

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2023

DOCKET NUMBER: AR20230005409

APPLICANT REQUESTS:

- restore rank/grade to staff sergeant (SSG)/E-6
- in effect, medical discharge
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- U.S. Army Aviation School Certificate
- Academy of Health Sciences U.S. Army Diploma
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Rutgers The State University Bachelor of Arts Certificate
- Letter from Rider University
- Rider University Master of Arts Certificate
- Pictures of Applicant
- Newspaper Article Workers Learning Job Training Skills
- Newspaper Article "Urban Network Organization (UNO)" Training Programs Helping Youth "Build" a Future
- Newspaper Article Three Honored with Community Service Awards
- Letter from Internal Revenue Service (IRS)
- Welcome from Mayor W- D-
- Letter from Mayor
- Letter from Minotola National Bank
- Letter from National Puerto Rican Coalition Inc.
- Letter from National Council of La Raza
- Letter of Appointment
- Department of Veterans Affairs (VA) Decision Documents, 5 January 2023 and 13 February 2023
- Letter from VA
- Letter from Army Review Boards Agency (ARBA)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 in his application and self-authored letter, in effect:

a. The applicant indicates on his application he suffers from Post-Traumatic Stress Disorder (PTSD) and he was the victim of sexual assault/harassment.

b. He was honorably discharged but a reduction in rank had occurred. He believes the root cause of the behavior and discharge was based on an undiagnosed, undocumented, and lack of treatment for PTSD.

c. The PTSD diagnoses has throughout the years, progressed into additional disorders such as Bipolar Disorder and Anxiety. It has been determined by the VA he is service connected for these conditions. Unfortunately, the diagnoses have contributed to a lifetime of hardships including divorces, homelessness, suicidal ideations, and unsuccessful attempts.

d. After serving with distinction and honor, it was a mental condition that was a factor and contributed to the discharge. The PTSD condition started and progressively got worse during his military tenure. The condition directly contributed to the discharge because it was undiagnosed and untreated. Had he been medically discharged he would have been a disabled veteran for the last half a century. That itself is unjust.

e. The United States military is one of the few professions in the world that requires those who join it to not only work for a particular service branch but to live by a certain set of standards, traditions, customs, courtesies, and code. It is a type of cultural engagement that is unique to Soldiers. A person is not just a part of the U.S. military for eight hours per day, they live it for 24/7. This type of complete, emotional, spiritual, personal, and professional commitment leads to military pride. A pride ingrained into our very psyche.

f. While serving in the Army, one of his greatest accomplishments and prideful moments was receiving the honor of a 2-star general, arriving from Washington DC, promoting him to SSG, as he was the only medical corpsman in his Military Occupational Specialty (MOS) to be promoted that year, and secondly, competing for the Expert Field Medical Badge. Approximately 50 Soldiers participated and only two successfully completed the course, the commanding officer and himself. The

achievement is in line with God's greatest gift, the birth of his children, and on his bucket list, completing a master's degree in Organizational Leadership.

g. The desire to choose this degree stemmed from his service in the military, which transitioned over into the civilian sector. This accomplishment allowed him to conceive a nonprofit organization created to instill leadership skills to inner-city students through "academics, arts, and athletics" curriculum and programs.

h. Creation of his legacy, during the remaining years of his life is his goal. He wants his family to stand proud of his military service and accomplishments, regardless of the obstacles and struggles he has overcome. He has learned to understand there are emotional, personality, beliefs, expectations, physical, and mental influences that have had a profound impact throughout his lifespan. He has now learned to embrace it.

i. Yet, the fact that he was demoted and released from the military is intolerable for his peace of mind, especially since an undiagnosed and untreated medical condition and discharge decision had significantly altered the trajectory of his career.

j. He has read estimates of PTSD rates from VA's National Center for PTSD range from 11 to 20 percent of Iraq and Afghanistan Veterans to up to 30 percent of Vietnam Veterans. Yet nationwide only about 8 percent of the five million Veterans using VA care have been diagnosed with the disorder. For those left undiagnosed and ultimately untreated, PTSD can have life-altering consequences including hospitalization, unemployment, and poverty. About 30 percent of Veterans with untreated PTSD take a more chronic course.

k. Studies show these Veterans are more likely to have failed marriages, be indigent and have a number of medical problems. It is one of those things that cascades over time. You lose your job, your marriage falls apart, and it just accumulates, which has been in his case. Had he been properly diagnosed and treated under proper treatment, had he been given a second chance or medically discharged, in both cases his life would have been positively different.

l. Half a century of pain and suffering would have been averted; thus, he asks for the Board's consideration to have his rank restored to SSG and remove the blemish on his otherwise flawless record so he may solidify his legacy. He looks forward to speaking to the Board.

3. The applicant's service record contains the following documents:

a. DD Form 214 shows the applicant entered active duty on 26 November 1973 in MOS 67V (OH-6/OH-58 Helicopter Repairman) and was honorably transferred, in the rank/grade of specialist four (SP4)/E-4, to the U.S. Army Reserve (USAR) Control

Group (Reinforcement) on 29 November 1976. He completed 3 years and 4 days of active duty service. His terminal date of reserve service obligation was 25 November 1979.

b. DD Form 4 (Enlistment or Reenlistment Agreement - Armed Forces of the United States), dated 18 January 1977 shows the applicant, in the rank of private (PVT)/E-1 enlisted in the USAR for a period of 6 years.

c. On 26 April 1977, the applicant entered active duty.

d. DD Form 4, dated 27 January 1981, shows the applicant immediately reenlisted in the Regular Army, in the rank/grade of specialist five (SP5)/E-5, for a period of 3 years.

e. Orders Number 77-40, published by Headquarters, Fort Devens, dated 21 April 1982 promoted the applicant to the rank/grade of SSG/E-6 in MOS 91Y (Eye Specialist), effective 1 May 1982 with a date of rank of 1 April 1982.

f. DD Form 4, dated 10 November 1983, shows the applicant immediately reenlisted in the Regular Army, in the rank of SSG, for a period of 4 years.

g. DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice (UCMJ)) dated 19 April 1984 shows the applicant accepted Nonjudicial Punishment (NJP) under the provisions of Article 15, UCMJ, for wrongful appropriation of government property of a value of about \$920 between on or about 8 August 1983 through 11 December 1983. His punishment included forfeiture of pay suspended and extra duty. The applicant did not appeal his punishment.

h. DA Form 3822-R (Report of Mental Status Evaluation), dated 17 September 1984 shows the applicant had normal behavior, was fully alert, fully oriented, his mood was anxious, he had clear thinking and normal thought content. He met retention requirements. The applicant displayed many possible traits which closely approached a personality disorder diagnosis. In view of that he would not be able to reenlist, and thus there could be no meaningful attempt to rehabilitate him/offer him a chance to save his career. Administrative discharge was recommended. The entire evaluation is available for the Board's review.

i. DA Form 2627, dated 20 September 1984, shows the applicant accepted NJP under the provisions of Article 15, UCMJ, for being absent without leave from on or about 20 August 1984 through on or about 28 August 1984. His punishment included reduction in rank to SP5/E-5 and forfeiture of pay for two months, suspended. The applicant did not appeal the punishment.

j. DA Form 2627, dated 5 October 1984, shows the applicant accepted NJP under the provisions of Article 15, UCMJ, for absenting himself from his place of duty on 24 September 1984 and 25 September 1984 to 26 September 1984. His punishment included reduction to E-4. The applicant did not appeal his punishment.

k. Memorandum, Subject: Separation for Unsatisfactory Performance under the provisions of Chapter 13, Army Regulation 635-200 (Personnel Separations Enlisted Separations), dated 9 October 1984, notified the applicant he was being recommended for separation for unsatisfactory performance. Within the previous 12 months, the applicant's performance of duty had been characterized by incidents that reflected negatively on his desire and ability to meet the Army's performance and retention standards. The applicant had failed to respond to counseling by supervisors, the commander, and first sergeant. The applicant had received punishment under Article 15, UCMJ. Additionally, the applicant had been involved in damage of government property and disorderly conduct. The commander felt the best interests of the Army and the applicant would be met by administratively discharging the applicant from the Army.

l. DA Form 3822-R, dated 16 October 1984, shows the applicant had normal behavior, was fully alert, fully oriented, had an anxious mood, clear thinking, normal though content, and had the mental capacity to understand and participate in the proceedings. The entire evaluation is available for the Board's consideration.

m. 1st Indorsement Subject: Separation for Unsatisfactory Performance, dated 18 October 1984, shows the applicant consulted with counsel, waived consideration of his case by a board of officers, waived a personal appearance before a board of officers, submitted statements in his own behalf, and waived representation by military counsel. The statements submitted, if any, were not available for the Board's consideration. He understood he could encounter substantial prejudice in civilian life and he may be ineligible for all benefits as a Veteran under both Federal and State laws.

n. DA Form 2627-2 (Record of Supplementary Action Under Article 15, UCMJ), dated 23 October 1984, vacated the suspended punishment of forfeiture of one half of one month's pay for two months imposed on the applicant on 20 September 1984 based on the applicant being absent from his place of duty on 24 September 1984 and 25 September 1984 through 26 September 1984.

o. Memorandum, Subject: Separation for Unsatisfactory Performance, dated 7 November 1984 the applicant's immediate commander initiated separation against the applicant under the provisions of AR 635-200, chapter 13. The applicant had been in the Army approximately 10 years and 6 months. His overall performance of duty the previous 12 months had been unsatisfactory and had adversely affected military

discipline, good order, and morale. All assistance given to the applicant had proven to be ineffective. The entire document is available for the Board's consideration.

p. 1st Indorsement Subject: Separation for Unsatisfactory Performance, dated 7 November 1984 the separation authority approved the commander's recommendation to separate the applicant under the provisions of AR 635-200, chapter 13 and directed the applicant be issued an honorable discharge.

q. DD Form 214 shows on 14 November 1984, the applicant was honorably discharged from active duty by reason of unsatisfactory performance, under the provisions of AR 635-200, chapter 13, Separation Code JHJ, Reentry Codes 3 and 3B). Item 4a (Grade, Rate or Rank) shows "SP4," Item 4b (Pay Grade) shows E-4, and Item 12h (Effective Date of Pay Grade) shows October 1984. He completed 7 years, 6 months, and 11 days of net active duty service this period with 3 years and 4 days of prior active duty service.

r. The applicant's service record is void of documentation showing he was going through the medical board process.

4. The applicant provides the following documents, not previously considered:

a. U.S. Army Aviation School Certificate shows the applicant successfully completed the OH-58 Helicopter Repair Course on 9 April 1974.

b. Academy of Health Sciences U.S. Army Diploma shows the applicant successfully completed the Basic Medical Specialist Course on 30 June 1977.

c. Rutgers The State University certificate shows the applicant received his Bachelor of Arts on 23 May 1991.

d. Letter from Rider University shows the applicant had been conditionally accepted by the College of Education and Human Services to the Doctor of Educational Leadership degree program beginning summer 2022.

e. Rider University certificate shows the applicant received his Master of Arts on 12 May 2022.

f. Pictures of the applicant, one of which states "Founder and Executive Director of 24/7 NPO, a New Jersey 501(c)(3) nonprofit corporation. Graduate of Perth Amboy High School; Rutgers University, Bachelor of Arts; and Rider University, Master of Arts. A Vietnam era Army Veteran and retired federal employee, motivational and inspirational speaker." The pictures are available for the Board's consideration.

g. Newspaper article entitled "Workers learning job training skills" which is about the Cumberland County Technical Education Center programs and names the UNO. The entire article is available for the Board's consideration.

h. Newspaper article entitled "'UNO' Training Programs: Helping Youth 'Build' a Future" states the UNO is a Vineland based nonprofit organization, organized to operate exclusively for charitable and educational purposes. UNO's program mission is to help at-risk youths, homeless, homeless mentally ill, welfare recipients, women, and minorities or anyone interested in a career in the construction trades. The entire article is available for the Board's consideration.

i. Newspaper article entitled "Three honored with Community Service awards" three individuals with UNO were honored with the 1998 Community Service awards. The entire article is available for the Board's consideration.

j. Letter from the IRS states the author was delighted to hear that the "UNO" was preparing to commence training and employment sessions. The entire letter is available for the Board's consideration.

k. A document entitled Welcome from Mayor W- D-, which was a welcome to the city of Perth Amboy and thanking the applicant for joining their community in support of high education through the USA Leadership Program. The entire document is available for the Board's consideration.

l. A letter from the Mayor to the National Puerto Rican Coalition Inc. to inform them the City of Vineland would welcome the National Puerto Rican Coalition Inc. and its organizational staff into Vineland to work with the UNO to further the well-being of the Hispanic residents in the city. The entire letter is available for the Board's consideration.

m. Letter from Minotola National Bank states they would be pleased to provide assistance in obtaining mortgage financing for the buyers of UNO's renovated homes in the local area. The entire letter is available for the Board's consideration.

n. Letter from National Puerto Rican Coalition Inc. to UNO requesting their participation and support for an initiative which the National Puerto Rican Coalition was seeking to implement with the U.S. Department of Commerce, National Telecommunications and Information Administration. The entire letter is available for the Board's consideration.

o. Letter from National Council of La Raza to UNO which officially notified UNO the National Council of La Raza was awarding UNO a grant of \$10,000.00 through the Intermediary Support for Organizing Communities Program. The entire letter is available for the Board's consideration.

p. Letter from the Mayor appointing the applicant to the Board of Directors of the Police Athletic League. The entire letter is available for the Board's consideration.

q. VA Decisions dated 5 January 2023 and 2 February 2023, state in pertinent part as it applies to PTSD:

- evaluation of PTSD in addition to bipolar I disorder, and unspecified anxiety disorder continued at 70 percent
- entitlement to individual unemployability was granted effective 11 January 2022
- evaluation of PTSD with bipolar I disorder, and unspecified anxiety disorder continued at 70 percent

r. Letter from the VA, dated 13 February 2023, was provided to the applicant so he could receive commissary store and exchange privileges from the Armed Forces.

s. Letter from ARBA, dated 16 June 2023, wherein they were requesting documentation showing the applicant had PTSD.

5. On 12 July 2023, the Criminal Investigation Division (CID) responded to the Army Review Board Agency's request for a sanitized Report of Investigation(s) and/or Military Police Report(s) pertaining to the applicant. They included reports showing the applicant was investigated for:

- adultery and unlawful cohabitation
- self inflicted injury, disorderly conduct, and damage to government property
- wrongful possession of government property

6. On 19 July 2023, the CID letter and reports were provided to the applicant to allow him the opportunity to respond. He did not respond.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting restoration of his rank and in effect, a medical discharge. He contends that he experienced PTSD and sexual assault/harassment, which mitigates his misconduct and warrants a medical discharge.

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: 1) The applicant enlisted in the Regular Army on 26 November 1973; 2) On 19 April 1984, the applicant accepted Nonjudicial Punishment (NJP) for wrongful appropriation of government property of a value of about \$920 between on 8 August-11 December 1983; 3) On 20 September 1984, the applicant accepted NJP for being AWOL from 20-

28 August 1984; 4) On 5 October 1984, the applicant accepted NJP for absenting himself from his place of duty on 24 September 1984 and 25 September 1984 to 26 September 1984; 5) The applicant was honorably discharged on 14 November 1984, Chapter 13- by reason of unsatisfactory performance. His rank was shown as "SP4."

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) and the applicant's VA Benefits letters were also examined.

d. The applicant states he incurred PTSD and sexual assault/trauma while on active service, which mitigates his misconduct and should have resulted in a medical disability discharge. There is insufficient evidence the applicant was ever deployed to an active combat area, and he did not describe experiencing sexual assault/harassment in his narrative description. The applicant was seen on 17 September 1984 for a Command Directed Mental Status Exam (MSE). His duty performance was described by his leadership as "excellent" until a year ago. The applicant reported his decrement in performance was related to problems with his second marriage. Specially, the applicant had accepted over \$900 in phone calls, which were charged to his unit, and he had gone AWOL. The applicant was reported to be anxious, but there was no history of psychiatric treatment or substance abuse prior to this encounter. The applicant was not diagnosed with a mental health condition, and he was recommended for an administrative separation. It was also noted the applicant had inconsistencies in his report of events. Lastly, the applicant was found to have the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention requirements.

e. The applicant was seen for another MSE on 16 October 1984 by a different behavioral health provider. Again, the applicant was identified as anxious, but he was not diagnosed with mental health condition. There was insufficient evidence the applicant was ever diagnosed with any mental health condition, attended any behavioral health treatment, or was ever placed on a psychiatric profile while on active service. There was evidence in a CID report that the applicant was investigated for cutting his wrists, disorderly conduct, and destruction of government property the day he was discharged. The applicant was reported to have been evaluated, treated and, released and the same day.

f. A review of JLV provided evidence the applicant began to engage in care at the VA in 2022. There is insufficient evidence the applicant has ever been diagnosed and treated for bipolar disorder by the VA. The applicant did during some of his evaluations report being exposed to sexual trauma as a child, but there was insufficient evidence he ever reported experiencing sexual assault/harassment while on active service. The applicant did complete a Compensation and Pension Evaluation in April 2022 for PTSD. The applicant reported trauma symptoms after his discharge as a result of his work as

medical personnel in a military hospital in Germany. The experiences the applicant reported were consistent with normal experiences for enlisted medical personnel. The applicant was diagnosed with service-connected PTSD (70%).

g. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant was evaluated twice by licensed behavioral health providers while on active service, and he was not diagnosed mental health condition and was found to meet the retention standards. The applicant appeared and reported to be experiencing difficulty with his second marriage, which impacted his military performance and resulted in his discharge. Therefore, there is insufficient evidence at this time that the applicant warrants a referral to IDES from a behavioral health perspective, and there is insufficient evidence the applicant's misconduct is mitigatable by a mental health condition or experience.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced PTSD, bipolar disorder, and sexual assault/harassment conditions while on active service. The applicant has been diagnosed with service-connected PTSD as the result of his typical experiences as medical personnel in a hospital in Germany.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced PTSD, bipolar disorder, and sexual assault/harassment conditions while on active service. The applicant has been diagnosed with service-connected PTSD as the result of his typical experiences as medical personnel in a hospital in Germany.

(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence the applicant was ever diagnosed with a mental health condition while on active service, and there is insufficient evidence he was found to not meet medical retention standards. The applicant appeared and reported to be experiencing difficulty with his second marriage, which impacted his military performance and resulted in his misconduct and discharge. Therefore, there is insufficient evidence at this time that the applicant warrants a referral to IDES from a behavioral health perspective. The applicant was diagnosed with service-connected PTSD in 2022 for reported symptoms after his discharge. The applicant was found to be AWOL and not at his place of duty, but there is insufficient evidence the applicant was actively avoiding any situation related to his reported trauma of working as medical personnel in Germany. Also, there is no nexus between PTSD and charging over \$900 in phone bills to his unit. The applicant reported experiencing sexual assault/harassment in his application, but he did not describe any experience of military

sexual trauma in his narrative or in his VA medical record. However, the applicant contends he was experiencing a mental health condition and experience that mitigated his misconduct and discharge, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, the Board determined 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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence of record shows the applicant was promoted to SSG/E-6 effective 1 May 1982 with a date of rank of 1 April 1982. However, he was reduced via NJP from SSG/E-6 to SP5/E-5 on 28 August 1984 following his AWOL from 20 to 28 August 1984 and reduced again to SP4/E-4 on 5 October 1984, following a series of misconduct. He held the rank/grade of SP4/E-4 at the time of separation. There is no evidence he was promoted back to SSG between the date she was reduced and the date he was separated. Therefore, the Board determined the grade listed on his DD Form 214 at the time of separation is neither in error nor unjust. s

b. The evidence of record also shows the applicant was discharged from active duty due to unsatisfactory performance. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical advisory opinion finding insufficient evidence at this time that the applicant warrants a referral to the integrated disability evaluation system from a behavioral health perspective, and there is insufficient evidence the applicant's misconduct is mitigatable by a mental health condition or experience. Based on a preponderance of evidence, the Board determined that the narrative reason for separation the applicant received upon separation was not in error or unjust.

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.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, section 1552(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) 635-40 (Disability Evaluation for Retention, Retirement, or Separation) Paragraph 4-3f (2) provides that Soldiers under processing for an administrative separation for misconduct remain eligible to be referred to the Medical Evaluation Board (MEB). The Soldier's commander must notify the Soldier's Physical Evaluation Board Liaison Officer (PEBLO) in writing that administrative separation action has been initiated. The Soldier's completed MEB must be referred to the Soldier's General Court-Martial Convening Authority (GCMCA) in accordance with AR 635-200

to determine whether the Soldier will be referred to the PEB. Approval and suspension of an AR 635–200 separation action is not authorized when the Soldier is pending both an AR 635–200 and AR 635–40 action. The GCMCA must decide which action to pursue (as described in AR 635–200). Soldiers continue to be eligible for these administrative separation actions up until the day of their separation or retirement for disability even though their Physical Evaluation Board findings have been previously completed and approved by USAPDA for the SECARMY. In no case will a Soldier, being processed for an administrative separation for misconduct be discharged through the Disability Evaluation System process without the approval of the GCMCA.

a. Chapter 4 (Separation for Expiration of Service Obligation) provides that a Soldier will 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 will not be separated because of expiration term of service unless processing for separation because of physical disability is waived.

b. Paragraph 4-27 provides that permanent disability retirement is directed under 10 USC 1201 or 10 USC 1204, as applicable, when the Soldier is determined unfit for continued service and has a compensable disability in accordance with the standards of this regulation, and:

- the disabilities are permanent and stable, or the disability rating will not improve to less than 80 percent
- the Soldier has at least 20 years of service as computed under 10 USC 1208
- the Soldier has a combined disability rating of at least 30 percent

3. AR 600-8-19 (Enlisted Promotions and Reductions) Chapter 3 (Semi-Centralized Promotions (Sergeant and Staff Sergeant) provides that field grade commanders of any unit authorized a commander in the rank of lieutenant colonel or above may promote an enlisted Soldier to the rank of SGT or SSG.

4. AR 27-10 (Military Justice) provides that any commander is authorized to exercise the disciplinary powers conferred by UCMJ, Article 15. Regarding reductions in grade, the grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this regulation, the imposing commander or any subordinate commander has "promotion authority" within the meaning of UCMJ, Article 15 if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade.

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

a. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

b. 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.

6. AR 635-5 (Separation Documents) in effect at the time prescribes the separation documents which are prepared for individuals upon retirement, discharge, or release from active military service or control of the Army. Item 4a; enter the grade, rate or rank at the time of separation.

7. On 25 August 2017 the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post Traumatic Stress Disorder (PTSD); Traumatic Brain Injury (TBI); sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge. The veteran's testimony alone, oral or written, may establish the existence of a condition or experience, that the condition or experience existed during or was aggravated by military service, and that the condition or experience excuses or mitigates the discharge.

8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that

might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//