

IN THE CASE OF: [REDACTED]  
[REDACTED]

BOARD DATE: 11 July 2023

DOCKET NUMBER: AR20220010894

APPLICANT'S REQUEST: reconsideration of his earlier request to upgrade his dishonorable discharge to general under honorable conditions.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20150010680, on 7 June 2016.

2. The applicant states that 32 years have lapsed since his misconduct, and he attributes his behavior to his mental and physical condition at the time; additionally, he was suffering from undiagnosed post-traumatic stress disorder (PTSD), which he had incurred while a teenager.

a. The applicant maintains that, since his discharge, he has grown and his military family would be proud of him; his father was airborne, and his grandfather was a paratrooper. The applicant also asserts that other Soldiers who were in situations similar, if not identical, to his received general discharges; he specifically notes a case involving Mr. J\_\_ Q. B\_\_.

b. On his application, in item13 (Are Any of the Following Issues/Conditions Related to Your Request), the applicant has checked boxes for PTSD, Other Mental Health (Conditions), and Sexual Assault/Harassment. On 9 January 2023, the Army Review Boards Agency (ARBA) asked the applicant, via letter, to provide medical documentation supporting his claims of behavioral health conditions; the applicant did not respond.

3. A review of the applicant's service record reveals the following:

a. On 3 February 1987, the applicant enlisted into the Regular Army for 4 years; following graduation from basic combat training, orders transferred the applicant to the

Defense Language Institute at Presidio of Monterey, CA, for advanced individual training (AIT) in military occupational specialty 97E (Interrogator) with a Polish Language additional skill identifier.

b. In or around November 1988, the applicant completed AIT, and orders assigned him to a military intelligence battalion at Fort Hood, TX; the applicant arrived at his new unit, on or about 22 November 1988. In or around November/December 1989, medical authority diagnosed the applicant with HIV (Human Immunodeficiency Virus). Effective 1 April 1989, his leadership promoted him to specialist four (SP4)/E-4.

c. At some point prior to 16 December 1989, the applicant's company commander ordered the applicant to "verbally advise all prospective sexual partners of your diagnosed condition prior to engaging in any sexual intercourse and to use condoms when engaging in sexual intercourse with a partner."

d. On 16 December 1989, someone discovered the applicant involved in sexual intimacy with another male Soldier. On or about 18 December 1989, the applicant took an overdose of medications and went to the emergency room of the fort's military hospital; military authority admitted him, and he remained in the hospital until 23 January 1990. At his discharge, the treating physician prepared a narrative summary, in which he wrote:

(1) The applicant claimed he had overdosed because his HIV diagnosis made him want to die; he maintained he had contracted HIV after three men raped him while he was stationed in California. The applicant denied engaging in homosexual activity and affirmed he was not an IV drug abuser, nor had he had blood transfusions.

(2) Under "Mental Status Examination," the doctor stated, "(the applicant) initially displayed a mildly depressed mood and a constricted affect until he was asked about the alleged homosexual rape experience. He then became quite tearful with sobbing and muffled speech, making statements such as 'they killed me' or 'they gave me AIDS.'"

(3) The doctor consulted the Psychology Service, and they tested the applicant; the testing revealed the applicant had a high IQ, and that he was someone who tended to "over-dramatize his need for help and (tended) to exaggerate his problems with a very negative view of himself and others." "In addition, there was noted a tendency of this individual to exaggerate physical symptoms to gain attention. The testing was most supportive of an Axis II diagnosis of personality disorder with dependent, avoidant, and passive-aggressive features."

(4) During the first few days of the applicant's hospitalization, the applicant remained "somewhat withdrawn, occasionally curling up in the chair of his room in a

fetal position, attempting to portray himself as a highly distressed individual, crying and sobbing and repeatedly making statements about the alleged homosexual rape."

(5) The medical staff had initially considered referring the applicant to a medical evaluation board because of his depressive symptoms; however, "patient's company commander, Captain C\_\_\_, made a visit to the ward and discussed the patient's legal status with his physician. (The commander) revealed that the day prior to admission, the patient had been apprehended by a Fort Hood MP (military police) while allegedly performing homosexual activities with another individual. The company commander further related that the Soldier had been informed that he would probably undergo a court-martial for these activities. The patient had not mentioned any of these problems as significant stressors to any of the staff or to his physician. It became apparent that he hoped to use his hospitalization as a clever means of avoiding prosecution. When he was confronted with these allegations, he stated rather blandly, 'I had planned to deal with that after getting out of the hospital.'"

(6) The applicant then resumed his depressed appearance and secluded himself in his room. "When it became apparent that his depressive presentation was not going to have its intended effect, the patient dropped this facade." Over the last week before his discharge, the applicant's mood improved; because the doctor found no evidence of psychotic features or any other indications that the applicant would not be competent to stand trial and participate in his defense, the doctor discharged the applicant from the hospital. At discharge, the doctor provided the following diagnoses:

- "Axis I, 309.40: Adjustment Disorder with mixed disturbance of emotions and conduct"
- "Axis II, 301.90: Personality Disorder with dependent, histrionic, and passive-aggressive features"
- "Axis III, #1: HIV positive, Stage 1"
- "Axis III, Old ligament tear, left knee"

e. On 14 February 1990, the applicant reentered the hospital, reporting he was having "ongoing suicidal thoughts in relation to his multiple stressor." On 28 February 1990, the physician discharged the applicant after first requiring him to sign a statement affirming he had no intention of harming himself or others and agreeing to seek mental health treatment. The doctor's final diagnosis was:

- "Axis I, 309.00: Adjustment Disorder with depressed mood"
- "Axis II, 309.90: Personality Disorder with avoidant and passive-aggressive features"
- "Axis III, #1; HIV positive, Stage I"
- "Axis III, #2: Left knee strain"
- "Axis III, #3: Syncopal episodes of unknown etiology"

f. On 13 March 1990, medical authority admitted the applicant once again to the Fort Hood military hospital; earlier and while absent without leave, the applicant had attempted suicide by overdosing on Tylenol, and, before being transferred, he had been admitted for treatment at an Air Force hospital. On 23 March 1990, medical authority discharged the applicant with the below-listed diagnoses:

- "Axis I, 309.00: Adjustment Disorder with depressed mood"
- "Axis II, 309.90: Personality Disorder with avoidant and passive-aggressive features"
- "Axis III, #1 Left knee strain"
- "Axis III, #2; HIV positive, Stage I"

g. On 23 March 1990, consistent with the applicant's pleas, a general court-martial found the applicant guilty of Uniform Code of Military Justice (UCMJ) violations.

(1) The court convicted the applicant of the following UCMJ offenses:

- Article 90 (Willful Disobedience of a Commissioned Officer's Lawful Order) – the applicant's company commander had ordered the applicant to advise all prospective sexual partners of his diagnosed medical condition, and, on 16 December 1990, the applicant had willfully disobeyed that order
- Article 125 (Sodomy) – on 16 December 1989, the applicant committed sodomy with another male Soldier
- Article 134 (General Article – Indecent Acts) – on 16 December 1989, the applicant committed indecent acts with another male Soldier

(2) The court sentenced the applicant to 5-years' confinement, forfeiture of all pay and allowances, reduction to private (PV1)/E-1, and a dishonorable discharge; the court immediately remanded the applicant to confinement.

(3) On 4 April 1990, the general court-martial convening authority approved the sentence and, except for the dishonorable discharge, ordered its execution; however, the convening authority suspended that part of the applicant's confinement that exceeded seven months.

h. On 6 April 1990, medical authority admitted the applicant to the hospital for treatment. On 14 May 1990, the U.S. Army Court of Military Review affirmed the findings of guilty and the sentence in the applicant's case. On 19 June 1990, medical authority released the applicant back to confinement, but he returned to the hospital for treatment, on 30 July 1990. On 9 August 1990, medical authority returned the applicant to confinement.

i. On 12 September 1990, a general court-martial order announced the completion of the applicant's appellate review process and directed the execution of the applicant's dishonorable discharge. On 14 September 1990, the Army separated the applicant with a dishonorable discharge; his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 3 years, 1 months, and 17 days of his 4-year enlistment contract, with lost time from 19900323 through 19900913. Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) lists the Army Service Ribbon, Army Good Conduct Medal (1st Award), and two marksmanship qualification badges.

j. On 16 July 2014, the applicant petitioned the ABCMR, requesting an upgrade to general under honorable conditions.

(1) The applicant argued a precedent had already been set in the case U.S. v. J\_\_ Q. B\_\_, someone who had been tried for an offense identical to the applicant's and then received a general discharge. In addition, the applicant wrote a letter to the President of the United States, outlining his situation and arguing reasons why the Board should grant his petition. The applicant disclosed that another Soldier had given his name to CID (U.S. Army Criminal Investigation Command) in exchange for a better character of service; the CID then following the applicant and found him with another Soldier in a compromising situation. The applicant added that that other Soldier later committed suicide rather than face a court-martial.

(2) On 7 June 2016, the Board voted to deny relief after reviewing the applicant's arguments and his service record. The Board noted the case referenced by the applicant (U.S. v. J\_\_ Q. B\_\_) could not be located, but, in any case, a court's ruling would not necessarily result in the same finding for the applicant. The Board concluded that there were aggravating factors in the applicant's court-martial conviction, and, as such, an upgrade was not warranted.

4. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10 (Armed Forces), U.S. Code, section 1552 (Correction of Military Records: Claims Incident Thereto), the ABCMR is not empowered to set aside a conviction. Rather, the law only authorizes the Board to change the severity of the sentence imposed in the court-martial process, and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

5. During the applicant's era of service, Department of the Army policy stated homosexuality was incompatible with military service. A person who committed homosexual acts seriously impaired discipline, good order, morale, and security of a military unit.

a. In 1993, the Army implemented the Don't-Ask-Don't-Tell (DADT) policy; this policy banned the military from investigating service members about their sexual orientation. Service members could be investigated and administratively discharged if they made a statement that they were lesbian, gay, or bisexual; engaged in physical contact with someone of the same sex for the purposes of sexual gratification; or married, or attempted to marry, someone of the same sex.

b. A 20 September 2011 memorandum by the Under Secretary of Defense (Personnel and Readiness) memorandum, subject: Correction of Military Records Following Repeal of Section 654 of Title 10, U.S. Code, provides policy guidance for Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs).

(1) The memorandum states that, effective 20 September 2011, Service DRBs and BCM/NRs should normally grant requests for upgrade of an adverse character of service and make the following changes:

- change narrative reason for separation to "Secretarial Authority" and SPD code to "JFF"
- revise character of service to honorable
- amend RE code to an immediately-eligible-to-reenter (i.e. RE-1)

(2) For Board to grant upgrades, the circumstances of an applicant's separation must meet the following criteria:

- the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT; and
- there were no aggravating factors in the record, such as misconduct

(3) The memorandum further states that, although Boards must evaluate each request on a case-by-case basis, the award of an honorable or a general discharge normally indicates the absence of aggravating factors.

(4) The memorandum recognized that, although BCM/NRs have a significantly broader scope of review and are authorized to provide much more comprehensive remedies than are available from the DRBs, it is Department of Defense (DOD) policy that broad, retroactive corrections of records from applicants discharged under DADT [or prior policies] are not warranted.

(5) Although DADT was repealed effective 20 September 2011, it was the law and reflected the view of Congress during the period it was the law. Similarly, DOD regulations implementing various aspects of DADT (or prior policies) were valid regulations during those same or prior periods. Thus, Boards should not consider the

issuance of a discharge under DADT (or prior policies), by itself, as constituting an error or injustice sufficient to invalidate an otherwise properly taken discharge action.

6. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

7. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

8. Based on the applicant's petition referring to PTSD, other mental health conditions, and sexual assault/harassment, the ARBA medical staff provided a medical review for the Board members. See the "MEDICAL REVIEW" section below. This agency does not provide copies of ARBA Medical Staff reviews to applicants and/or their legal representatives prior to adjudication of the case.

#### MEDICAL REVIEW:

The applicant is applying to the ABCMR requesting reconsideration of his earlier request to upgrade his dishonorable discharge to general under honorable conditions. He contends he experienced military sexual trauma (MST) and had mental health conditions including PTSD which mitigated his discharge. 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 3 February 1987; 2) The applicant arrived to Ft. Hood around 22 November 1988, and around November/December 1989, the applicant was diagnosed with HIV; 3) On 23 March 1990, consistent with the applicant's pleas, a general court-martial found the applicant guilty of: A) Article 90 (Willful Disobedience of a Commissioned Officer's Lawful Order) – the applicant's company commander had ordered the applicant to advise all prospective sexual partners of his diagnosed medical condition (HIV) and use condoms. The applicant willfully disobeyed that order; B) Article 125 (Sodomy); C) Article 134 (General Article – Indecent Acts); 4) The applicant was discharged on 14

September 1990, Chapter 3, as the result of court-martial with a dishonorable character of service; 5) On 7 June 2016, ABCMR considered and denied the applicant's petition for upgrade of his discharge. The Board concluded that there were aggravating factors in the applicant's court-martial conviction and an upgrade was not warranted.

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

b. On his application, the applicant noted MST, PTSD, and other mental health conditions were related to his request, as mitigating factors in the circumstances that resulted in his separation. The applicant was admitted to a psychiatric facility multiple times while on active service for suicidal behavior or thoughts. Initially, he was admitted on 18 December 1989 after the applicant took an overdose of medication. He stated he attempted suicide because of his HIV status, which he stated he contracted as the result of MST. He was seen by Psychology Service and administered psychological testing, which provided evidence the applicant was experiencing a personality disorder. The inpatient psychiatric staff initially considered referring the applicant for a medical evaluation board due to the severity of the applicant's presented depressed symptoms. However, once the applicant's Commander alerted them the situation surrounding his court martial hearing and the alteration in the applicant's symptoms presentation, the medical staff did not proceed with the recommendation of a medical board. The applicant was stabilized and was discharged on 23 January 1990 with a diagnosis of adjustment disorder and a personality disorder. The applicant was admitted again to a military inpatient psychiatric ward from 14-28 February 1990 for suicidal ideation. He was diagnosed with the same diagnoses. He was admitted a third time after taking an overdose of Tylenol while AWOL on 13 March 1990. He was diagnosed with the same diagnoses and released 23 March 1990. He remained in the custody of his unit till his trial. The applicant was repeatedly found on each of his inpatient hospitalizations to not be experiencing psychosis and was fully oriented.

c. A review of JLV provided no evidence the applicant has been seen by the VA for treatment related any mental health disorder including PTSD, and the applicant receives no service-connected disability. The applicant did not provide any additional civilian medical documentation.

d. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence to support the applicant had condition or experience that mitigated his discharge to warrant an upgrade of his discharge.

Kurta Questions



(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced MST. He was repeatedly admitted to a military inpatient psychiatric ward for suicidal behavior and thoughts while on active service and was diagnosed consistently with an adjustment disorder and a personality disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced MST. He was repeatedly admitted to an inpatient psychiatric ward for suicidal behavior and thoughts while on active service and was diagnosed consistently with an adjustment disorder and a personality disorder.

(3) Does the condition experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence the applicant was experiencing a mental health condition while on active service. In addition, he reported experiencing MST. However, he was never identified as experiencing psychosis or unaware of his actions. While the applicant was found guilty of two charges related to similar policies in place prior to Don't-Ask-Don't-Tell (DADT), he was also found guilty of the misconduct of willfully disobeying his commander's order of advising all prospective sexual partners of his HIV status prior to sexual activity and use condoms when engaging in sexual intercourse with a partner. There is no nexus between the applicant's mental health condition or experience of MST and this type of misconduct. Therefore, his discharge was not based solely on a policy similar to DADT, and the applicant's additional misconduct is not mitigatable by his mental health conditions or MST. However, the applicant contends he experienced MST, PTSD, and another mental health condition and that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The Board found the applicant's trial by a general court-martial was warranted by the gravity of the offense charged. His conviction and discharge were accomplished in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which he was convicted. He was given a dishonorable discharge pursuant to an approved sentence of a general court-martial. The appellate review was completed, and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process, and the rights of the applicant were fully protected.

b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board reviewed and was persuaded by the medical advisory opinion finding insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided insufficient evidence of post-service achievements, letters of reference/support, or evidence of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 to amend the decision of the ABCMR set forth in Docket Number AR20150010680, on 7 June 2016.

[Redacted]

[Redacted]

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[Redacted]

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[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. Title 10, USC, section 1552 provides that, with respect to courts-martial, and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of the Secretary's Department may extend only to actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.

2. Title 10, United State Code, section 1556 (Ex Parte Communications Prohibited) provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) stated an honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. An honorable discharge could be furnished when disqualifying entries in the Soldier's military record was outweighed by subsequent honest and faithful service over a greater period of time. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge) stated a general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities issued the Soldier this character of service when their military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-10 (Dishonorable Discharge) stated separation authorities could issue a dishonorable discharge pursuant only to an approved sentence of a general court-martial. The regulation required the completion of appellate review and that proper authority had ordered the affirmed sentence to be duly executed.

4. The Army implemented the Don't-Ask-Don't-Tell (DADT) policy in 1993 during the Clinton administration; this policy banned the military from investigating service

members about their sexual orientation. Service members could be investigated and administratively discharged if they made a statement that they were lesbian, gay, or bisexual; engaged in physical contact with someone of the same sex for the purposes of sexual gratification; or married, or attempted to marry, someone of the same sex.

5. A memorandum by the Under Secretary of Defense (Personnel and Readiness) memorandum, dated 20 September 2011, subject: Correction of Military Records Following Repeal of Section 654 of Title 10, U.S. Code, provides policy guidance for Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs).

a. The memorandum states that, effective 20 September 2011, Service DRBs and BCM/NRs should normally grant requests for upgrade of an adverse character of service and make the following changes:

- change narrative reason for separation to "Secretarial Authority" and SPD code to "JFF"
- revise character of service to honorable
- amend RE code to an immediately-eligible-to-reenter (i.e. RE-1)

b. For Board to grant upgrades, the circumstances of an applicant's separation must meet the following criteria:

- the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT; and
- there were no aggravating factors in the record, such as misconduct

c. The memorandum further states that, although Boards must evaluate each request on a case-by-case basis, the award of an honorable or a general discharge normally indicates the absence of aggravating factors.

d. The memorandum recognized that, although BCM/NRs have a significantly broader scope of review and are authorized to provide much more comprehensive remedies than are available from the DRBs, it is Department of Defense (DOD) policy that broad, retroactive corrections of records from applicants discharged under DADT [or prior policies] are not warranted. Although DADT is repealed effective 20 September 2011, it was the law and reflected the view of Congress during the period it was the law. Similarly, DOD regulations implementing various aspects of DADT (or prior policies) were valid regulations during those same or prior periods. Thus, Boards should not consider the issuance of a discharge under DADT (or prior policies), by itself, as constituting an error or injustice sufficient to invalidate an otherwise properly taken discharge action.

6. 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 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.

7. 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 DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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.

8. 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, 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//