

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 January 2024

DOCKET NUMBER: AR20230005137

APPLICANT REQUESTS: in effect, his NGB Form 22 (National Guard Report of Separation and Record of Service) corrected to show he was medically discharged for his depression and anxiety.

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

- DD Form 149 (Application for Correction of Military Record)
- NGB Form 22
- Department of Veterans Affairs (VA) service connected disability letter
- VA summary of benefits letter
- Medical Records (61 pages)
- [REDACTED] statement in support of claim
- [REDACTED] statements (3) in support of claim
- [REDACTED] statement in support of claim

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states this request is to show that his anxiety and depression were the reason he was separated from the Army. This way he will qualify for a VA home loan.
3. The applicant underwent a medical examination on 27 March 2012 for enlistment purposes. His DD Form 2807-1 (Report of Medical History) shows he reported he was in good health with a history corrective lenses, tonsillectomy, chicken pox, shingles, and heartburn. The corresponding DD Form 2808 (Report of Medical Examination) shows he exceeded weight standards. He was found not qualified for service and assigned a physical profile of 3T11111.

A physical profile, as reflected on a DA Form 3349 (Physical Profile) or DD Form 2808, is derived using six body systems: "P" = physical capacity or stamina; "U" =

upper extremities; "L" = lower extremities; "H" = hearing; "E" = eyes; and "S" = psychiatric (abbreviated as PULHES). Each body system has a numerical designation: 1 meaning a high level of fitness; 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited. Physical profile ratings can be either permanent or temporary.

4. The applicant enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG) and as a Reserve of the Army on 31 March 2012 for a period of 8 years.
5. Orders 2249017 show the applicant was ordered to initial active duty for training (IADT) with a reporting date of 25 September 2012. A DD Form 220 (Active Duty Report) shows he served 73 days on active duty from 25 September 2012 to 7 December 2012.
6. The applicant underwent a medical examination on 18 April 2014 for enlistment purposes. His DD Form 2807-1 shows he reported he was in good health with a history corrective lenses, tonsillectomy, wisdom teeth removal, chicken pox, and shingles. The corresponding DD Form 2808 again shows he exceeded weight standards. He was found not qualified for service and assigned a physical profile of 3T11111.
7. The applicant entered active duty for training on 19 September 2014. He completed his required training and was awarded the military occupational specialty (MOS) 68W (health care specialist). He was released from active duty and returned to his unit effective 19 September 2014.
8. A memorandum, subjected: Non-Duty Related Medical Disqualification Request for Separation, dated 29 November 2016, from the applicant to his unit stating:
 - a. He received his permanent profile on 14 November 2016. He is currently considered medically disqualified for panic attacks and anxiety; not intractable in accordance with Army Regulation (AR) 40-501 (Standards of Medical Fitness). He is aware he no longer meets medical retention standards; he also acknowledges declining entry to the Physical Evaluation Board (PEB) and is requesting to be separated from the [REDACTED] ARNG.
 - b. His condition/impairment outlined in this memorandum is considered non-duty related. The disqualifying impairment did not occur nor was aggravated during duty, including no manifestation while performing duty.
 - c. He is aware he will be considered medically non-deployable during the duration of this process. He is not authorized to attend Annual Training. He is still obligated to

participate in mandatory Inactive Duty Training (IDT) performing under the limitations of his permanent profile.

d. He has been struggling with anxiety and depression for the better part of a year and a half now. He has been under medications and going through therapy in order to help himself get better. Although he has made small improvements, he is still far away from his goal. It has been recommended/discussed by his doctors and family to remove as many stressors from his life as possible in order to assist his healing process. Unfortunately, the Army is one of those stressors. He hopes to continue to get better and focus all of his time on this goal moving forward.

9. A memorandum, subjected: Notification of Non-Duty Related Medical Disqualification, dated 6 January 2017, states:

a. The Office of the State Surgeon has conducted a comprehensive and detailed review of his medical records. He has been issued a permanent profile (DA Form 3349), dated 15 November 2016, for panic attacks and anxiety. In accordance with paragraph 3-33b and c of AR 40-501 - Standards of Medical Fitness -he no longer meets medical retention standards.

b. His condition/impairment is considered non-duty related. He is currently pending medical separation with an effective date of 60 days from the date of this memorandum. In accordance with AR 40-501, paragraph 10-27, his is not authorized to attend Annual Training or be placed on orders during this process. He is required to attend Inactive Duty Training within the parameters of his permanent profile.

c. He may submit a written request - within 30 days from the date of this memorandum - for referral to the non-duty related (NDR) Physical Evaluation Board (PEB), for a fitness for duty determination only. ... If no written response is received - within 30 days from the date of this memorandum - the separation process will begin.

10. A memorandum, subjected: Medical Separation from the ■■■ ARNG, dated 25 January 2017, states: On 6 January 2017, he elected - in writing - to be discharged from the Army National Guard, a reserve component of the Army. This was based on medical retention disqualification guidance in accordance with National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management) paragraph 6-36l (8). His is therefore separated from the OHARNG, effective 30 days from the date of this memorandum.

11. Orders 055-910, dated 24 February 2017, shows the reason for the applicant's discharge as: medically disqualified.

12. The applicant's NGB Form 22 shows he was honorably discharged from the [REDACTED] ARNG and as a Reserve of the Army on 25 February 2017 under the provisions of NGR 600-200, paragraph 8-35I (8) for medically unfit for retention. He was credited 4 years, 5 months, and 25 days total service for pay.

13. The applicant provided the following:

a. A VA service connected disability letter and a VA summary of benefits letter showing he is receiving service-connected disability compensation with a combined evaluation of 50 percent effective 1 December 2022. He does not provide what condition(s) he is rated.

b. His father, [REDACTED] statement in support of claim stating since joining the Army, the applicant has become a different person. One incident he had with the applicant involved a phone call from the applicant in which he was upset and crying because he was very late on his car payment, felt like a loser and wanted to kill himself. He was able to calm the applicant down with a promise not to harm himself. (The statement in its entirety is available to the Board).

c. His mother, [REDACTED] statement in support of claim stating since the applicant joined the Army, he has become a different person. He used to be easy going and loved going different places; now that is not the case anymore. He stays home more now than he ever did before. She would have to hold him all day and night so he could fall asleep. He would cry all the time and could not stop. She missed so much work trying to take care of him. He eventually lost a good job because of the anxiety and depression. He had to move back in with her and her husband. He has gained a lot of weight due to all the medications he is on now. (The statement in its entirety is available to the Board).

d. His wife, [REDACTED] three (3) statements in support of claim stating she has known the applicant since they were in high school.

(1) She always knew him to be free-spirited, genuine, kind-hearted, and open to all human beings. He had a sparkle in his eyes. She lost touch with him until after he was separated from the Army. He had lost his sparkle. He used to love working out and taking care of himself with diet. Post separation he gained a lot of sudden weight reaching 350 pounds. He did not want to leave the house or be active. After a few months of dating, he started getting sudden and frequent anxiety and panic attacks resulting in trips to the emergency room for fear of a hearth attack. (The statement in its entirety is available to the Board).

(2) The applicant has developed a hump on his neck and back and neck arthritis. She believes a nerve impairment from his neck and spine leads to and triggers his panic attacks. She has noticed swelling on the back of his neck, resulting in stiffness and pain.

His back has locked up to the point he cannot lift their daughter. (The statement in its entirety is available to the Board).

(3) The applicant suffers from gastroesophageal reflux disease (GERD). His symptoms include nausea, regurgitation, difficulty swallowing, and severe heart burn. He never had this prior to his neck injury. Many nights he cannot sleep for the constant reflux and belching. He is miserable if he misses a dose of his medication.

14. Based on the applicant's contention the Army Review Boards Agency medical staff provided a medical review for the Board members. See "MEDICAL REVIEW" section.

15. The Army rates only conditions determined to be physically unfitting at the time of discharge, which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career. The VA does not have authority or responsibility for determining physical fitness for military service. The VA may compensate the individual for loss of civilian employability.

16. Title 38, U.S. Code, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

17. Title 38, CFR, Part IV is the VA's schedule for rating disabilities. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

18. MEDICAL REVIEW:

a. Request: The applicant is requesting his NGB Form 22 (National Guard Report of Separation and Record of Service) corrected to show he was medically discharged for depression and anxiety.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a brief summary of information pertinent to this advisory:

- The applicant enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG) and as a Reserve of the Army on 31 March 2012.

- Applicant underwent a medical examination on 27 March 2012 for enlistment purposes. His DD Form 2807-1 (Report of Medical History) shows he reported he was in good health. The corresponding DD Form 2808 (Report of Medical Examination) shows he exceeded weight standards. He was found not qualified for service and assigned a physical profile of 3T11111.
- Orders 2249017 show the applicant was ordered to initial active duty for training (IADT) with a reporting date of 25 September 2012. A DD Form 220 (Active Duty Report) shows he served 73 days on active duty from 25 September 2012 to 7 December 2012.
- Applicant's NGB Form 22 shows he was honorably discharged from the [REDACTED] ARNG and as a Reserve of the Army on 25 February 2017 under the provisions of NGR 600-200, paragraph 8-35I (8) for medically unfit for retention. He was credited 4 years, 5 months, and 25 days total service for pay.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 293, NGB Form 22, VA summary of benefits letter, medical records, statements in support of claim, and ABCMR Record of Proceedings (ROP). The VA electronic medical record and DoD health record available for review through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states this request is to show that his anxiety and depression were the reason he was separated from the Army. This way he will qualify for a VA home loan. This appears to be inconsistent since the applicant was honorably discharged and there should be no impediment to his accessing a VA loan.

e. The applicant's electronic medical record is void of behavioral health encounters. However, the applicant submitted medical documentation from a civilian provider indicating nine medical visits with the provider between 18 May 2015 to 11 June 2020. The applicant's medical documentation indicates on 18 May 2015 he was diagnosed with panic syndrome and anxiety. He was treated with medication management to address both his symptoms of panic and anxiety. He participated in follow-up visits on 11 June 2015, 25 August 2015, and 17 March 2016. The applicant was seen again on 5 August 2016 and was diagnosed with Depressive Disorder, NOS; Anxiety; and Panic Disorder. During that time, when he was being treated for behavioral health concerns, the applicant appeared to be performing his duties and exceeding expectations, with his service record evidencing a promotion order dated 24 January 2015 and a letter dated 11 December 2015 indicating ribbons awarded. On 7 November 2016, the applicant was ordered to active duty for training. However, the applicant submitted a memorandum to his unit, dated 29 November 2016, for non-duty related medical disqualification request for separation. The memorandum reports he received a profile on 14 November

2016 and was being considered medically disqualified for panic attacks and anxiety; not intractable in accordance with Army Regulation (AR) 40-501 (Standards of Medical Fitness). He acknowledged declining entry to the Physical Evaluation Board (PEB) and requested to be separated from the [REDACTED] ARNG. His condition/impairment was considered non-duty related. The disqualifying impairment did not occur nor was it aggravated during duty, including no manifestation while performing duty. He was provided the option of submitting a written request; within 30 days for referral to the non-duty related (NDR) Physical Evaluation Board (PEB), for a fitness for duty determination only. No written response was received. The applicant's behavioral health condition while in service was treated by a civilian provider with medication management and a referral to therapy. However, he did not require admission to a psychiatric hospital or facility, his symptoms did not impede his ability to perform his duties, and there was no manifestation of his behavioral health condition while performing his duties.

f. The VA electronic record indicates the applicant is currently 50% service connected for Mood Disorder with an effective date of 21 July 2022. The VA electronic record is void of any BH treatment records for this applicant.

g. Based on all available information, it is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the IDES process at this time. Although the applicant has been service connected for Mood Disorder, 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 Mood Disorder through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of Mood Disorder is not automatically unfitting per AR 40-501 and would not automatically result in the 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. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a 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. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support a referral to the IDES process at this time. Additionally, the opine noted there is no indication that an omission or error occurred that would warrant a referral to the IDES process. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

2. The Board agreed there is insufficient evidence to support the applicant's contentions based on the opine, for correction to his NGB Form 22 showing he was medically discharged for his depression and anxiety. Based on the preponderance of evidence, the Board denied relief

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.

2/18/2024

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.

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) 135-178 (Army National Guard and Army Reserve - Enlisted Administrative Separations) establishes policies, standards, and procedures governing the administrative separation of certain enlisted soldiers of the Army National Guard of the United States and the United States Army Reserve as directed by Department of Defense Directive 1332.14, December 1993 Subject: Enlisted Administrative Separations.

3. Title 10, U.S. Code, § 12731b - Special rule for members with physical disabilities not incurred in line of duty.

a. In the case of a member of the Selected Reserve of a reserve component who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability, the Secretary concerned may, for purposes of section 12731 of this title, determine to treat the member as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member has completed

at least 15, and less than 20, years of service computed under section 12732 of this title.

b. Notification under subsection (a) may not be made if— (1) the disability was the result of the member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary concerned; or (2) the disability was incurred during a period of unauthorized absence. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

4. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

5. Title 38 USC, section 1110 (General - Basic Entitlement) states 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.

6. Title 38 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states 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.

7. AR 635-40 (Personnel Separations-Disability Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

8. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). The Department of Veterans Affairs Schedule for Rating Disabilities (VASRD). VASRD is used by the Army and the VA as part of the process of adjudicating disability claims. It is a guide for evaluating the severity of disabilities resulting from all types of diseases and injuries encountered as a result of or incident to military service. This degree of severity is expressed as a percentage rating which determines the amount of monthly compensation.

9. Section 1556 of Title 10, USC, 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.

10. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

11. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences.

12. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the 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. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

//NOTHING FOLLOWS//