

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2025

DOCKET NUMBER: AR20240013275

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable. Additionally, he requests appearance before the Board, via video/telephone.

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

DD Form 149 (Application for Correction of Military Record)

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 his discharge was unjust. He had undiagnosed post-traumatic stress disorder (PTSD) during his time in service. As a Vietnam Veteran he should have been considered for discharge upgrade; he served honorably.
3. A review of the applicant's service record reflects the following:
 - a. He enlisted in the Regular Army on 6 January 1971.
 - b. On 12 June 1971, he began service in the Republic of Vietnam.
 - c. On 9 March 1972, he accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for: disobeying a lawful general order, on or about 1 March 1972 by being in an off limits area; breaking curfew restriction on or about 1 March 1972; and being absent from his place of duty from 22 February to 2 March 1972. His punishment included reduction to E-2, forfeiture of \$75.00 per month for two months, and 30 days restriction.
 - d. He departed the Republic of Vietnam, on or about 11 March 1972.

e. On 27 July 1972, he accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his place of duty, on or about 25 July 1972. His punishment included forfeiture of \$50.00 for one month, and 14 days extra duty.

f. On or about 19 August 1972, he was reported absent without leave (AWOL) and remained absent until he returned to military authorities, on or about 18 September 1972.

g. On or about 20 September 1972, he was reported AWOL a second time, and remained absent until he returned to military authorities, on or about 5 February 1973.

h. Before a special court-martial at Fort Bragg, NC on 7 March 1973, he was found guilty of two specifications of AWOL.

i. The court sentenced him to reduction to E-1, confinement at hard labor for 60 days, and forfeiture of \$100.00 per month for two months. The sentence was approved on 19 March 1973.

j. On or about 22 November 1973, he was reported AWOL a third time, and remained absent until he returned to military authorities, on or about 30 November 1973.

k. On or about 3 December 1973, he was reported AWOL a fourth time, and remained absent until he returned to military authorities, on or about 13 December 1973.

l. On or about 31 December 1973, he was reported AWOL a fifth time, and remained absent until he returned to military authorities, on or about 4 January 1974.

m. Court-martial charges were preferred against him on 10 January 1974, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with three specifications of being AWOL.

(1) He consulted with legal counsel on 13 February 1974, 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.

(2) Subsequent to receiving legal counsel, he 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.

n. He underwent a mental status evaluation on 14 March 1974. He was psychiatrically cleared to understand and participate in board proceedings.

o. On 14 March 1974, his commander recommended approval of his request for discharge with issuance of an Undesirable Discharge Certificate.

p. By legal review on 18 March 1974, his separation action was found to be legally sufficient for further processing.

q. Consistent with the chain of command recommendations, the separation authority approved his request for discharge on 18 March 1974, and directed issuance of a DD Form 258A (Undesirable Discharge Certificate).

r. The applicant was discharged on 21 March 1974. His DD Form 214 (Report of Separation from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 10-1. He was discharged in the lowest enlisted grade and his service characterized as UOTHC. He completed 2 years, 5 months, and 7 days of net active service this period with 273 days of lost time.

4. On 29 April 2025, the ABCMR staff requested that the applicant provide medical documents to support his mental health issues. He was advised that he could contact the doctor that diagnosed him or his Veterans Affairs regional office for assistance. He did not respond.

5. 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.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends he was experiencing PTSD, which mitigates his misconduct. 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 applicant enlisted in the Regular Army on 6 January 1971; 2) The applicant was deployed to Vietnam from 12 June 1971-11 March 1972; 3) On 9 March 1972, the applicant accepted non-judicial punishment (NJP) for: disobeying

a lawful general order by being in an off limits area; breaking curfew restriction; and being absent from his place of duty from 22 February to 2 March 1972; 4) On 27 July 1972, the applicant accepted NJP for failing to go at the time prescribed to his place of duty; 5) The applicant was found to be AWOL five times between August 1972- January 1974; 6) The applicant was discharged on 21 March 1974. His DD Form 214 (Report of Separation from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 10-1. He was discharged in the lowest enlisted grade and his service characterized as UOTHC. He completed 2 years, 5 months, and 7 days of net active service this period with 273 days of lost time.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experiencing PTSD, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition, including PTSD while on active service. He underwent a mental status evaluation on 14 March 1974. The applicant was not diagnosed with a mental health condition, and he was cleared from a psychiatric perspective to participate in the board proceedings.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition including PTSD, and he does not receive any service-connected disability for a mental health condition, including PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a mental health condition or experience which mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did engage in avoidant and erratic

behavior such as repeatedly going AWOL, not following orders, and not reporting to duty, which could be a natural sequela to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. Yet, the applicant contends he was experiencing a mental health condition or an experience which mitigates his misconduct, and per Liberal Consideration the contention alone is sufficient for 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 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 determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a mental health condition or experience which mitigates his misconduct.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD while on active service, which mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing PTSD, while he was on active service. The applicant did engage in avoidant and erratic behavior such as repeatedly going AWOL, not following orders, and not reporting to duty, which could be a natural sequela to PTSD. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition during active service. Yet, the applicant contends he was experiencing a mental health condition or an experience which mitigates his misconduct, and per Liberal Consideration the contention alone is sufficient for the board's consideration.

3. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted, the applicant's record reflects a pattern of

misconduct that includes multiple non-judicial punishments under Article 15 of the UCMJ, repeated incidents of AWOL, and a special court-martial conviction. The Board found the applicant’s offenses span a period following service in the Republic of Vietnam and exhibit disregard for lawful orders and military obligations. The applicant provided no evidence of post-service achievements, letters of support, or a compelling narrative of rehabilitation for the Board to weigh in favor of clemency. Absent mitigating factors or demonstrable post-service contributions, the Board found the characterization of service at separation is appropriate and equitable. Therefore, the Board denied relief.

4. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant

5. 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>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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):

1. Army Regulation 635-5 (Separation Documents), in effect at the time, stated the DD Form 214 was to list all decorations, service medals, campaign credits, and badges awarded or authorized.
2. A review of the applicant's record shows his DD Form 214, for the period ending 28 May 1970, is missing important entries that affect recognition for his acts of heroism. As a result, amend the DD Form 214 by adding the following entries in item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized):
 - Vietnam Service Medal with three bronze service stars
 - Republic of Vietnam Campaign Medal with 60 Device
 - Republic of Vietnam Gallantry Cross with Palm
 - 2 Overseas Service Bars
 - Sharpshooter (Rifle M-16) Badge

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. 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. Paragraph 2-9 states 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.

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.

4. 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.

5. 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.

6. 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//