1971), losing his M-16 Rifle and driving his vehicle in a negligent manner (12 October 1971), while riding in a truck, threw one round of M-60 ammunition at a Vietnamese National causing injury to him (20 March 1972), on 27 July 1972 for being AWOL from 11 July 1972 to 18 July 1972 and again from 21 July 1972 to 21 July 1972, for disobeying a lawful order and failing to go to his place of duty (03 August 1972), and on 27 October 1972 for being AWOL from 06 September 1972 to 20 October 1972, 4) court-martial charges were preferred against the applicant for two specifications of AWOL (07 November 1972 to 06 January 1973 and 12 January 1973 to 07 March 1973), 5) the Service Member was discharged on 06 June 1973 under the provisions of AR 635-200, Chapter 13-5a(1), with an under other than honorable characterization of service.

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.

d. A review of JLV was void of medical information. There is no documentation showing the Service Member was service-connected through the VA for any conditions and no VA medical records available for review.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the Service Member had a condition or experience during his time in service that mitigated his misconduct. However, the applicant contends the Service Member's misconduct was related to Other Mental Health Issues, and, per liberal guidance, her assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends the Service Member's misconduct was related 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? No. There were no in-service medical records available for review and the applicant provided no medical documentation supporting her assertion of the Service Member's Other Mental Health Issues. In absence of documentation supporting her assertion, there is insufficient evidence to establish that the Service Member's misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, she contends the Service Member's misconduct was related to Other Mental Health Issues, and, per liberal guidance, her assertion is sufficient to warrant the Board's consideration.

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 Service Member'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. The Board considered the applicant's statement, the Service Member's record of service, the frequency and nature of the misconduct and the reason for separation. Based upon the misconduct leading to the separation and the recommendation found in the medical review related to liberal consideration, the following Kurta Questions were considered:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends the Service Member's misconduct was related 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? No. There were no in-service medical records available for review and the applicant provided no medical documentation supporting her assertion of the Service Member's Other Mental Health Issues.

2. The Board concurred with the medical advisor and determined there was insufficient evidence that the Service Member had a condition or experience during his time in service that mitigated his misconduct. However, the Board determined the punishment imposed for his misconduct of being AWOL for 2 days over a holiday weekend was too harsh. Based on this, the Board determined relief was appropriate to amend the characterization of service to under honorable conditions (general).

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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the Service Member's DD Form 214, for the period ending 6 June 1973 to show in item 24 (Character of Service): under honorable conditions (General).

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 begins its consideration of each case with the presumption of administrative regularity.

a. 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 (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. 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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

4. 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 13 established policy and provided procedures and guidelines for eliminating enlisted personnel found to be unfit or unsuitable for further military service. Despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort is unlikely to succeed; or rehabilitation is impracticable or his is not amenable to rehabilitation measures as indicated by medical and or personal history record.

d. Paragraph 13-5a(1). An individual is subject to separation under the provisions of this chapter for unfitness due to frequent incidents of a discreditable nature with civil or military authorities.

5. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (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.

6. 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.

7. 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/NR) 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//