

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 September 2024

DOCKET NUMBER: AR20230004602

APPLICANT REQUESTS: through counsel, in effect -

a. correction of her DD Form 214, Certificate of Release or Discharge from Active Duty to show:

- an honorable characterization of service (upgrade her already-upgraded general discharge to honorable)
- restoration of rank/pay grade to sergeant (SGT/E-5) with back pay and allowances by setting aside her punishment under Article 15, Uniform Code of Military Justice (UCMJ)
- she was medically retired due to service-connected, combat related, post-traumatic stress disorder (PTSD)
- a narrative reason for separation of "Disability, Permanent (Enhanced)"
- a separation designator code (SPD) of "SEJ"
- a separation authority of Army Regulation (AR) 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, chapter 4

(1) or in the alternative:

- an honorable characterization of service
- a narrative reason for separation of "Completion of Required Active Service"
- an SPD code of "MBK"
- a reentry (RE) code of "1"
- a change in the separation authority to AR 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, chapter 4

(2) or in the alternative:

- an honorable characterization of service
- a narrative reason for separation of "rehabilitation failure"
- an SPD code to "JPD"
- a RE code of "1"
- a change in the separation authority to AR 635-200, Chapter 9

b. all pay and allowances together with all benefits she may have been deprived of as a result of her discharge, from the date of the discharge to the date of end of her last enlistment period, including but not limited to -

- reimbursement for medical insurance necessitated by cessation of coverage
- quarters allowance
- ration allowance
- accumulated leave pay
- reimbursement for clothing allowance
- and post exchange and commissary privileges

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

- DD Form 149, Application for Correction of Military Record
- Legal Retainer and Petition
- Exhibits A-L include -
  - enlistment documents
  - promotion orders
  - decree of divorce
  - Joint Service Commendation Medal
- Exhibits M-P include -
  - Post-Deployment Health Assessment (PDHA) questionnaires (2)
  - Traumatic Brain Injury (TBI) Evaluation
  - DA Form 2627 Record of Proceeding Under Article 15, Uniform Code of Military Justice (UCMJ)
  - Applicant's statement
  - VA Form 21-4138-Statement in Support of Claim
- Exhibit Q includes -
  - Department of Veterans Affairs (VA) rating decisions
  - PTSD Disability Benefits Questionnaire
  - Behavioral Health-Psychological Evaluation
  - Progress Notes
  - Army Discharge Review Board (ADRB) Case Report and Directive (AR20180011455)
  - Health Records

- DA Form 4856-Developmental Counseling Form
- Army Substance Abuse Program (ASAP) Enrollment
- Report of Behavioral Health Evaluation
- Report of Medical Examination
- Exhibit R, Part 1 includes – Military Police (MP) Report with sworn statement
- Exhibit R, Part 2 includes –
  - partial sworn statement
  - notice of driver license suspension
  - breathalyzer test results
- Exhibits S-X include –
  - Administrative Reprimand, DA Form 2627
  - Army Continuing Education System memorandum
  - Technical Institute Transcripts
  - course completion certificates
- Exhibits Y- AA include -
  - ADRB Docket Number AR20100030491
  - applicant's employment resume
  - ADRB Docket Number AR20180011455 (duplicate)
- Exhibits BB-DD include –
  - VA Rating Decision
  - marriage license
  - child's birth certificate
- Exhibits EE Part I and Part II include – color photographs
- Exhibits FF-MM include –
  - DA Form 4856
  - Report of Medical History
  - security clearance application
  - Secretary of Defense/Office of the Under Secretary of Defense (Kutra, Hagel, and Wilke) memoranda
  - PTSD literature
  - Certificate of Achievement

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. Counsel request, in effect:

a. The applicant be medically retired based on her service-connected, combat-related PTSD, which eventually became so debilitating it resulted in her being unable to reasonably perform the duties of her rank and position. In addition to a medical retirement, the applicant requests the following:

(1) For all pay and allowances together with all benefits that the applicant may have been deprived of as a result of her discharge, from the date of discharge to the date of the end of her last enlistment period, including but not limited to reimbursement for medical insurance necessitated by cessation of coverage of her: quarters allowance; ration allowance; accumulated leave pay; reimbursement for clothing allowance; and PX and commissary allowances;

(2) Restoration of her rank and grade to SGT/E-5, and all amounts to be paid, above, reflective of the E-5 grade if such payment or benefit relies on rank and grade to calculate (i.e., Basic Allowance for Housing (BAH), basic pay, accumulated leave pay, etc.);

(3) That her characterization of service change to "Honorable":

(4) That the narrative reason for her separation change to "Disability, Permanent (Enhanced)";

(5) That her separation code change to "SEJ"; and

(6) The separation authority be changed to "AR 635-40, Chapter 4."

b. Should the Board determine the applicant does not meet the requirements to be medically retired, they would still posit that she is entitled to and has earned multiple changes to her DD Form 214 and that two alternative basis exist for the Board to provide relief. Based on the errors and injustices in her case, as well as the matters of extenuation and mitigation warranting an upgrade for clemency purposes, the applicant would request the following relief:

(1) an upgrade of the characterization of her service from under honorable conditions (general) to honorable;

(2) the removal of the words “Misconduct (Drug Abuse)” as the narrative reason for her discharge and changed to “Completion of Required Active Service”;

(3) change of SPD code from “JKK” to “MBK”;

(4) change in RE code from “4” to “1”; and

(5) a change in separation authority from “PARA 14-12C” to “Chapter 4.”

c. The last alternative is that the applicant simply be treated, at worst, as an ASAP failure. The evidence is clear that she entered the ASAP program in June 2008, was apparently released, and then had an alcohol-related incident in August 2008 and was command-referred for a second time into ASAP in September 2008. If the Board chose this alternative, she should receive an honorable characterization of service; a change in separation authority to AR 635-200, Chapter 9; a narrative reason for discharge change to “rehabilitation failure;” and an SPD code change to “JPD.” While this is not the ideal relief, it is technically appropriate in the applicant’s case, and it would provide the honorable characterization of service she seeks and deserves after all these years for her sacrifice and service.

d. The applicant enlisted into the U.S. Army Reserve (USAR) on 24 May 1996 shortly after turning 19 years old. The applicant served honorably in the USAR for several years as an 88M, motor transport operator, quickly advancing through the enlisted ranks. Then, on 27 March 2003, just over two weeks after the start of the U.S. war in Iraq, she signed her second enlistment contract, transferring onto active duty at the rank of specialist (SPC)/E-4. Seven months later, she would be deployed in support of Operation Iraqi Freedom for an eleven-month tour from 2 November 2003 to 29 September 2004.

e. The applicant’s first deployment to Iraq was not easy or uneventful by any means, and it is quite apparent, what occurred on this deployment set the wheels in motion for what would later be diagnosed as severe PTSD. On this deployment, the applicant earned a Combat Action Badge for events that took place on 25 June 2004. As later recalled by a lifelong friend who has known the applicant from their childhood, even after her first deployment, she was “jumpy, quick to react and fearful,” and the applicant “appeared extremely anxious and cried a lot.” The applicant had also expressed the fear she had and the trauma she experienced during her first deployment. This is significant considering this friend recalled when the two were growing up, the applicant was “lighthearted and fun” and “joyful and had a zest for life”; the friend went on to state “since the Army, [the applicant] is different.”

f. Despite the difficulties on that deployment, the applicant remained a superb Soldier and continued to progress in her career. Two years after her first deployment to

Iraq, she again found herself being deployed to Iraq for 12 months, beginning on 1 October 2006. A lot happened on this deployment that would ultimately change the course of her life. First, she was promoted to SGT, effective 1 January 2007. Second, the applicant reenlisted on 28 April 2007 for three more years. It was also during this time the applicant came to accept herself for who she was and fully realized she was gay and attracted exclusively to females; this led to her filing for divorce from her husband, which was finalized 27 July 2007.

g. Once again, she excelled on this deployment, earning the Joint Service Commendation Medal as a very junior noncommissioned officer (NCO). Once again, though, it was not an easy deployment, and this deployment came with additional stress and pressure by virtue of just being in her role as an NCO. She was now responsible for five – ten junior Soldiers who relied on her guidance, and she took the responsibility to guide, lead, and keep them safe seriously. It took the applicant virtually zero time to realize that something was not quite right and that her mental health was not doing well. Just eight days after she redeployed, she took her first PDHA where she indicated that her “health got worse,” and that within the past two weeks she had felt “down, depressed, or hopeless” “A Lot,” and that she had “Little Interest or pleasure in doing things” “some” of the time. Yet, if you look at page three of the PDHA, it shows there was not a single referral for the applicant to follow up with anyone; specifically, she was not referred to “Mental Health.” The applicant was struggling and not getting better; six months after that initial PDHA, she completed another PDHA on 29 April 2008 and indicated she was suffering from multiple common PTSD symptoms. The only thing the applicant did “wrong” (if you can call it that) is (1) she had never suffered from any mental health conditions and did not know what PTSD felt like, so she could not identify, on her own at that time, the extent and severity of what she was suffering, and (2) it is obvious that the applicant was leaving “breadcrumbs” and assuming if something was “wrong” that a medical professional would also review her answers and let her know and step in.

h. Specifically, in the April 2008 PDHA, the applicant gave the following answers:

9. Have you had any experience that was so frightening, horrible, or upsetting that, IN THE PAST MONTH, you ...

a. Have had any nightmares about it or thought about it when you did not want to ☒ Yes

b. Tried hard not to think about it or went out of your way to avoid situations that reminded you of it ☒ Yes

c. Were constantly on guard, watchful, or easily startled ☒ Yes

d. Felt numb or detached from others, activities, or your surroundings ☐ No

10. a. In the PAST MONTH, did you use alcohol more than you meant to? ☒ Yes

b. In the PAST MONTH, have you felt that you wanted to or needed to cut down on your drinking? ☒ Yes

11. Over the PAST MONTH, have you been bothered by the following?

a. Little interest or pleasure in doing things ☐ Few or several days

b. Feeling down, depressed, or hopeless ☐ Few or several days

12. If you checked off any problems or concerns on this questionnaire, how difficult have these problems made it for you to do your work, take care of things at home, or get along with other people? ☒ Somewhat difficult

13. Would you like to schedule a visit with a healthcare provider to further discuss ...

i. In other words, the applicant was marking some items in the affirmative or just enough that she presumed it would be enough to raise a “yellow flag” without jeopardizing her security clearance, career, etc. To her surprise, the medical professional from the second PDHA indicated – despite her clearly indicating she was having nightmares, avoided triggers, and expressed hypervigilance and anxiety - no subsequent referral was necessary. At that time, it took the applicant to be the one to say, “No, a referral is necessary; I need to speak with someone in behavioral health.” (Paraphrased, but one can see that the only reason it was even contemplated that she be referred is because the applicant had to specifically request it, as apparent in the note stating “referred to MH, per request”). However, as the applicant has been stating for 14 years to the ADRB and VA, she was never actually given the referral to Behavioral Health at this time and her service treatment records (STRs) reflect the absence of such referral as well.

j. After mentioning the need to speak to someone about her mental health and without someone in medicine seeming to care and/or taking her admissions seriously, the applicant came to two conclusions (1) maybe nothing really was wrong with her and she needed to “toughen up,” and (2) if she was going to get any help, she was going to have to do it on her own and find ways to self-medicate. She immediately attempted to do as her peers and friends did and cope using alcohol. She even marked on her second PDHA (again, this was in April 2008) in the affirmative to the questions: “In the PAST MONTH, did you use alcohol more than you meant to?” and “In the PAST MONTH, have you felt that you wanted to or needed to cut down on your drinking?”

k. However, as severe as the applicant’s PTSD symptoms were at this time, alcohol was not enough to ameliorate her condition, and she needed more. Less than a month after she was ignored after she divulged all that information, the applicant tested positive for cocaine on a random unit urinalysis taken in mid-May 2008. She was given a Field Grade Article 15. Her punishment included reduction in grade from E-5 to E-4. The applicant requested behavioral health support at this time, but she was only sent to ASAP, which obviously did not help or correct the underlying reason or basis for her use of cocaine in the first place. By 11 June 2008, the applicant was command-referred to ASAP, but there were no accompanying behavioral health appointments. There was, however, a diagnosis of “Reaction to Chronic Stress” that starts to show up in her records on 27 June 2008. Despite this diagnosis of “Chronic Stress,” there is no referral, no appointment, and no other treatment or care; it simply showed up in June 2008, was ignored, but continues to show up on all records thereafter as an active diagnosis. The next several months the applicant’s career was poorly handled by her chain of command and anyone responsible for treating Soldiers.

l. Her entire STR is not included as there are over 2300 pages, and the only way to prove that a referral or appointment did not occur is to review all records; however, we

can state that no such appointment occurred, and all 2300 pages can be provided upon request if the Board requires corroborating evidence.

m. Hindsight is 20/20, but it is perplexing that a servicemember with almost two full years of combat deployments to Iraq, a Combat Action Badge, and who had disclosed what she had disclosed on her PDHAs (who also receives an Axis I diagnosis labeled "Reaction to Chronic Stress") is not referred for more treatment. The fact that no one put two and two together to figure that her "chronic stress" was highly likely to be – and actually was – PTSD is disheartening, frustrating, and truly a tragedy.

n. Still being denied behavioral health treatment, she continued alcohol use when she needed to self-medicate. This resulted in her committing further misconduct on 30 August 2008. On that date, she voluntarily parked her car at the vehicle checkpoint at one of the gates on Fort Riley, Kansas, and even though she was no longer driving, an MP said he smelled alcohol on her and administered a breathalyzer test which registered .118 Blood Alcohol Content. She was given a DUI because she was observed driving immediately prior to the test. As a result of her DUI, a General Officer Memorandum of Reprimand (GOMOR) and a Field Grade Article 15 are permanently filed in her personnel file. She was also reduced to private/E-1.

o. On 3 September 2008, the applicant was again referred to ASAP. However, this time, as she accurately and honestly recounted to the ADRB several years ago, this was the first time she was afforded the opportunity to see any mental health professional. But, as she also stated previously, her fate was already sealed, and this visit was too little, too late. What is most interesting and relevant is that her STR shows several new prescriptions appear in her records as of 4 September 2008. These prescriptions include:

- Zolpidem, which is used to treat insomnia (difficulty falling asleep or staying asleep)
- Trazodone, which is used to manage and treat major depressive disorder
- Propranolol, which is used to treat anxiety

p. These are precisely symptoms and/or conditions caused by and/or related to her untreated PTSD that she had felt and expressed several months earlier after returning from her second deployment. Once she was on these medications and provided at least this small window to converse with behavioral health, the applicant committed no further misconduct from the date of her DUI through her separation date of 15 January 2009. None of that appeared to matter to the chain of command, as it had already been made known to her as early as 5 September 2008 when she was completing mandatory steps in the separation process that the intent was to involuntarily separate her under AR 635-200, chapter 14-12c.



q. Having been reduced to private/E-1, with severe PTSD, and drug and alcohol dependency issues, the applicant could not help but feel beaten down, and she reached her lowest point; therefore, when it came time to make decisions regarding going to a separation board hearing or not, she had no fight left in her. The applicant waived the separation board and accepted the under other than honorable conditions characterization of service, and she was separated on 15 January 2009 after being involved in the Army for over 12 years.

r. Since the applicant's separation from the Army, life has been far from easy, but it has not been for a lack of effort on her part. After the positive urinalysis for cocaine, she was marked for separation, and her chain of command's commitment to helping her seek treatment essentially vanished. There was no incentive in the eyes of the command to allow her to utilize Army resources, behavioral health, seek treatment, etc. Thus, it is no surprise that, upon separation, she was absolutely dealing with the same severe PTSD and mental health problems that led her to engage in misconduct in the first place. To make matters worse, with an under other than honorable conditions characterization of service and a narrative reason reflecting "Drug Abuse, she was denied virtually all VA benefits and would go on to be discriminated against when seeking employment.

s. All that being said, she has absolutely done as much as she can, or as much as her circumstances would allow. Within just a couple of months after she separated, in March 2009, she enrolled into the Universal Technical Institute (UTI) to become a mechanic. She would go on to complete the program in May of 2010, and during that time, she picked up and earned two component-specific certifications to become further specialized.

t. Although she was doing well in this line of work, eventually, with her PTSD being unchecked due to the lack of support and assistance available through the VA at that time, there were simply too many triggers which made work in this field impossible for her. And the applicant knew this way of life – with her not being able to take charge of her PTSD and mental health – was unsustainable and would lead to a breaking point. This motivated her near the end of 2010 to submit her first application to the ADRB. While the Board certainly reached an incorrect decision, the applicant did not properly convey how badly she was struggling with PTSD, and, instead, decided to phrase it as an "inability for [her] to adjust to Garrison life after return from Iraq the second time"; obviously ignoring or failing to mention that her failure to "adjust" was due to her severe combat-related PTSD.

u. Unfortunately, her application was denied, and she attempted to keep pushing on through life without benefits. However, she eventually reached a point that she knew she needed to do something, and her records reflect psychiatric hospitalizations in 2011 and 2012. This was a very difficult time for her because of PTSD, and her home life with

her then-wife and stepchild were in a bad place, and she was having difficulties maintaining steady employment. The applicant and her spouse divorced in 2013, and, while it ultimately was for the best, the divorce caused an entirely new set of stressors for her to have to navigate during a particularly complex and difficult time in her life.

v. Despite all these hardships and how difficult life was at this time, she never turned to any illegal drugs or unlawfully took any controlled substances. Additionally, for the past nine years, the applicant has been completely sober with the help of counseling and AA; in fact, she learned she is allergic to alcohol, which has actually helped her move on from it and stop relying on it.

w. The applicant is resilient, and she refused to give up. Her life began to turn around for the better in 2014 when she met her now-spouse, whom she married in 2020. In 2016, she was able to begin her job with the United States Postal Service (USPS). The applicant was also notified that she could reapply to the ADRB, which she did in 2018, and fortunately, the characterization of her service was upgraded to general, under honorable conditions which unlocked invaluable VA healthcare benefits and disability compensation.

x. Once she was finally able to be assessed and given a percentage for her several service-connected injuries and conditions, she was initially awarded an 80% VA disability rating, her PTSD was rated at 30%. A year later with consistent treatment, her rating was quickly increased from 80% to 90% in July of 2020. Most recently, in March of 2021, after it became clear that her life was so severely impacted by her PTSD, her disability rating rose to 100%; 70% of which was attributed to her PTSD. The applicant's PTSD has been and is still so severe that she had to resign her employment with the USPS in 2021 due to being unable to perform her duties even with multiple reasonable accommodations to try to cater to her limitations and triggers.

y. However, even with her continued battle with PTSD and its limiting effects (especially on relationships, employment, and overall ability to enjoy life), the applicant married the love of her life in 2020. The applicant is now a stepmother to Isabel Marie Hernandez and the two have a great relationship. The family enjoys traveling and just spending time together. One of her mental health outlets has been exercise, keeping up her physical shape as best as she can, and she has been drawn to physical challenges and races; she has participated in numerous Scottish Highlander Games, Tough Mudders/Spartan Races, and half marathons.

z. Argument of Error – The Allegation of BAH Fraud was Severely Deficient and Should Not Have Been Considered.

(1) There appears to have been no investigation or insight into the applicant's alleged "BAH fraud" that shows up seemingly out of nowhere in a DA Form 4856

(Developmental Counseling Form) in near-mid September of 2008. Counsel contends the bare minimum analysis was applied: the applicant was divorced in July 2007, she was receiving BAH until August 2008; therefore, according to the chain of command's reasoning, it must have been fraudulently received. "Fraudulent" is a term of legal art and is not synonymous with "inadvertent," "incidental," or "incorrectly."

(2) The counseling reflects that her chain of command alleged that she may have violated Article 121 of the UCMJ. Upon reviewing DA Pamphlet 27-9, Legal Services-Military Judges' Benchbook, for offenses committed prior to 2019, it shows that Article 121 contains four essential elements:

(a) That (state the time and place alleged), the accused wrongfully (took) (withheld) (obtained) certain property, that is, (state the property allegedly taken), from the possession of (state the name of the owner or other person alleged);

(b) That the property belonged to (state the name of the owner or other person alleged);

(c) That the property was of a value of \_\_\_\_\_ (or of some lesser value, in which case the finding should be in the lesser amount); (and)

(d) That the (taking) (withholding) (obtaining) by the accused was with the intent (permanently to (deprive) (defraud) (state the name of the owner or other person alleged) of the use and benefit of the property) (or) (permanently to appropriate the property to the accused's own use or the use of someone other than the owner.

aa. The instructions go on to define, among other terms, "wrongfulness," which is highly relevant in the applicant's case: NOTE 2: Wrongfulness of the taking, withholding, or obtaining. When an issue of wrongfulness is raised by the evidence, an instruction tailored substantially as follows should be given:

(1) An obtaining is wrongful only when it is accomplished by false pretenses with a criminal state of mind.

(2) A criminal "false pretense" is any misrepresentation of fact by a person who knows it to be untrue, which is intended to deceive, which does in fact deceive, and which is the means by which value is obtained from another without compensation. The misrepresentation must be an important factor in causing the owner to part with the property. The misrepresentation does not, however, have to be the only cause of the obtaining.

(3) In determining whether the (taking) (or) (withholding) (or) (obtaining) was wrongful, you should consider all the facts and circumstances presented by the evidence.

bb. BAH fraud-type cases are also frequently alternatively charged under a violation of Article 132 in the UCMJ, but an Article 132 violation would be equally baseless and meritless against the applicant. Specifically, Article 132 has even more strict elements regarding wrongfulness and knowingly providing or making false claims, in which she absolutely did not engage. Article 132's elements consist of:

(1) That (state the time and place alleged), the accused made a certain claim against (the United States) (\_\_\_\_\_, an officer of the United States) for (state the nature and amount of the alleged claim);

(2) That the accused did so by (state the manner alleged);

(3) That the claim was (false) (fraudulent) (false and fraudulent) in the (state the particulars alleged); and

(4) That, at the time the accused made the claim, (he) (she) knew it was (false) (fraudulent) (false and fraudulent).

cc. DEFINITIONS AND OTHER INSTRUCTIONS: A "claim" is a demand for a transfer of ownership of money or property. ("False") ("Fraudulent") ("False and fraudulent") means intentionally deceitful. (It) (They) refer(s) to an untrue representation of a material fact, that is, an important fact, made with knowledge of its untruthfulness and with the intent to defraud another. The test of whether a fact is material is whether it was capable of influencing the approving authority to pay the claim... "Intent to defraud" means an intent to obtain something of value through a misrepresentation and to apply it to one's own use and benefit or to the use and benefit of another, either temporarily or permanently.

dd. Under either article of the UCMJ, it requires an intent or affirmative step, such as submitting a false DA Form 5960, BAH Authorization and Dependency Declaration; the applicant's DA Form 5960 was not fraudulent or inaccurate at the time she submitted it when she was married. At no time did the applicant misrepresent that she was married or entitled to BAH when she was not. Her divorce finalized when she was in the middle of a deployment to Iraq and had a lot going on. She notified her S1 but was not asked to do anything else at that time. For all intents and purposes, she believed that would be the end of it. She also never attempted to hide her marital status. As can be seen on her PDHA in October 2007, she clearly marked divorced. There is not a single DA Form 5960 to reflect that she misrepresented anything. Additionally, she had never completed a permanent change of station (PCS) move, which is the typical

event giving rise to a Soldier needing to submit a new and/or confirm the accuracy of an existing DA Form 5960.

ee. Lastly, even when reviewing the language of the DA 4856, there is not an actual allegation that she knowingly did anything wrong. It appears they did not know what, if anything, she did other than happen to receive the money: stating the applicant's actions were "with or without intent to deprive or defraud," and "knowingly or unknowingly" is not sufficient, as it is not a crime under the UCMJ or any other law to do any of the above "unknowingly" and/or "without intent."

ff. The amount was also paid back in full. There was no victim, no harm to the government, and this was not a violation of any law, regulation, or policy. Had this allegation been given the proper consideration – which, should have been zero consideration – the applicant would only be facing allegations of misconduct that are so clearly and directly tied to and resulting from her severe PTSD that equity would warrant a medical retirement and/or Honorable discharge.

gg. Arguments of Injustice/Other Equity Considerations and Post-Military Conduct.

(1) Just after the Iraq War's 20th Anniversary this month, a flood of articles and studies have been released discussing the very real and ongoing plight of so many Veterans of that war. The physical, mental, and emotional damage continues to grip thousands of these Veterans specifically, and she falls within that class of those who sacrificed essentially everything but their breath and beating hearts. We are including just one of many of the articles that helps provide invaluable insight and context, as well as being able to paint this picture more accurately than can be said in this petition.

(2) Aside from addressing the common knowledge that PTSD and seeking behavioral health at that time carried its own stigma and servicemembers faced being ridiculed, ostracized, and resented for "missing" work to attend appointments, it is just as possible or likely that the applicant was not provided additional support after making her disclosures because help was limited. It was not until 2014 that the military and Congress took a harder look at what was being done to Veterans struggling with PTSD; this is not just simply talking about the DoD Memoranda, such as the Hagel and Kurta memoranda but speaks to just the sheer availability and number of competent providers and programs. An article by USA Today in 2014 revealed, "The number of available therapists increased 43% between the end of 2009 and December 2013 to 9,425 military, civilian, and contractor mental health care providers, the Pentagon said." It is obviously relevant that "the end of 2009" would be roughly one year after she had already been separated with an under other than honorable conditions characterization of service.

(3) She did some of the hardest deployments to one of the most dangerous places in the world for almost two full years of her life. She did request treatment and did not receive it. Her PTSD was so severe that it literally prevented her from being able to perform the duties expected of an NCO, and she was left with no choice but to attempt to self-medicate. The only equitable response is to finally correct this injustice and allow this amazing human and proud Veteran to say she has been medically retired from the U.S. Army.

(4) AR 635-40 is clear that an individual with 30% or more disability with less than 20 years of service who is/was unfit to perform the duties of someone of equal rank should be medically retired. The applicant is currently compensated based on a 100% combined disability rating, of which her PTSD is rated at 70% for her PTSD. However, the VA initially rated her service-connected disabilities at 80%, of which her PTSD was rated at 30%. Considering her PTSD rendered her unable to perform her duties, she qualifies for medical retirement.

hh. DoD Guidance requires “liberal consideration” be given to the applicant’s request due to her diagnosis of PTSD, anxiety, and depression.

(1) Over eight years ago, the DoD issued the first of four memoranda providing guidance to the military records corrections boards on how PTSD, Traumatic Brain Injury (TBI), Military Sexual Trauma (MST), and other mental health conditions should factor into their decision-making regarding military discharge upgrades. The general guidance is that a veteran’s application should be given “liberal consideration” when it is established that a mental health condition played a role or was the proximate cause of the discharge. The applicant is precisely the type of veteran who was an intended beneficiary of the memoranda by the DoD encouraging a “benefit of the doubt” approach by records review boards.

(2) Most insightful and applicable is the 2017 memorandum released by the Acting Under Secretary of Defense for Personnel and Readiness, titled “Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment,” or commonly known as the “Kurta Memorandum.” When comparing the guidance directly against the applicant’s service and medical/mental health records, it is clear she should not be prejudiced in the form of a general, under honorable conditions characterization as a result of her mental health condition at the time of discharge.

(3) The Kurta Memorandum provided clarifying guidance to review boards in regard to Secretary of Defense’s initial guidance of “liberal consideration.” Specifically, the memorandum stated: Invisible wounds, however, are some of the most difficult cases [Boards for Correction of Military/Naval Records (BCM/NRs) and Discharge

Review Boards (DRBs)] review and there are frequently limited records for the boards to consider, often through no fault of the veteran, in resolving appeals for relief. **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. This clarifying guidance ensures fair and consistent standards of review for veterans with mental health conditions** (Emphasis added).

(4) In this type of request, the Kurta Memorandum states that the discharge relief sought by veterans such as Mrs. Jennings will involve four questions:

- (a) Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- (b) Did that condition exist/experience occur during military service?
- (c) Does that condition, or experience actually excuse or mitigate the discharge?
- (d) Does that condition, or experience outweigh the discharge?

ii. After a review of her service and medical/mental health records, it is clear all answers are resoundingly in the affirmative and point to her receiving the discharge upgrade relief she is requesting.

(1) Did the veteran have a condition or experience that may excuse or mitigate the discharge? The guidance by the memorandum goes on to clarify: "Absent clear evidence to the contrary, a diagnosis rendered by a licensed psychiatrist or psychologist is evidence the veteran had a condition that may excuse or mitigate the discharge." In the applicant's case, she received a diagnosis of PTSD that was undeniably linked to her combat deployments by a licensed clinical professional. Based on the Letters of Support, the symptoms reported and observed and diagnosed while still in service, and the VA diagnoses and service connection for her mental health conditions, the applicant absolutely suffered from PTSD, anxiety, and depression at the time of the misconduct and at the time of her discharge.

(2) Did that condition exist/experience occur during military service? The guidance by the memorandum goes on to clarify: *A diagnosis made by a licensed psychiatrist or psychologist that the condition existed during military service will receive liberal consideration. A determination made by the VA that a veteran's mental health condition, including PTSD; TBI; sexual assault; or sexual harassment is connected to military service, while not binding on the Department of Defense, is persuasive evidence that the condition existed, or experience occurred during military service. Liberal consideration is not required for cases involving pre-existing conditions which are*

*determined not to have been aggravated by military service.* In this case, there was no related prior or pre-existing condition documented in her medical records, and the VA subsequently decided and assigned a rating specifically related to her disorder(s)/condition(s). Specifically, a full review of her medical and mental health records reveals no mental health-related issues whatsoever until she began to open up about her PTSD symptoms after deployments. Her deployments to Iraq occurred prior to the misconduct, the PTSD was service-connected to her combat deployments, and symptoms of her PTSD remained prevalent all the way through several years after she had been separated to this very day.

(3) Does that condition or experience actually excuse or mitigate the discharge? The guidance by the memorandum goes on to clarify: *Conditions or experiences that may reasonably have existed at the time of discharge will be liberally considered as excusing or mitigating the discharge.*

(a) In the applicant's case, it is clear from her mental health records that the condition existed at the time of her misconduct and at the time of her discharge; therefore, her request must be liberally considered as excusing or mitigating her discharge. More importantly and even more relevant, is that her condition absolutely existed and was a major contributing (if not sole) factor to the misconduct that ultimately led to her discharge.

(b) After suffering from multiple traumatic events while deployed, she was no longer able to survive without the support of addictive and controlled substances to help her cope with her PTSD symptoms. She tried to use legal methods to help her cope, but the more deployment time she faced, the more severe her symptoms became. The more severe her symptoms became, the more she literally needed a drug and/or medication to help her cope. When you combine excessive, continuous substance abuse with the diminished processing tied to her PTSD, anxiety, and depression symptoms, the applicant was at an incredibly high risk of risky behavior and poor decision-making. Had she not suffered from PTSD, there is no sign or indication in her record that would indicate she would ever become dependent on alcohol or cocaine. As already stated, the applicant is allergic to alcohol; this should give the Board some indication of how desperate and hopeless she was feeling to then endure allergic reactions and out of the ordinary side effects to drink alcohol to try to cope when her body literally could not handle it. Reckless decisions and poor decision-making are common in individuals suffering from PTSD.

(4) Does that condition or experience outweigh the discharge? The guidance by the memorandum goes on to clarify: *In some cases, the severity of misconduct may outweigh any mitigation from mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment.* Premeditated misconduct is not generally excused by mental health conditions, including PTSD; TBI; or by a sexual assault or sexual



harassment experience. However, substance-seeking behavior and efforts to self-medicate symptoms of a mental health condition may warrant consideration. Review Boards will exercise caution in assessing the causal relationship between asserted conditions or experiences and premeditated misconduct. Further: *Liberal consideration includes but is not limited to the following concepts: an honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.* The applicant's offense was a non-violent offense. While she obviously used cocaine, it was used to alleviate intense symptoms she felt from her service-connected mental health conditions. The nexus and relationship between the mental health condition and the misconduct is the exact scenario contemplated and clarified by the Kurta Memorandum. As such, she deserves a medical retirement and her characterization of service be upgraded to honorable.

jj. The Wilkie Memorandum.

(1) The last memorandum released by the DoD that was designed to provide guidance to review boards was published by the Under Secretary of Defense, Robert Wilkie, in his 25 July 2018, memorandum for the secretaries of the military departments addressing "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations." The purpose of the Wilkie Memorandum was to provide standards for DRBs and BCM/NRs in determining whether relief is warranted on the basis of equity, injustice, or clemency. The ultimate goal was to establish these standards specifically for equity for DRBs and relief for injustice for BCM/NRs in order to ensure fundamental fairness. The Wilkie Memorandum then goes on to state, "In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, DRBs and BCM/NRs shall consider the following..." (emphasis added) and lists 30 factors or conditions which boards must consider and weigh when reviewing veterans' petitions for upgrade. In her case, several of the factors specifically listed under Paragraph 6 of the Wilkie Memorandum Attachment apply and are directly on point and must be considered and applied:

(a) It is consistent with military custom and practice to honor sacrifices and achievements, to punish only to the extent necessary, to rehabilitate to the greatest extent possible, and to favor second chances in situations in which individuals have paid for their misdeeds. This subparagraph is directly on point in the applicant's case. It is no coincidence that this is the very first factor listed within the Wilkie Memorandum Attachment: the first of almost thirty factors between the subparagraphs of paragraphs 6 and 7 mandated for review and consideration by the Board. The applicant deserved treatment for her mental health condition, not just treatment for a substance abuse issue. She deserved to be treated, to be rehabilitated, and if successful, she deserved a second chance. She certainly did not deserve both a GOMOR and a Field Grade Article 15 for the same offense (the DUI), especially considering that is not customary

and goes above and beyond the “going rate” for that offense. It was harsh, and it was done to make an example out of her and take all the rank she had earned through literal blood, sweat, and tears.

(b) As further proof of her ability to rehabilitate, ever since she was placed on proper prescription medication, she has been able to refrain from unlawful substances or alcohol to help her cope. Her rehabilitation potential was high, but it was not even offered or attempted in her case.

(c) An honorable discharge characterization does not require flawless military service. Many veterans are separated with honorable characterization despite relatively minor or infrequent misconduct. But for a three month stretch over the course of a career that spanned over 12 years with USAR time, she had a near flawless military career: no other Article 15s, no other reprimands, and not even a negative counseling. She had never been in trouble or received adverse action in her entire life prior to that three-month period after her second deployment. That is quite telling about her character and just how terribly she was suffering from PTSD. For this factor, it clearly contemplates that the misconduct could be “relatively minor” or “infrequent.” While for the average citizen, a DUI and using cocaine are not necessarily “minor misconduct,” taken together with her condition and extenuating circumstances, her level of culpability should not be judged the same. Again, even if the Board were to disagree with the assessment that her conduct really was not that serious—considering there were no victims, and it was a non-violent offense—it is undeniable that her misconduct would qualify as “infrequent” as contemplated by the Wilkie Memorandum. While it is obviously true there are some offenses that are so egregious as to warrant less than an honorable discharge characterization, this is not such type of offense.

(d) Changes in policy, whereby a Service member under the same circumstances today would reasonably be expected to receive a more favorable outcome than the applicant received, may be grounds for relief. While not technically a change in policy, per se, as has been discussed above, PTSD is better understood now than in 2008. The affects the Iraq war had on Soldiers is better understood. The availability of providers specializing in treating PTSD increased 43% over the four years after her separation. Had this occurred in 2023, assumingly and sincerely hoping she would have been met with more empathy, care, and compassion, and she would have received a more favorable disposition.

(e). Requests for relief based in whole or in part on a mental health condition, including PTSD; Traumatic Brain Injury (TBI); or a sexual assault or sexual harassment experience, should be considered for relief on equitable, injustice, or clemency grounds whenever there is insufficient evidence to warrant relief for an error or impropriety. It is important to note and should be highlighted that even though the Kurta Memorandum

covered this in detail, the Wilkie Memorandum once again felt it necessary to provide this guidance to the Boards.

(f) Relief is generally more appropriate for nonviolent offenses than for violent offenses. The applicant's offenses were victimless, non-violent offenses. In addition to the above, based on the Wilkie Memorandum guidance, the applicant also specifically asks the Board to consider and apply the following subparagraphs from paragraph 7 in its consideration:

(1) An applicant's candor. The Board will not find, in the multiple statements she has made and that are provided, anywhere that the applicant did not take accountability or disclose the truth. The only thing she has ever downplayed was just how badly she was suffering and just how much it was contributed directly to PTSD; for instance, in her ADRB application, she stated she had difficulties "adjusting to Garrison life... This is one way to put it, but the medical explanation is that the trauma she endured prevented her from being able to adapt and adjust without support, treatment, counseling, medication, etc. She has and continues to be candid with the VA and the Boards.

(2) Whether the punishment, including any collateral consequences, was too harsh. This has been discussed above. The applicant was given unduly harsh punishment at the time of the offense, as well as having to go through life suffering with severe PTSD with virtually no VA benefits for over 9 years. Now over 14 years later, she continues to have a DD Form 214 that reflects "Drug Use" and a less than honorable characterization of service. This has been more than enough punishment for someone who has sacrificed so much.

(3) Positive or negative post-conviction conduct, including any arrests, criminal charges, or any convictions since the incident at issue. The applicant has not been in trouble or charged or convicted of any crimes or offenses prior to or after the incidents of misconduct.

(4) Length of time since misconduct. It has been almost 15 years since the misconduct. This is essentially a 15-year sentence with a less than honorable discharge (the majority of which has been spent with an under other than honorable conditions) on her military record despite her being an excellent leader and NCO for most of her service career.

(5) Acceptance of responsibility, remorse, or atonement for misconduct. The applicant wishes more than anything that she could have found the treatment or answer to helping her cope before she went down such a dark path. Again, the Board will not find a statement where she does not own up to her mistakes.

(6) Meritorious service in government or other endeavors. The applicant worked for the USPS for as long as she could before PTSD triggers became too much, and she felt she was no longer a contributing member of the team. She is, however, drawn to continued public and government service and has never ruled out continuing her treatment to try to make government service a career once again in the future.

(7) Job History. The applicant's resume reflects someone who has fervently attempted to balance her severe PTSD with employment. Her resume reflects differing fields because she is constantly trying new positions and new areas that might be more suitable with her current mental health conditions. While not always finding the right fit, she continues to make the effort. One key takeaway is that when she does find a role that even seems like a possible fit, she commits herself fully so that she can be extremely competent, proficient, and valuable; in addition to her certifications, she earned as a mechanic, she also pursued continued learning opportunities with USPS and had earned additional certifications.

(8) Character references, and Letters of Recommendation. This application includes multiple letters of support. What is particularly impactful with these letters are that they are from several individuals who have known the applicant for a long time (and not just a long time ago). To read about the juxtaposition between the applicant pre- and post-deployment is incredibly powerful and so woefully sad. As mentioned, the Iraq war altered her life and made her an unrecognizable version of herself; she is now someone with lifelong mental and physical debilitating conditions that limit her, and her positivity and zest for life has morphed into anxiety, depression, and the loss of will get out of bed some mornings. What else is clear and can easily be deduced from these letters, is that the applicant was and always has been a very good and kind-hearted person. The events that unfolded that led to the end of her military career were an uncharacteristic and unfortunate blip on the radar that is outside the true character and nature of the applicant. She is worthy of the highest relief warranted by this Board.

jj. ASAP Failure. As an alternative, the type and timing of the misconduct relative to the admissions into the ASAP program could have triggered initiation of separation under AR 635-200, chapter 9 for being an ASAP failure. Had the command done this properly, the applicant would have been separated in a matter of a few weeks, and it is highly possible, based on her record, she would have and should have received an honorable characterization of service. Specifically, AR 635-200, chapter 9-4 expressly authorizes either an honorable or under honorable conditions discharge. Additionally, had this route been taken in the first place, she would have been able to utilize her two opportunities before the ADRB to seek an upgrade from a general, under honorable conditions to an honorable, instead of starting with an under other than honorable conditions off the bat.

kk. In conclusion, the fair outcome here would be for the Board to determine the applicant's is deserving of a medical retirement. This is one of the most clear and obvious cases for finding the nexus between everything needed to grant the relief requested and directed by law, guidance, and precedent. She served honorably prior to and throughout her two deployments. Her deployments changed her and resulted in severe PTSD. Her PTSD led to substance-seeking and self-medicating for coping purposes. The substances she needed were unlawful and resulted in misconduct. The misconduct led to her separation and resulting derogatory marks on her DD Form 214. Therefore, for the reasons stated forth above, it is clear her case is the exact type of discharge upgrade request that was contemplated by the DoD's guidance.

ll. Regardless of which path the Board decides to follow as the most appropriate means to grant relief at a minimum, all roads lead to at least an upgrade in the characterization of service to HONORABLE.

3. The applicant enlisted in the Regular Army on 27 March 2003; she subsequently reenlisted on 28 April 2007.

4. The applicant's Enlisted Record Brief shows -

a. she completed deployments to –

- Iraq from 1 November 2003 to 29 September 2004
- Iraq from 1 October 2006 to 2 October 2007

b. she was promoted/demoted -

- promoted - sergeant (SGT)/E-5 on 1 January 2007
- demoted - specialist (SPC)/E-4 on 8 July 2008
- demoted - private (PVT)/E-1 on 23 September 2008

5. Her record includes the following misconduct.

a. The applicant was command referred to the ASAP for the improper use of drugs on 11 June 2008.

b. On 8 July 2008, she accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ for the wrongful use of cocaine on or about 16 May 2008 and on or about 20 May 2008. Her punishment include reduction from sergeant/E-5 to specialist/E-4, forfeiture of \$1,067.00 per month for two months, and extra duty for 45 days.

c. On 3 September 2008, she was counseled for driving under the influence of alcohol on 30 August 2008. As a result of this incident, she was command referred to ASAP on the same day.

d. On 23 September 2008, she accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ for physically controlling a vehicle while drunk on or about 30 August 2008. She was reduced to private/E-1, required to forfeit \$673.00 pay per month for two months, perform extra duty for 38 days; and she was restricted to specified limits for 38 days.

e. She received a negative performance counseling on 30 September 2008 for knowingly receiving BAH, temporary or permanently, with or without the intent to deprive and defraud the U.S. Government by failing to provide her divorce decree which was granted on 27 July 2007.

6. On 7 January 2008, the Commander, Company A, 101st Forward Support Battalion, 1st Brigade, 1st Infantry Division, Fort Riley, Kansas informed the applicant of his intent to separate her under the provisions of AR 635-200, Active Duty Enlisted Administrative Separations, chapter 14-12c(2) for commission of a serious offense, abuse of an illegal substance with a recommendation her service be characterized as under other than honorable conditions. As the specific reasons, her commander cited the applicant's two Article 15's, operating a vehicle while drunk, and stealing \$9,498.53 in BAH from the U.S. Government. The applicant acknowledged receipt of the commander's intent on 22 October 2008.

7. After being informed of her rights regarding administrative separation, the applicant waived her right to an administrative board contingent upon receiving a characterization of service or description of separation no less favorable than general under honorable conditions, and she elected not to submit statements on her behalf. However, if the separation authority refused to accept the conditional waiver of a hearing before an administrative separation board, her case would be referred to an administrative separation board. In that case she requested a personal appearance before the board and to consult with and be represented by counsel.

8. Subsequent to the applicant's elections, her commander formally recommended the applicant's separation from service, under the provisions of AR 635-200, chapter 14-12c(2), by reason of commission of a serious offense.

9. The applicant's brigade commander recommend disapproval of her request for a conditional waiver on 5 November 2008 with a recommendation that her case be sent to an administrative separation board.

10. On 19 November 2008, the applicant was notified to appear before an administrative separation board on 10 December 2008 at Fort Riley, Kansas. The purpose of the board was to determine whether she should be discharged for commission of a serious offense, abuse of illegal drugs, before the expiration of her term of service.

11. The applicant waived her right for consideration of her case by an administrative separation board on 5 January 2009. She acknowledged that she was being considered for separation with an under other than honorable conditions characterization of service. She elected not to submit statements on her own behalf but requested consultation with counsel.

12. On 7 January 2009 (incorrectly listed as 2008), the separation authority approved the recommended discharge under the provisions of AR 635-200, chapter 14-12c, commission of a serious offense and directed the applicant's service be characterized as under other than honorable conditions.

13. The applicant was discharged on 15 January 2009 in accordance with AR 635-200, paragraph 14-12c(2), misconduct (drug abuse). Her DD Form 214 shows she held the rank/pay grade of private/E-1 at the time of discharge. She completed 5 years, 9 months, and 19 days of net active service for the period. She was awarded the Combat Action Badge and her unit received the Valorous Unit Award. This form further shows in:

- Block 24, Character of Service – under other than honorable conditions
- Block 25, Separation Authority – AR 635-200, Paragraph 14-12c(2)
- Block 26, Separation Code – JKK
- Block 27, Reentry Code – 4
- Block 28, Narrative Reason for Separation – Misconduct (Drug Abuse)

14. The Army Discharge Review Board (ADRB) considered the applicant's request to upgrade the characterization of her discharge on 17 August 2011. After carefully examining the applicant's record of service during the period of enlistment under review, the Board determined the applicant had been properly and equitable discharged.

15. On 1 May 2019, the ADRB reconsidered the applicant's request to upgrade the characterization of her discharge based on her contention that she was suffering from PTSD at the time of her misconduct. After carefully examining the applicant's record of service during the period of enlistment under review, the Board determined the applicant's length and quality of service, to include combat service and the circumstances surrounding the discharge, a prior period of honorable service, and granted relief in the form of an upgrade to the characterization of service to general

under honorable conditions. The narrative reason, SPD code and RE code remained the same.

16. The applicant was issued a new DD Form 214 on 23 July 2019 which shows she received a general, under honorable conditions characterization of service.

17. Her record is void of documentation showing she had a medical or mental health condition that required referral for disability evaluation processing.

18. The applicant's counsel provides Exhibits A-MM which contain military orders, awards, letters of support, documents related to her PTSD diagnosis/treatment, treatment for alcohol and cocaine dependency, mental health evaluations, hospital admission records, a military police report with sworn statements, PTSD literature, family photographs, and VA rating decisions. Counsel has addressed the relevant information contained in these exhibits in his petition and that information has been captured in this Record of Proceedings.

19. Regulatory guidance states the mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

20. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

21. Title 10, U.S. Code, section 1552, the law which provides for the Board, states that The Secretary may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due to the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps or Coast Guard, as the case may be.

22. MEDICAL REVIEW:

a. Background: The applicant's under other than honorable condition (UOTHC) discharge was upgraded to general by the ADRB in June 2022. The applicant is now requesting medical retirement due to post-traumatic stress disorder (PTSD). In addition, she requests restoration of rank/pay grade to sergeant (SGT/E-5) with back pay and allowances. This opine will narrowly address the applicant's request for disability and defer the remainder of her requests to the board.



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:

- The applicant enlisted in the Regular Army on 27 March 2003; she subsequently reenlisted on 28 April 2007.
- The applicant's Enlisted Record Brief shows she completed two deployments to Iraq: 1 November 2003 to 29 September 2004 and 1 October 2006 to 2 October 2007.
- The applicant was command referred to the ASAP for the improper use of drugs on 11 June 2008.
- On 8 July 2008, she accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ for the wrongful use of cocaine on or about 16 May 2008 and on or about 20 May 2008. Her punishment include reduction from sergeant/E-5 to specialist/E-4, forfeiture of \$1,067.00 per month for two months, and extra duty for 45 days.
- On 3 September 2008, she was counseled for driving under the influence of alcohol on 30 August 2008. As a result of this incident, she was command referred to ASAP on the same day.
- On 23 September 2008, she accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ for physically controlling a vehicle while drunk on or about 30 August 2008. She was reduced to private/E-1, required to forfeit \$673.00 pay per month for two months, perform extra duty for 38 days; and she was restricted to specified limits for 38 days.
- She received a negative performance counseling on 30 September 2008 for knowingly receiving BAH, temporary or permanently, with or without the intent to deprive and defraud the U.S. Government by failing to provide her divorce decree which was granted on 27 July 2007.
- Commander, Company A, 101st Forward Support Battalion, 1st Brigade, 1st Infantry Division, Fort Riley, Kansas informed the applicant of his intent to separate her under the provisions of AR 635-200, Active Duty Enlisted Administrative Separations, chapter 14-12c(2) for commission of a serious offense, abuse of an illegal substance with a recommendation her service be characterized as under other than honorable conditions. As the specific reasons, her commander cited the applicant's two Article 15's, operating a vehicle while drunk, and stealing \$9,498.53 in BAH from the U.S. Government. The applicant acknowledged receipt of the commander's intent on 22 October 2008.
- On 19 November 2008, the applicant was notified to appear before an administrative separation board on 10 December 2008 at Fort Riley, Kansas. The purpose of the board was to determine whether she should be discharged for

commission of a serious offense, abuse of illegal drugs, before the expiration of her term of service.

- The applicant waived her right for consideration of her case by an administrative separation board on 5 January 2009. She acknowledged that she was being considered for separation with an under other than honorable conditions characterization of service. She elected not to submit statements on her own behalf but requested consultation with counsel.
- The applicant was discharged on 15 January 2009 in accordance with AR 635-200, paragraph 14-12c(2), under other than honorable conditions, with narrative reason for separation misconduct (drug abuse), separation code JKK and RE-code 4. Her DD Form 214 shows she held the rank/pay grade of private/E-1 at the time of discharge. She completed 5 years, 9 months, and 19 days of net active service for the period.
- The Army Discharge Review Board (ADRB) considered the applicant's request for an upgrade of the characterization of her discharge on 17 August 2011. The Board determined the applicant had been properly and equitable discharged.
- On 1 May 2019, the ADRB reconsidered the applicant's request to upgrade the characterization of her discharge based on her contention that she was suffering from PTSD at the time of her misconduct and granted relief in the form of an upgrade to the characterization of service to general under honorable conditions. The narrative reason, SPD code and RE code remained the same.
- On 4 June 2022, the ADRB (AR20210002941) once again reconsidered the applicant's request to upgrade the characterization of her discharge based on her contention that she was suffering from PTSD at the time of her misconduct. The Board granted relief in the form of an upgrade to the characterization of service to honorable. In addition, a change to the narrative reason to Misconduct (Minor Infractions), SPD code JKN, and RE code 3.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant requests via counsel to be medically retired based on her service-connected, combat-related PTSD, which eventually became so debilitating it resulted in her being unable to reasonably perform the duties of her rank and position. In addition to a medical retirement, the applicant requests for all pay and allowances together with all benefits that the applicant may have been deprived of as a result of her discharge, from the date of discharge to the date of the end of her last enlistment period, including but not limited to reimbursement for medical insurance necessitated by cessation of coverage of her: quarters allowance; ration allowance; accumulated leave pay; reimbursement for clothing allowance; and PX and commissary allowances. She further requests restoration of her rank and grade to SGT/E-5, and all amounts to be paid, above, reflective of the E-5 grade if such payment or benefit relies on rank and grade to

calculate (i.e., Basic Allowance for Housing (BAH), basic pay, accumulated leave pay, etc.).

d. The applicant's record is void of documentation showing she had a medical or mental health condition that required referral for disability evaluation processing. The applicant did not have a behavioral health condition with psychotic features and the symptoms she presented with did not require extended or recurrent hospitalization nor did they interfere with duty performance and necessitate limitation of duty or duty in a protected environment. Active-duty electronic medical records available for review show that on 19 December 2007, the applicant self-referred to behavioral health services due to anger issues and increased alcohol consumption. A referral to ASAP was recommended and the applicant agreed to consider an ASAP evaluation, however, the applicant was not a danger to self or others, nor was she command referred. She was scheduled for a follow-up as well as referred to social work services, for individual therapy, and psychiatry for an evaluation. On 02 January 2008, the applicant was seen by social work services, her concerns included emotional intensity and disrupted sleep. She was diagnosed with Adjustment Disorder with Mixed Disturbance of Emotions and Conduct. The clinician noted her recent divorce and history of deployment as stressors, and she was scheduled for a follow-up the following week. The medical record indicates the applicant had acute bronchitis and did not appear to follow-up on her appointment. On 25 June 2008 the applicant was referred to social work services by ASAP, she was assessed, the clinical impression was that the applicant was experiencing Reaction to Chronic Stress, but she did not meet criteria for a diagnosis. The applicant was scheduled for a follow-up in two weeks. A note dated 27 June 2008, indicates the applicant was command referred to ASAP and participated in an assessment. She was diagnosed with Alcohol Dependence, and it was noted that in further treatment Cocaine Abuse be monitored or ruled out. The applicant was referred for Intensive Outpatient Treatment via ASAP. A social work services note dated 08 July 2008, indicates the applicant's chief complaints were of stress and disrupted sleep. The clinician explored recurring nightmares, but the applicant did not report symptoms that met diagnostic criteria and the diagnostic impression of Reaction to Chronic Stress remained, with the clinician assessing and monitoring for symptoms. The applicant continued receiving individual psychotherapy via social work services as well as treatment via ASAP. The available record indicates she participated in ongoing individual therapy sessions and ASAP up until her discharge; and processed issues related to her chaotic and violent family of origin, abuse in her prior marriages, anger issues, recurring nightmares, and chronic stress. During a psychiatric evaluation, on 27 August 2008, the applicant shared that her problems started when she was forced to return home from Iraq since she, "loved Iraq and didn't want to come home on this tour. She found a job so that she could stay but was told that she had to return". She was diagnosed with Anxiety Disorder and prescribed medication to address her symptoms of anxiety and insomnia. On 15 September 2008, the applicant was assessed by social work services for the purpose of

separation. The clinician noted the applicant was successful in both mental health and addiction treatment and cleared her for administrative action. However, additional testing was recommended since the applicant had a positive PTSD screening. The clinician noted, "refer her for psychological testing to clarify diagnosis and make recommendations for ongoing treatment outside of the Army". The applicant was tested on 29 September 2008; however, the validity of the testing was questioned since her responses were inconsistent and exaggerated.

e. Overall, the applicant initially did not follow-up on recommended BH services, however, once she was command referred, she actively participated in treatment and evidenced significant improvement. Unfortunately, the disciplinary process of the military proceeded, and the applicant was discharged with a UOTHC characterization of service.

f. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected, including 70% for PTSD. The applicant has participated in behavioral health services via the VA related to her symptoms of PTSD since 2021.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that although the applicant has been service connected for PTSD, VA examinations are based on different standards and parameters; they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of PTSD through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process at this time.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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 DoD guidance for liberal consideration of discharge upgrade requests.

a. Set aside the Nonjudicial Punishment (NJP): Deny. The evidence shows the applicant received two NJPs. In each case, the evidence of record confirms the applicant waived her right to a trial by court-martial and opted for either an open or a closed Article 15 hearing. In each case, the imposing officer found her guilty, and the resultant punishment included reduction in grade. The Board found both of her NJP proceedings were conducted in accordance with law and regulation. There is no evidence of record, and the applicant and her counsel provide insufficient evidence to show that the either NJP is untrue or unjust.

(1) The Army Board for Correction of Military Records (ABCMR) does not normally reexamine issues of guilt or innocence under Article 15 of the UCMJ. This is the imposing commander's function, and it will not be upset by the ABCMR unless the commander's determination is clearly unsupported by the evidence. The applicant was provided a defense attorney, she was given the right to demand trial by court-martial, and she was afforded the opportunity to appeal each Article 15 through the proper channels, and in each case, she chose not to appeal.

(2) The basis for any set aside action is a determination that, under all the circumstances of the case, the punishment has resulted in a clear injustice. "Clear injustice" means that there exists an unwaived legal or factual error that clearly and affirmatively injured the substantial rights of the Soldier. The Board found no such evidence.

b. Grade: Deny. The applicant was holding the rank of SGT when she accepted NJP under the provisions of Article 15 of the UCMJ for the wrongful use of cocaine on or about 16 May 2008 and on or about 20 May 2008. Her punishment included reduction to SPC/E-4. A few months later, she again accepted NJP under Article 15 of the UCMJ for physically controlling a vehicle while drunk on or about 30 August 2008. Her punishment this time included reduction to the lowest enlisted grade. She violated the UCMJ, not once, but twice, and in each case was punished for it. The Board did not find evidence that she was denied any due process during the conduct of the NJP.

Likewise, the Board did not find evidence that she was recommended for or promoted back to a higher grade between the date of her last reduction and the date of separation.

c. Discharge Processing. The evidence shows the applicant committed a serious misconduct (two NJPs, operating a vehicle while drunk, and stealing \$9,498.53 in BAH from the U.S. Government). As a result, her chain of command, initiated separation action against her. She waived her right to an administrative separation board, and she was separated with a under other than honorable conditions characterization of service. discharge. The Board found no error or injustice in her separation processing. On a second appeal to the ADRB, the ADRB determined the applicant's length and quality of service, combat service and the circumstances surrounding the discharge, and her prior period of honorable service, warranted relief in the form of an upgrade to the characterization of service to general under honorable conditions.

(1) Discharge upgrade: Deny. The Board determined given her serious misconduct that not only endangered herself but also others, her discharge appears to be appropriate based on the quality of her service. Her service was not consistent with Army standards of acceptable personal conduct and performance of duty by military personnel. Her actions at the time clearly brought discredit upon herself and the Army. Based on her record of misconduct her service was unsatisfactory and clearly did not rise to the level required for an honorable discharge. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board agreed with the medical provider's finding insufficient evidence to support the applicant had an experience or condition that mitigates her serious misconduct.

(2) Narrative Reason for Separation, Separation Code, Reentry Code: Deny. The Board found no mitigating factors that would merit a change to the applicant's narrative reason for discharge. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of paragraph 14-12c of AR 635-200 for serious misconduct – drug abuse. The underlying reason for her separation was her serious misconduct. The narrative reason specified by Army Regulations for a discharge under this paragraph for an enlisted Soldier is "Misconduct , the separation code is "JKK", and the reentry code is "RE 4." AR 635-8, Separation Documents, governs preparation of the DD Form 214 and dictates that entry of the narrative reason for separation, entered in block 28, separation code, entered in block 26, and RE Code, entered in block 27 of the form, will be entered exactly as listed in AR 635-5-1, Separation Program Designator (SPD) Codes. In view of the foregoing, the Board determined that the reason for discharge was both proper and equitable and

there is no reason to change it. Likewise, the Separation Code and RE Code are correct and there no reason to change either.

d. Medical Retirement: Deny. The Board found no probative evidence the applicant had a mental or physical health condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to her discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any additional medical condition prevented the applicant from being able to reasonably perform the duties of her office, grade, rank, or rating prior to his discharge. Therefore, the Board determined a disability separation is not warranted. Although she has been service connected for PTSD, VA examinations are based on different standards. The VA does not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of PTSD through the VA is not indicative of an injustice at the time of service. Furthermore, an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. Based on the documentation available for review, the Board determined there is no indication that an omission or error occurred that would warrant a referral to the IDES process at this time.

e. All pay and allowances together with all benefits she may have been deprived of as a result of her discharge: Deny. The Board corrects military records; and if as a result of the record correction, the Soldier is owed (or owes) any monetary benefits, the Board' directive is transmitted to DFAS for potential payment or collection. The Board did not find any error or injustice in her separation processing, character of service, reason for separation, grade, or NJP. Therefore, the Board determined payment of monetary benefits is not warranted.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	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 for correction of the records of the individual concerned.

9/9/2024

X

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): should the Board find the applicant IS NOT entitled to relief, her DD Form 214 should reflect her continuous honorable service in Block 18, Remarks. Correct her DD Form 214, effective 15 January 2009, by:

- deleting the entry: IMMEDIATE REENLISTMENT THIS PERIOD: 20030327-20070427, 20070228-20090115
- adding the entry: CONTINUOUS HONORABLE ACTIVE SERVICE FROM 20030327-20070427//IMMEDIATE REENLISTMENT THIS PERIOD: 20030327-20070427, 20070228-20090115

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation (AR) 27-10, Legal Services-Military Justice, prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial. It states:

a. Nonjudicial punishment is imposed to correct misconduct in violation of the Uniform Code of Military Justice (UCMJ). Such conduct may result from intentional disregard of or failure to comply with prescribed standards of military conduct. Nonpunitive measures usually deal with misconduct resulting from simple neglect, forgetfulness, laziness, inattention to instructions, sloppy habits, immaturity, difficulty in adjusting to disciplined military life, and similar deficiencies. These measures are primarily tools for teaching proper standards of conduct and performance and do not constitute punishment. Included among nonpunitive measures are denial of pass or other privileges, counseling, administrative reduction in grade, administrative reprimands and admonitions, extra training, bar to reenlistment, and military occupational specialty reclassification. Certain commanders may administratively reduce enlisted personnel for inefficiency and other reasons. This authority exists apart from any authority to punish misconduct under Article 15. These two separate and distinct kinds of authority should not be confused.

b. Paragraph 3-28, Setting Aside and Restoration, states this is an action whereby the punishment or any part or amount, whether executed or unexecuted, is set aside and any rights, privileges, or property affected by the portion of the punishment set aside are restored. Nonjudicial punishment is "wholly set aside" when the commander who imposed the punishment, a successor-in-command, or a superior authority sets

aside all punishment imposed upon an individual under Article 15. The basis for any set aside action is a determination that, under all the circumstances of the case, the punishment has resulted in a clear injustice. "Clear injustice" means that there exists an unwaived legal or factual error that clearly and affirmatively injured the substantial rights of the Soldier. An example of clear injustice would be the discovery of new evidence unquestionably exculpating the Soldier. Clear injustice does not include the fact that the Soldier's performance of service has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on the retention or promotion potential of the Soldier. The power to set aside an executed punishment and to mitigate a reduction in grade to a forfeiture of pay, absent unusual circumstances, will be exercised only within 4 months after the punishment has been executed.

c. If a reduction is set aside and all rights, privileges, and property are restored, the Soldier concerned will be entitled to pay as though the reduction had never been imposed.

3. AR 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, sets forth the basic authority 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. Chapter 4 permits for a Soldier to be separated upon expiration of enlistment or fulfillment of service obligation. Personnel who are physically unfit for retention but who were accepted for, or continued in, military service per AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, will not be separated because of ETS unless processing for separation because of physical disability is waived.

c. Chapter 9 contains the authority and outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who has been referred to the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Nothing in this chapter prevents separation of a Soldier who has been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status.

d. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

4. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation) states:

a. The mere presences of an impairment do not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. An enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions.

c. Exceptions to paragraph b above are if the case comes within the limitations above, the commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation. This authority may not be delegated. A copy of the decision, signed by the General Court Martial Convening Authority (GCMCA), must be forwarded with the disability case file to the PEB. A case file may be referred in this way if the GCMCA finds the following:

(1) The disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

(2) Other circumstances warrant disability processing instead of alternate administrative separation.

5. AR 635-5-1, Personnel Separations-Separation Program Designator (SPD) Codes, prescribes the SPD codes to be used and the authorities and reasons for their use and control. Table 2-3, SPD codes applicable to enlisted personnel, shows that:

a. SPD code "JPD" is the appropriate code when the narrative reason for separation is "Alcohol Rehabilitation Failure" and the authority is AR 635-200, chapter 9.

b. SPD code “MBK” is the appropriate code when the narrative reason for separation is “Completion of Required Service” and the authority is AR 635-200, chapter 4.

6. All Army Activities (ALARACT) Message 147/2008, dated 13 June 2008, subject: Implementation of New SPD Codes for the Disability-Related Provisions of the National Defense Authorization Act (NDAA) 2008 and the Disability Evaluation System (DES) Pilot Program, implemented new SPD codes for the disability-related provisions of the NDAA 2008 and the DES Pilot Program. This message states the Department of Defense memorandum, dated 13 March 2008, directed in part the implementation of additional SPD codes to include: SPD code “SEJ” which is the appropriate code when the narrative reason for separation is “Disability, Permanent (Enhanced)” and the authority is AR 635-40, chapter 4.

7. AR 601-210, Personnel Procurement-Active and Reserve Components Enlistment Program, in effect at the time, covered eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army and the US Army Reserve. Chapter 3 of that regulation prescribed basic eligibility for prior service applicants for enlistment. That chapter included a list of Armed Forces RE codes.

a. RE-1 applied to person completing their term of active duty service who is considered qualified to reenter the U.S. Army.

b. RE-3 applied to a person is not considered fully qualified for reentry or continuous service at the time of separation, but the disqualification is waivable.

c. RE-4 applied to a person separated from their last period of service with a non-waivable disqualification.

d. RE codes may be changed only if they are determined to be administratively incorrect.

8. Title 38, U.S. Code, section 1110, General - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

9. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

10. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

11. Title 10, U.S. Code, section 1552, the law which provides for the Board, states that The Secretary may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due to the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps or Coast Guard, as the case may be.

12. Title 10, U.S. Code, section 1556 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

13. AR 635-8, Separation Processing and Documents, governs the preparation of the DD Form 214. It states for Soldiers discharged for immediate reenlistment do not issue a DD Form 214. This same regulation states when completing Item 18 (Remarks) –

a. for Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter “IMMEDIATE REENLISTMENTS THIS PERIOD” and specify inclusive dates for each period of reenlistment.

b. for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except “Honorable,” enter “Continuous Honorable Active Service From” (first day of service for which DD Form 214 was not issued) until (date before commencement of current enlistment).

14. AR 15-185, ABCMR, 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.

//NOTHING FOLLOWS//