

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 9 February 2024

DOCKET NUMBER: AR20230006596

APPLICANT REQUESTS: through counsel,

- an upgrade of his under honorable conditions (General) discharge
- his Separation Program Designator (SPD) code and narrative reason for separation be amended to reflect "Secretarial Authority"
- upgrade of his Reentry Eligibility (RE) code

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel Petition and Nine exhibits (38 pages)

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. On behalf of the applicant, counsel provides a brief in support of the applicant's petition and nine exhibits which are available in their entirety for the Board's consideration, to include all of the footnoted references. Counsel provides, in part:

a. Statement of facts.

(1) The applicant enlisted, in the U.S. Army on 22 February 2016 for military occupational specialty 91F (Small Arms Artillery Repairman) (Exhibit 1). After completing basic combat training and advance individual training at Fort Jackson, SC, the applicant was stationed at Fort Riley, KS, where he spent his entire military service (Exhibit 2). While at Fort Riley, the applicant was promoted to the rank/grade of specialist/E-4 on 22 February 2018 (Exhibit 2). The applicant was deployed to Poland from 11 September 2017 to 21 May 2018 (Exhibit 2). During his service, the applicant was awarded the Army Achievement Medal, Army Good Conduct Medal, National

Defense Service Medal, Global War on Terrorism Service Medal, and the Army Service Ribbon (Exhibit 1). He also completed the Combat Lifesaver Course (Exhibit 1). Furthermore, the applicant had 8 months and 11 days of foreign service (Exhibit 1).

(2) The applicant's military career began to take a turn for the worse around the middle of 2017. The applicant's unit conducted a National Training Center (NTC) rotation at Fort Irwin, CA, as part of their train up to deploy to Poland and Germany (Exhibit 3). Upon his return from NTC, the applicant discovered that his wife of 4 months had cheated on him with an old boyfriend (Exhibit 3). The applicant, who was 20 years-old at the time, shortly after used a vape offered by someone in his chain of command containing spice and this began a long struggle with addiction. The applicant used it daily to cope with his marital situation for several weeks afterward and then attempted to stop, realizing that he was developing an addiction to it. This began a 2-week period of nausea, loss of appetite, insomnia, paranoia, anxiety attacks, and aggressive outbursts. He began drinking heavily, up to eight or nine beers and a fifth of rum per day to replace his urges to relapse into spice and eventually self-referred to Substance Use Disorder Clinical Care (SUDCC). While in SUDCC, the applicant continued to feel hopeless and began smoking marijuana 3 times per week.

(3) The applicant eventually failed a urinalysis in November 2018, received nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), and fell back into heavy alcohol use in February 2019 while enrolled in the Addiction Medicine Intensive Outpatient Program (AMIOP). It was during this time that he was diagnosed with severe alcohol and marijuana use disorder. In April 2019, he spent 3 weeks at an in-patient care facility, was diagnosed with depression and anxiety, and was found to be nondeployable.

(4) The applicant was discharged on 21 August 2019 with an "Under Honorable Conditions (General)" discharge status. His narrative reason for separation was "Misconduct (Drug Abuse)" with an SPD code of "JKK" and an RE code of "4." The applicant served a total of 3 years and 6 months.

b. Argument.

(1) A discharge will be deemed proper unless it is determined that an error of fact, law, procedure, or discretion existed at the time that the applicant was discharged, and the error prejudiced the rights of the applicant. Department of Defense Instruction (DoDI) 1332.28 E4.2.1.1. An error will constitute prejudicial error if there is substantial doubt that the discharge would have remained the same if the error had not been made. DoDI 1332.28 E4.2.1.1.

(2) It is respectfully submitted that the applicant's chain of command made an error of discretion by discharging the applicant with an "Under Honorable Conditions

(General)" characterization of service, given that the applicant was suffering significant mental health issues at the time, which led to substance abuse. It is respectfully argued that the applicant should have been separated honorably under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 9 and Army Regulation 600-85, Chapter 10-13. The applicant self-referred, and it appears that the Army used his first failed urinalysis against him despite the fact that he had self-referred. It was clear that the applicant was incapable of continuing successfully in the Army after repeatedly relapsing. He should have been either administratively separated under "Honorable" conditions or entered into the Medical Evaluation Board (MEB)/Physical Evaluation Board (PEB) process in accordance with Army Regulation 635-200, Chapter 1-34, especially after he was found to be a rehabilitation failure and non-deployable based on his conditions of severe alcohol use and cannabis use disorder.

(3) The applicant was young, had only been married for 4 months, and discovered upon returning from NTC that his wife was being unfaithful. He was devastated, as any husband would be, and admits that he made a poor choice when he chose to smoke spice. The applicant's medical records, referenced in the preceding paragraphs, clearly depict the applicant's long and painful spiral into substance abuse and addiction. The applicant knew what was occurring and self-referred, showing that he was willing to take personal responsibility for his actions, and ask for help from his chain of command and substance abuse professionals, yet still could not pull his mind and body out of the destructive and addictive system in which he was trapped.

(4) Admittedly, the applicant's chain of command initially appeared to help the applicant, supporting him through the SUDCC process. However, as time progressed and the applicant struggled with relapse, they chose to separate him with an "Under Honorable Conditions (General)" characterization of service with "Misconduct (Drug Abuse)" as the narrative reason for separation. The applicant has been stigmatized and harmed by his discharge status, which various courts have recognized. "Since the vast majority of discharges from the armed forces are honorable, the issuance of any other type of discharge stigmatizes the ex-serviceman. It robs him of his good name. It injures his economic and social potential as a member of the general community." *Sofranoff v. United States*, 165 Ct. Cl. 470 (Ct. Cl. 1964). The unambiguous language of the decision demonstrates the mentality of how anything other than an "Honorable" discharge is viewed by individuals outside of the military. Here, the applicant has been deprived of his honor and good name, which continues to cause him undue harm. It is respectfully argued that this was the wrong course of action, and the applicant's chain of command made an error of discretion when it chose to separate the applicant for misconduct.

(5) Since the applicant's discharge, he has been able to establish himself in the civilian world. The applicant held various jobs following his discharge, including working as a groundskeeper, laborer and pipefitter, and specialty sales and tech consultant. The

applicant is currently employed as a delivery driver and warehouse extra. In this position, the applicant prepares, builds, and loads all furniture and appliances that need to be delivered. Additionally, he installs each piece of furniture and appliances with precision and in a timely manner. When working in the warehouse, the applicant uses team building skills he learned in the Army to help his fellow coworkers in any way possible. The applicant also furthered his education and attended the Sawtooth Emergency Medical Institute (STEMI) in Nampa, ID. (Exhibit 4) While attending STEMI, the applicant successfully completed the Emergency Medical Technician (EMT) course on 25 June 2020. Furthermore, the applicant was registered as an EMT by the National Registry EMTs on 1 March 2021. In addition to his employment and continued education, several individuals have drafted character references vouching for the applicant's character in support of this application.

(6) The applicant's case is ripe for review under the Wilkie Memorandum. The applicant resorted to drug use at a young age; however, has done well in the civilian world through gainful employment and continuing his education to become an EMT. In addition, the numerous letters reinforce both the applicant's character and capacity to be an outstanding citizen. They further shed light on the applicant's dedication and commitment to his country. Thus, it is respectfully submitted that this Honorable board grant him the relief he seeks.

c. Considering the facts and circumstances provided herein, the applicant respectfully requests that his discharge be corrected to reflect an "Honorable" characterization of service, upgrade the narrative reason for separation from "Misconduct (Drug Abuse)" to "Secretarial Authority" with corresponding SPD code, and upgrade his RE code from "RE-4" to "RE-1." The applicant's chain of command made an error of discretion by not discharging him with an "Honorable" characterization of service considering the applicant was suffering from substance abuse, caused by mental health issues. Furthermore, his character and rehabilitation warrant an "Honorable" discharge under the equitable principle of law.

d. Counsel provides the following documents in support of the brief, all of which are available in their entirety for the Board's consideration.

(1) Exhibit 1 – A DD Form 214 (Certificate of Release or Discharge from Active Duty).

(2) Exhibit 2 – An Enlisted Record Brief.

(3) Exhibit 3 – Extract from the applicant's military medical record which shows he was evaluated and treated for substance addiction and depression during his military service. The applicant reported using alcohol and drugs as a means to cope with stress after discovering his wife had cheated on him.

(4) Exhibit 4 – Resume depicting the applicant's professional and educational experience and achievements.

(5) Exhibit 5 – Certificate of Completion for the STEMI EMT course on 25 June 2020.

(6) Exhibit 6 – Certificate showing the applicant was certified as an EMT by the Nation Registry of EMTs on 1 March 2021.

(7) Exhibit 7 – A character reference letter from a fellow Soldier who served with the applicant between 2017 and 2019. He states the applicant was an upstanding Soldier, good mechanic, and a hard worker. He was always motivated and cheerful. He also showed a degree of determination, focus, commitment, willingness to learn, and work ethic.

(8) Exhibit 8 – A character reference letter from a fellow Soldier who served with the applicant between 2017 and 2019 and considers as both a friend and a member of his family. The applicant had a strong desire to protect not only his loved ones, but also anyone who was in need. He was a good motivator and leader who strove to be the best.

(9) Exhibit 9 – A character reference letter from a fellow Soldier who has known the applicant for over 5 years. As the applicant's former supervisor, he has followed his progress with interest and has come to know the many positive qualities that define him personally and professionally. He is a motivated and hard-working young man who did well during his service in the Army and was a valued member of the team. He has been impressed with the applicant's strong communication skills and his ability to establish a comfortable rapport with others. He has shown exemplary leadership skills and potential for growth.

3. The applicant enlisted in the Regular Army on 22 February 2016. Upon completion of initial entry training, he was assigned to a unit at Fort Riley, KS. He was advanced to specialist (SPC)/E-4 on 22 February 2018.

4. The applicant's record is void of complete documentation showing the facts and circumstances regarding his administrative separation. However:

a. A Headquarters, 2d Armored Brigade Combat Team, Fort Riley, KS memorandum, dated 19 August 2019, shows the Brigade Commander directed the applicant be separated under the provisions of Army Regulation 635-200, paragraph 14-12c(2), for Misconduct-Abuse of Illegal Drugs. He further directed that the applicant's service be characterized as General (under honorable conditions).

b. Orders 232-0016, issued by Headquarters, U.S. Army Garrison, Fort Riley, Fort Riley, KS on 20 August 2019 show he was to be discharged from the Regular Army effective 21 August 2019.

c. The applicant's DD Form 214 shows he was discharged on 21 August 2019 in the rank/grade of SPC/E-4, under the provisions of Army Regulation 635-200, Paragraph 14-12c(2), by reason of Misconduct (Drug Abuse) with SPD code "JKK" and RE code "4." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 3 years and 6 months of active service.

5. Army Regulation 635-200, Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge UOTHC is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

6. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his Under Honorable Conditions (General) characterization of service to honorable. In addition to a change in his Separation Program Designator (SPD) code, narrative reason for separation be amended to reflect "Secretarial Authority" and an upgrade of his Reentry Eligibility (RE) code.

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

- Applicant enlisted in the RA on 22 February 2016.
- Applicant's record is void of complete documentation showing the specific facts and circumstances regarding his administrative separation.
- A memorandum, dated 19 August 2019, shows the Brigade Commander directed the applicant be separated under the provisions of Army Regulation 635-200, paragraph 14-12c(2), for Misconduct-Abuse of Illegal Drugs. He further directed the applicant's service be characterized as General (under honorable conditions).
- Applicant's DD Form 214 shows he was discharged on 21 August 2019 under the provisions of Army Regulation 635-200, Paragraph 14-12c(2), by reason of

Misconduct (Drug Abuse) with SPD code "JKK" and RE code "4." His service was characterized as Under Honorable Conditions (General).

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, counsel petition and exhibits, ABCMR Record of Proceedings (ROP), DD Form 214, letters of support, and documents from his service record and separation packet. 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 via counsel that his military career began to take a turn for the worse around the middle of 2017. The applicant's unit conducted a National Training Center (NTC) rotation at Fort Irwin, CA, as part of their training to deploy to Poland and Germany. Upon his return from NTC, the applicant discovered his wife of four months had cheated on him with an old boyfriend. The applicant, who was 20 years-old at the time, shortly after used a vape offered by someone in his chain of command containing spice, and this began a long struggle with addiction. The applicant used it daily to cope with his marital situation for several weeks and then attempted to stop, realizing that he was developing an addiction. This began a two-week period of nausea, loss of appetite, insomnia, paranoia, anxiety attacks, and aggressive outbursts. He began drinking heavily, up to eight or nine beers and a fifth of rum per day to replace his urges to relapse into spice and eventually self-referred to Substance Use Disorder Clinical Care (SUDCC). While in SUDCC, the applicant continued to feel hopeless and began smoking marijuana three times per week. The applicant eventually failed a urinalysis in November 2018, received nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), and fell back into heavy alcohol use in February 2019 while enrolled in the Addiction Medicine Intensive Outpatient Program (AMIOP). It was during this time that he was diagnosed with severe alcohol and marijuana use disorder. In April 2019, he spent three weeks at an in-patient care facility, was diagnosed with depression and anxiety, and was found to be nondeployable. The applicant was discharged on 21 August 2019 with an "Under Honorable Conditions (General)" discharge status.

e. Active-duty electronic medical records available for review evidence a behavioral health encounter dated 07 August 2018 where the applicant was diagnosed with Other Psychoactive Substance Use, unspecified with withdrawal. The applicant was provided with ongoing care and subsequent encounters diagnosed him with Alcohol Dependence and Hallucinogen Use. He was provided services via the Substance Use Disorder Clinical Care (SUDCC) and a note dated 05 December 2018 indicates he was on the SUDCC high risk tracker for Alcohol Use Disorder, Severe. On 04 January 2019 he was scheduled for Medication Assisted Treatment for cravings and the medical provider

expressed concern that the applicant was drinking daily, and residential treatment was recommended due to his inability to stop drinking and positive THC results. The applicant was admitted to inpatient detox on 06 February 2019 and was discharged on 11 March 2019. Upon discharge he was referred to the Addiction Medicine Intensive Outpatient Program (AMIOP) to address concerns related to substance use disorder. He continued to receive services until his discharge and was diagnosed with Cannabis Dependence, uncomplicated; Alcohol Dependence, uncomplicated; and Sedative, Hypnotic or Anxiolytic Dependence, uncomplicated. On 03 May 2019 he was seen for a Mental Status Evaluation for the purpose of separation. During that encounter he was diagnosed with Alcohol Use, unspecified with alcohol-induced mood disorder; Cocaine Use, unspecified with cocaine-induced mood disorder; and Alcohol Dependence. A note dated 25 June 2019 diagnosed him with Alcohol Abuse with alcohol-induced mood disorder and summarizes the applicant's history of polysubstance abuse, with spice (synthetic marijuana) being his primary substance of abuse. He also used marijuana off and on. He had been through residential treatment at BAMC and then AMIOP until 2 April 2019. He relapsed on 24 March 2019 on alcohol use and had a previous relapse of marijuana. He was previously taking naltrexone for cravings but discontinued against medical advice. The applicant's final in-service encounter dated 14 August 2019 discharged him from SUDCC, cleared him to leave, and provided a final diagnosis of Sedative, Hypnotic or Anxiolytic Dependence, uncomplicated; Alcohol Dependence, uncomplicated; and Cannabis Dependence, uncomplicated.

f. The applicant is not service connected and the VA electronic medical records available for review evidence a note dated 21 September 2020 which provides a diagnostic impression of Problematic Alcohol Use and Nicotine Use. On 18 October 2021, the applicant self-referred for psychotherapy however, reported taking a harm reduction approach to his alcohol use and was not interested in the recommended treatment.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor the applicant's main diagnosis was polysubstance use disorder with mood issues surfacing as a result of his substance abuse. Regardless, an opine regarding mitigation cannot be provided without the specific facts and circumstances that led to his discharge from military service.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant contends a mitigating condition as well as marital conflict/infidelity

(2) Did the condition exist or experience occur during military service? Yes. The applicant was treated for polysubstance abuse disorder while in military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant's counsel contends he was suffering from substance abuse caused by mental health issues. However, medical documentation indicates the applicant engaged in polysubstance abuse with a history of severe abuse of synthetic marijuana and alcohol, that eventually resulted in an episode of substance induced mood disorder. The applicant's main diagnoses while in service were Sedative, Hypnotic or Anxiolytic Dependence; Alcohol Dependence; and Cannabis Dependence. The applicant was diagnosed with Alcohol abuse with alcohol-induced mood disorder during an episode of treatment where his substance abuse caused feelings of hopelessness, anxiety and depressed mood. His symptoms likely resulted from his extensive history of polysubstance abuse since it is a risk factor for mental health symptoms. Given his mood issues were induced by his substance abuse, this would not support mitigation of discharge. Regardless, without the specific facts and circumstances of the misconduct that led to his discharge, an opine regarding mitigation based on a BH condition cannot be provided.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board noted the lack of circumstances surrounding the applicant's discharge and concurred with the medical advisor's review finding mitigation could not be determined without the specific facts leading to the applicant's separation. The Board determined the characterization of service, narrative reason for separation, and reentry code the applicant received upon separation was not in error or unjust.

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a provides that 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. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 5, paragraph 5-3 states separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.
 - d. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally

appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

5. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

6. Army Regulation 635-5-1 (SPD Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD JKK is the appropriate code to assign to an enlisted Soldier who is involuntarily separated under the provisions of Army Regulation 635-200, Chapter 14-12c(2), due to Misconduct (Drug Abuse). JFF is the appropriate SPD to assign to enlisted Soldiers who are voluntarily discharged under Secretarial authority. Additionally, the SPD/RE Code Cross Reference Table established RE code "4" as the proper reentry code to assign to Soldiers separated under this authority and for this reason.

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (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.

8. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//