

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2025

DOCKET NUMBER: AR20240010923

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge), for service from 7 January 1971 to 30 October 1972

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20100012878 on 21 October 2010.
2. The applicant states, in effect, one night he was on guard duty when it started to rain. He called the duty officer to tell him that he needed his poncho, but the radio didn't work. He went to his room and the duty officer found him there. He was punished for not being at his place of duty. He was told to accept his punishment so the duty officer's record would look better. He believes this was racially motivated because the officer was black. He decided to go absent without leave (AWOL). Subsequently, he was charged with desertion. He turned himself in and was placed in the stockade. A captain told him he would get him out of the stockade if he signed the discharge paperwork. He has lived in a homeless shelter, and a doctor at a Veterans Affairs facility has diagnosed him with post-traumatic stress disorder (PTSD).
3. On 7 January 1971, the applicant enlisted in the Regular Army for 3 years.
4. He served in Vietnam from 9 August 1971 to 22 April 1972.
5. He accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 29 June 1972, for absenting himself from his place of duty, on or

about 23 June 1972. His punishment included forfeiture of \$75.00 for one month, and 14 days extra duty.

6. On or about 2 August 1972, the applicant was reported as AWOL and remained absent until he returned to military control on or about 12 September 1972.

7. Court-martial charges were preferred against the applicant on 12 September 1972, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL.

8. The applicant consulted with legal counsel on 12 September 1972, and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an undesirable discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service, he acknowledged he understood that if his request for discharge was accepted, he may be discharged UOTHC and furnished an Undesirable Discharge Certificate. He understood that, as a result of the issuance of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State law. He also understood that he may expect to encounter substantial prejudice in civilian life by reason of an undesirable discharge.

b. On 19 September 1972, he submitted a statement in his own behalf, stating he had served in Vietnam and did well while there. He did not feel he should have to serve any longer. He wanted to get married and settle down.

9. He underwent a mental status evaluation on the same date. He was psychiatrically cleared to understand and participate in board proceedings.

10. On 27 September 1972, the applicant's commander recommended approval of his request for discharge with issuance of an Undesirable Discharge Certificate.

11. Consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge on 6 October 1972, and directed issuance of a DD Form 258A (Undesirable Discharge Certificate).

12. The applicant was discharged on 30 October 1972. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. He was discharged in the lowest enlisted grade and his service

characterized as UOTHC. He completed 1 year, 8 months, and 14 days of net active service this period with 41 days of lost time.

13. He petitioned the ABCMR requesting upgrade of his UOTHC discharge. On 21 October 2010, the Board voted to deny relief and determined the overall merits of this case were insufficient as a basis for correction of the applicant's records.

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

15. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request of an upgrade of his under other than honorable conditions discharge. He contends PTSD and OMH 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 7 January 1971.
- Applicant served in the Republic of Vietnam from 9 August 1971 to 22 April 1972.
- He accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 29 June 1972, for absenting himself from his place of duty, on or about 23 June 1972.
- On or about 2 August 1972, the applicant was reported as AWOL and remained absent until he returned to military control on or about 12 September 1972.
- Court-martial charges were preferred against the applicant on 12 September 1972, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL.
- Applicant was discharged on 30 October 1972. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. He was discharged in the lowest enlisted grade and his service characterized as UOTHC.

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, one night he was on guard duty when it started to rain. He called the duty officer to tell him that he needed his poncho, but the radio didn't work. He went to his room and the duty officer found him there. He was punished for not being at his place of duty. He was told to accept his punishment so the duty officer's record would look better. He believes this was racially motivated because the officer was black. He decided to go absent without leave (AWOL). Subsequently, he was

charged with desertion. He turned himself in and was placed in the stockade. A captain told him he would get him out of the stockade if he signed the discharge paperwork. He has lived in a homeless shelter, and a doctor at a Veterans Affairs facility has diagnosed him with post-traumatic stress disorder (PTSD). Contrary to the applicant's account, a statement submitted on his own behalf, dated 19 September 1972, states he had served in Vietnam and did well there. However, he did not feel he should have to serve any longer. He wanted to get married and settle down.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant provides hardcopy documentation of a mental status evaluation dated 19 September 1972, indicating the applicant had no mental illness and cleared him for any administrative action deemed appropriate by command. A medical examination on the same date, states the applicant did not demonstrate any psychiatric disorder.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. There is no evidence the applicant has participated in any behavioral health services or has been diagnosed with any condition.

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 during military service. However, his service record indicates the applicant deployed to a combat zone and this experience could potentially mitigate 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 PTSD and OMH as related to his request.

(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 did not provide any medical documentation substantiating his assertion of PTSD and OMH. There is no evidence of any in-service BH diagnoses and both medical documents from his time in service indicate he did not have a mental health or psychiatric condition. In addition, the VA has not service-connected the applicant for any BH condition and there are no VA electronic records indicating he has been treated for any mental health condition. However, the applicant deployed to a combat zone, the Republic of Vietnam, and much of his misconduct occurred after returning from his

deployment potentially indicating his experience of combat may have contributed to mental health issues. Given the association between multiple behavioral health conditions and avoidance, there is a likelihood the applicant's post-combat mental status contributed to his misconduct of AWOL.

h. Per Liberal Consideration, the applicant's assertion of PTSD and OMH 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 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 determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board considered the advising official findings, 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 during military service. However, his service record indicates the applicant deployed to a combat zone and this experience could potentially mitigate his discharge.

Kurta Questions:

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

(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 did not provide any medical documentation substantiating his assertion of PTSD and OMH. There is no evidence of any in-service BH diagnoses and both medical documents from his time in service indicate he did not have a mental health or psychiatric condition. In addition, the VA has not service-connected the applicant for any BH condition and there are no VA electronic records indicating he has been treated for any mental health condition. However, the applicant deployed to a combat zone, the Republic of Vietnam, and much of his misconduct occurred after returning from his deployment potentially indicating his experience of combat may have contributed to

mental health issues. Given the association between multiple behavioral health conditions and avoidance, there is a likelihood the applicant's post-combat mental status contributed to his misconduct of AWOL.

2. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct of going AWOL after returning from his tour in Vietnam. Although the applicant did not provide any post service achievements or character letters of support for the Board to weigh a clemency determination. The Board agreed under liberal consideration, the applicant deployed and served without incident during his time in Vietnam and relief is warranted with an upgrade to under honorable (general) conditions discharge. Based on this the Board granted relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

██████████ GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing his characterization of service as general, under honorable conditions.

[REDACTED]

[REDACTED]

[REDACTED]

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. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.
2. Title 10, U.S. Code, Section 1556, 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.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

4. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) on 25 August 2017. 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, 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 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.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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, 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//