

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2025

DOCKET NUMBER: AR20240010185

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to an honorable discharge.

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 16 April 1969

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 an upgrade of his characterization of service would allow him to receive mental health, medical care, and Department of Veterans Affairs (VA) benefits he currently cannot receive.
3. On his DD Form 149, the applicant indicates other mental health issues are related to his request.
4. A review of the applicant's records show:
 - a. He was inducted into the Army of the United States on 9 November 1967.
 - b. Headquarters, U.S. Army Training Center, Infantry, Fort Dix, NJ Special Orders Number 12, 12 January 1968 awarded him the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14) effective 9 December 1967.
 - c. Commander, Company C, 17th Engineer Battalion, 2d Armored Division, Fort Hood, TX memorandum (Certificate of Unsuitability for Enlistment/Reenlistment),

28 May 1968 notified his higher chain of command that the applicant was a sub-standard Soldier and should be barred from enlistment/re-enlistment in service. He noted his conduct and efficiency was unsatisfactory and was presently under charges under the Uniform Code of Military Justice (UCMJ) for disobeying an order from a superior noncommissioned officer. The applicant acknowledged the memorandum and signed the form on the same date.

d. Summary Court-Martial Order Number 4, issued by Headquarters 17th Engineer Battalion, 2d Armored Division on 17 June 1968, shows he pleaded guilty and was found guilty of two specifications of violating Article 91 of the UCMJ, specifically for disobeying the lawful order of a superior noncommissioned officer on 9 May 1968 and being disrespectful in deportment toward a superior noncommissioned officer on 9 May 1968. The sentence was confinement at hard labor for one month, forfeiture of \$63.00 for one month, and reduction to the rank/grade of Private/E-1. The sentence was approved and ordered to be executed on 17 June 1968, but the execution of the portion the portion of the confinement at hard labor was reduced to 15 days and suspended for 15 days unless vacated.

e. On 29 October 1968, he accepted non-judicial punishment under the provisions of Article 15 of the UCMJ for disobeying an order. His punishment was extra duty and restriction for 14 days. He did not appeal.

f. On 28 January 1969, his immediate commander notified him that he was being considered for separation under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability) as unfit for military service. (Note: A review of his records is void of his acknowledgment)

g. Special Court-Martial Order Number 3, issued by Headquarters, 538th Engineer Battalion (Construction), on 30 January 1969, shows he pleaded guilty and was found guilty of violating numerous Articles of the UCMJ while assigned to Camp Sema San, Thailand; specifically,

(1) one specification of willfully disobeying a superior officer on or about 3 December 1968 in violation of Article 90;

(2) two specifications of behaving disrespectfully toward two superior officers on or about 3 December 196 in violation of Article 89;

(3) one specification of being disrespectful in language toward of superior noncommissioned officer in violation of violation of Article 91.

(4) The sentence was adjudged on 23 January 1969; his sentence consisted of reduction to the rank/grade of private/E-1, confinement at hard labor for 3 months, and

forfeiture of \$78.00 per month for 6 months. The sentence was ordered to be executed on 30 January 1969.

h. On 5 February 1969, he was formally recommended for elimination from service in accordance with Army Regulation 635-212 by reason of unfitness.

i. On 10 February 1969, a psychiatrist evaluated and diagnosed the applicant with passive aggressive personality disorder. He was determined to be mentally competent to understand board proceedings. He met medical retention standards and was psychiatrically cleared for processing for separation under the provisions of Army Regulation 635-212.

j. The applicant consulted with legal counsel on 12 February 1969, he was advised of the basis for the contemplated separation action, his right to present his case before a board of officers, to submit a statement in his own behalf, and to be represented by counsel. He elected to waive his rights, waived consideration of his case by a board of officers, and elected not to submit matters on his own behalf. He also indicated he understood he might expect to encounter substantial prejudice in civilian life by reason of a general discharge under honorable conditions. He also acknowledged he understood he might be ineligible for many or all benefits as a veteran under both Federal and State laws and that he might expect to encounter substantial prejudice in civilian life as a result of an undesirable discharge under conditions other than honorable.

k. Special Court-Martial Order Number 5, issued by Headquarters, U.S. Army Support, Thailand on 20 February 1969, ordered the unexecuted portion to confinement at hard labor, promulgated in Special Court-Martial Order Number 3, dated 30 January 1969 is remitted.

l. Special Court-Martial Order Number 44, issued by Headquarters, 29th General Support Group, APO U.S. Forces on 20 February 1969, ordered the suspended portion of the unexecuted portion of the approved sentence to confinement at hard labor is vacated. The unexecuted portion of sentence would be duly executed.

m. On 20 February 1969, his intermediate commander noted the applicant waived consideration of his case before a board and a rehabilitation transfer. He determined the applicant should be discharged and be furnished an Undesirable Discharge Certificate (DD Form 258A).

n. On 6 March 1969, he accepted non-judicial punishment under the provisions of Article 15 of the UCMJ, for two specifications of the UCMJ:

(1) on or about 20 February 1969 disobeying an order from a superior noncommissioned officer in violation of Article 91, and

(2) on or about 20 February 1969, wrongfully using provoking words towards another prisoner in violation of Article 117.

(3) His punishment was forfeiture of \$50 per month for 2 months and placement in correction custody for a period of 30 days. He did not appeal.

o. On 14 March 1969, the separation authority approved separation under the provisions of Army Regulation 635-212, by reason of unfitness. He directed the applicant receive an undesirable discharge certificate and that he be reduced to private/E-1.

5. The applicant was discharged on 16 April 1969. His DD Form 214 shows in:

- item 5a (Grade, Rate, or Rank) – Private
- item 5b (Pay Grade) – E-1
- item 13a (Character of Service) – Under Other Than Honorable Conditions
- item 22a(1) (Net Active Service This Period) – 1 year, 4 months, and 17 days

6. The Board should consider the applicant's overall 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 under other than honorable conditions (UOTHC) discharge to honorable. The applicant selected OMH on his application as related to the 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 was inducted into the Army of the United States on 9 November 1967.
- Memorandum (Certificate of Unsuitability for Enlistment/Reenlistment), dated 28 May 1968, notified his higher chain of command the applicant was a sub-standard Soldier and should be barred from enlistment/re-enlistment in service.
- Summary Court-Martial Order Number 4, issued by Headquarters 17th Engineer Battalion, 2d Armored Division on 17 June 1968, shows he pleaded guilty and was found guilty of two specifications of violating Article 91 of the UCMJ, specifically for disobeying the lawful order of a superior noncommissioned officer on 9 May 1968 and being disrespectful in deportment toward a superior noncommissioned officer on 9 May 1968.

- On 29 October 1968, he accepted non-judicial punishment under the provisions of Article 15 of the UCMJ for disobeying an order.
- On 28 January 1969, his immediate commander notified him that he was being considered for separation under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability) as unfit for military service.
- Special Court-Martial Order Number 3, issued by Headquarters, 538th Engineer Battalion (Construction), APO San Francisco on 30 January 1969, shows he pleaded guilty and was found guilty of violating numerous Articles of the UCMJ while assigned to Camp Sema San, Thailand; specifically,
 - (1) one specification of willfully disobeying a superior officer on or about 3 December 1968 in violation of Article 90;
 - (2) two specifications of behaving disrespectfully toward two superior officers on or about 3 December 1968 in violation of Article 89;
 - (3) one specification of being disrespectful in language toward a superior noncommissioned officer in violation of Article 91.
- On 6 March 1969, he accepted non-judicial punishment under the provisions of Article 15 of the UCMJ, for two specifications: on or about 20 February 1969 disobeying an order from a superior noncommissioned officer in violation of Article 91, and wrongfully using provoking words towards another prisoner in violation of Article 117.
- Applicant was discharged on 16 April 1969 under the provisions of Army Regulation 635-212, by reason of unfitness. His DD Form 214 shows his service was characterized as Under Other Than Honorable Conditions with SPN 28B and RE code 3.

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, "I need to have my discharge upgraded due to my mental health, I cannot receive VA benefits currently. The upgrade would allow me to receive access to care and would solve my homeless issue".

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant provided hardcopy medical documentation of a mental status evaluation for the purpose of separation, dated 10 February 1969, that diagnosed him with Passive Aggressive Personality Disorder. He was found to be mentally competent, met medical retention standards, and was psychiatrically cleared for processing separation under the provisions of Army Regulation 635-212.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant was not service connected and there is no evidence he was diagnosed with or participated in treatment for any behavioral health condition. JLV documents an encounter with the

applicant in November 2024, related to inadequate housing, since he was living in an unsound structure.

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 that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH as related to the request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed with Passive Aggressive Personality Disorder during a mental status evaluation for the purpose of discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected OMH on the application as related to the request, there is insufficient evidence of any mitigating BH condition. There is evidence the applicant participated in a mental status evaluation for the purpose of separation that diagnosed him with Passive Aggressive Personality Disorder. However, a personality disorder would not provide mitigation for his misconduct. A personality disorder is not a mental illness, it describes personality traits considered to be under volitional control. In addition, the VA did not service-connect the applicant for any BH condition nor does the electronic record indicate the applicant was diagnosed or treated for any mental health condition. And while the applicant selected OMH on his application, there is no medical documentation substantiating any BH condition.

h. Per Liberal Consideration guidelines, selection of OMH on the application is sufficient to warrant consideration by the Board.

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 disobeying a superior officer, being disrespectful in department, and using disrespectful language punishable under the Uniform Code of Military Justice with a punitive discharge. The Board found no error or injustice in the separation proceedings and designated characterization of service.

2. The Board considered the following Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH as related to the request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant was diagnosed with Passive Aggressive Personality Disorder during a mental status evaluation for the purpose of discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected OMH on the application as related to the request, there is insufficient evidence of any mitigating BH condition.

3. The Board concurred with the medical advisor's review finding insufficient evidence the applicant had a condition or experience during service that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

4. Prior to closing the discussion, the Board reviewed and concurred with the administrative note below to more accurately depict the military service of the applicant.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> | |
|--------------|--------------|--------------|----------------------|
| : | : | : | 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.



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.

ADMINISTRATIVE NOTE(S):

The applicant is authorized administrative correction of his DD Form 214 for the period ending 16 April 1969 without Board action to show award of the Sharpshooter Marksmanship Qualification Badge with Rifle Bar (M-14).

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. Section 1556 of Title 10, U.S. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic policy for the separation of enlisted personnel.

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.

4. Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), then in effect, set forth the policy for administrative separation for unfitness. It provided, in pertinent part, that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued unless the particular circumstances warranted a general or an honorable discharge.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; 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.

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/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.

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, Boards 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//