

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2024

DOCKET NUMBER: AR20230006644

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions (UOTHC) discharge
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney Brief
- DA Form 4834 (Commander's Report of Inquiry/Unauthorized Absence)
- U.S. Army Deserter Information Paper
- Memorandum Request for Discharge in lieu of (ILO) Trial by Court-Martial
- Memorandum Admission of Absent Without Leave (AWOL) for Administrative Purposes
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Army Discharge Review Board (ADRB) Letter
- Cornerstone Psychology Report

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:

a. He is requesting an upgrade of his UOTHC discharge pursuant to the settlement agreement in the lawsuit filed in U.S. District Court of Connecticut and Public Notice, dated 28 April 2021 by the Department of the Army (DA), Army Review Boards Agency (ARBA). He believes he is a "Group B" Soldier.

b. The reality at the time of his AWOL and after he turned himself in, was he was suffering from a significant mental disability, which constitutes "other mental health" or

other "behavioral health issues" as provided in the Public Notice. The Forensic Psychological Evaluation, provided by the applicant, determined the applicant met the diagnostic criteria, at a minimum, for adjustment disorder with mixed anxiety and depression.

c. Although the applicant's command knew or should have known of his severe mental stress, at the time before he went AWOL and after he turned himself in, the command took no action whatsoever to consider it, much less attempt to help the applicant resolve it. The applicant was told to Soldier up.

d. As the forensic evaluation reported, the applicant was overwhelmed by the psychosocial stressors and the lack of assistance and support from his military superiors. These things coupled with a general absence of adaptive coping skills left the applicant vulnerable to emotional decision making, impaired his judgment, and with much less ability to clearly consider the long-term effects of his decisions. This mental health deficiency impacted not only the applicant's decision to go AWOL but his decision, after turning himself in, to take an administrative discharge.

e. The effects of the administrative discharge were misrepresented. The applicant was told, during out processing, that if he took a discharge, he would be out of the Army in only a few days without any other problems. The applicant was also told he could get an automatic upgrade of discharge in a couple of years. The applicant was also given misinformation about a court-martial and he would be sent to prison when it might have been possible to go to the retraining brigade and possibly continue in the Army. The applicant did not have the mental health to ask questions. He merely went along with the process, which was a mistake.

3. The applicant's attorney states, on behalf of the applicant, in effect:

a. The applicant received an UOTHC discharge ILO court-martial in November 2004, for being AWOL. He is now categorized as a "Group B" former Soldier who previously applied to the ADRB for an upgrade and whose applicant was denied between 7 October 2001 and 16 April 2011. The applicant received notification by the ADRB about a year later that his appeal was denied.

b. In the fall of 2021, the applicant became aware the he could submit a new application from his previously adjudicated discharge upgrade request. The attorney first met the applicant at a Civil Air Patrol (CAP) Squadron meeting, in the fall of 2021. The attorney is a chaplain and legal officer for the Florida Wing. During a conversation with the applicant, the attorney learned the applicant had been denied membership in CAP because he had an UOTHC discharge. The attorney agreed in the fall of 2021 to research the issue and help the applicant with a new application on a pro bono basis.

c. The applicant's appeal is based upon behavioral health issues related to the applicant's service and subsequent AWOL, which significantly contributed to the reasons for the AWOL and to the reasons he was discharged. The applicant's records, at the time of discharge and previous application, may have raised evidence pertaining to post-traumatic stress disorder, traumatic brain injury, military sexual trauma, and/or other behavioral health issues, per DA Public Notice, dated 28 April 2021 and pursuant to which this appeal is made.

d. The applicant respectfully claims other behavioral health issues, which are confirmed by his forensic psychological evaluation by Cornerstone Psychology. Dr. R-N. M- evaluated the applicant. The evaluation took place in November 2022. The final report was completed in March 2023. Dr. M- concluded at the time of AWOL and discharge, the applicant, at a minimum, met the diagnostic criteria for an adjustment disorder with mixed anxiety and depressed mood.

e. The doctor found, in his opinion, that there were relevant psychological and neurodevelopmental factors that substantially contributed to or caused the applicant to leave Fort Eustis and go AWOL in August 2003. The applicant experienced a number of psychosocial stressors, during the relatively brief period of his military training, to include his mother's divorce and related financial troubles, his grandmother's illness of newly discovered cancer, and the loss of two childhood friends in a car crash. The applicant described a feeling of loss of control and when he sought guidance and support from the chaplain and military leaders, he reportedly received none.

f. After basic training at Fort Jackson, South Carolina, the applicant went to Fort Eustis for advanced individual training to become a 67R (Apache Helicopter Crew Chief). He went AWOL about two weeks before he would have graduated. All he had left was the final test. There were 67R classes behind him, which he could have joined, if necessary, to make up any work he missed if he had been allowed to take a weekend pass or go on leave.

g. When the applicant learned of the tragic news from his mother and a friend at about the same time, it overwhelmed him. He asked for a pass to go home for the weekend. He went to see a chaplain but was told to use his chain of command. He went to his commander and first sergeant but his request for a weekend pass was denied. This was because, according to the first sergeant, the applicant did not pass his physical training (PT) test. The applicant explained he had sprained/twisted his ankle just before the test. The applicant had passed all previous PT tests with high scores. He was told to Soldier on. Nothing was done by the command to help him with his personal issues. The applicant's ankle got better and he passed the next PT test before he went AWOL.

h. At the time, several bad attitude Soldiers in his unit told him to go AWOL. This was the first time he considered going AWOL. These suggestions festered in his mind. On 4 August 2003, the applicant went AWOL and went home.

i. The unit commander filed a DA Form 4384 and noted in paragraph 10 that possible factors causing the AWOL were unknown. Why would the commander claim the factors were unknown when both the commander and the first sergeant personally knew all the problems the applicant was having at home and yet denied him a weekend pass and told him to Soldier on. It should have been obvious to the command why the applicant went AWOL. This entire situation could have been alleviated had the command reacted appropriately.

j. The applicant remained at home in an AWOL status. In October 2004, the applicant received a letter, via his mother, from Fort Knox urging him to turn himself in. He decided to do so having read in that letter "upon your return to military control, you will be given ample opportunity to present mitigating factors or circumstances." This turned out not to be the case. The applicant was never given an opportunity to present mitigating and extenuating factors or circumstances that would have clearly raised issues to his mental/behavior health.

k. The applicant, in the company of his mother, grandmother, and sister, traveled to Fort Knox, on 25 October 2004, to turn himself in. He was placed in the AWOL barracks for processing.

l. After several days, he began out processing in a group of about 30 Soldiers. All the instructions were presented, and paperwork signed, in a group format. There was no personal counseling.

m. The applicant and his group were asked if anyone wanted to stay in the Army or be discharged. The applicant did not know how to answer. The group was told if anyone decided to stay, they would be court-martialed and sent to prison. On the other hand, he could take an administrative discharge and be out in a few days without any problems. The Soldiers were also told they could get an automatic upgrade of their discharge in a couple of years or so.

n. The applicant never actually was given any personal one-on-one time with legal counsel, much less a defense counsel. His mitigating and extenuating circumstances were never considered by anyone in this processing system. The defense counsel informed the group in a handout, not personally, that he, as defense counsel, could not adequately defend anyone as there was inadequate documentation available. The point was that if the applicant wanted to stay in the Army, it would take an unknown amount of time to get the paperwork, all while he remained in custody in the AWOL disciplinary barracks.

o. If the applicant had been given adequate legal counsel, the Judge Advocate General lawyer would have been able to explain the actual working of the court-martial system. The applicant would be convicted, but given all the admissible mitigating and extenuating circumstances in his case, he may have been given another chance to serve in the Army. Further, the defense counsel would also note there was no such thing as an automatic upgrade of a discharge characterization. This was a totally false statement intended to encourage Soldiers to take a discharge, which would save the Army time, effort, and resources.

p. Given the applicant's behavioral/mental/emotional issues documented in the forensic psychological evaluation, it is obvious that he did not have the ability to make appropriate choices, before going AWOL. This is especially the case after turning himself in, given the clearly misleading, indeed untruthful information he was given in a group format. The applicant was never given the opportunity to present legally admissible mitigating and extenuating evidence as promised.

q. The applicant has done reasonably well in his life, since the Army. But the UOTHC discharge has adversely impacted his life to this day. He is a hardworking, well respected family man, who contributes to his community. But he has some jobs, promotions, and memberships denied because of the UOTHC discharge. A recent example, the applicant's daughter joined CAP. The applicant applied to join CAP to support his daughter and his community, but his application was denied because of the UOTHC discharge received almost 20 years ago.

r. It is respectfully submitted the facts presented, including the Forensic Psychological Evaluations, clearly meet the criteria set forth in the DA, ARBA Public Notice, dated 28 April 2021, Part II, new applications, for an upgrade of the applicant's UOTHC discharge.

s. The applicant was doing reasonably well in the Army until he was hit in a very short timeframe with a series of tragic incidents, which he was mentally unable to handle. The applicant was psychologically unable to handle these issues amounting to a behavioral disability as noted in his psychological evaluation.

t. The applicant's behavior health issues were exacerbated and complicated by the commands lack of understanding of the mental breakdown the applicant experienced. The command essentially did nothing to assist him telling him to just Soldier on, something the applicant was mentally unable to do.

u. After the applicant turned himself in, the process he went through provided no opportunity for him to provide mitigating and extenuating evidence. This evidence should have resulted in a mental health evaluation, but it did not.

v. Operating with less than a healthy mental state, during the discharge process, the applicant received misleading and untruthful information, which improperly influenced his decision making process, which, as noted, was compromised.

w. Accordingly, it is respectfully requested the Board upgrade the applicant's UOTHC discharge. The Board's consideration is deeply appreciated.

x. It is unclear what the applicant or counsel is referring to in the settlement agreement in the lawsuit filed in U.S. District Court of Connecticut and Public Notice, dated 28 April 2021 by the Department of the Army (DA), Army Review Boards Agency (ARBA). He does not list the court case number, Public Notice number or provide the court document to which he refers.

4. The applicant provides the following documents:

a. DA Form 4384, dated 4 August 2003, which shows in block 10 (Possible Contributing Factors Causing AWOL) the unknown block is checked.

b. A U.S. Army Deserter Information Point document, dated 29 September 2004, which states the applicant was reported by his military unit to be in a deserter status as of 3 September 2003. The applicant was encouraged to report immediately to his nearest active duty military installation. He should bring a copy of the letter and all available documentation relating to his military service so the matter of his AWOL could be resolved. Upon his return to military control, he would be given ample opportunity to present any mitigating factors or circumstances which may impact upon the commander's decision to retain or separate him from the Army.

c. Memorandum Admission of AWOL for Administrative Purposes, dated 28 October 2004, states the applicant knowingly, willingly, and voluntarily declared he was AWOL from the U.S. Army from on or about 4 August 2003 to on or about 25 October 2004. He made the admission for administrative purposes only, so he may process out of the Army and realized in doing so he may be given an UOTHC discharge. The applicant and his defense counsel signed the memorandum.

d. A letter from the ARBA, dated 16 April 2009, which acknowledged receipt of his application for review of discharge to the ADRB.

e. Confidential Forensic Psychological Evaluation, shows the applicant was evaluated on 7 November 2022. The evaluation states, in pertinent part:

(1) The applicant was seeking an upgrade of his UOTHC discharge pursuant to the settlement agreement in the lawsuit filed in the U.S. District Court of Connecticut and Public Notice, dated 28 April 2021, filed by the DA ARBA as a Group B Soldier

claimant. Specifically, the evaluation was completed to determine whether the applicant might have suffered from behavioral health issues prior to or at the time of his discharge from military service.

(2) It was the opinion of the doctor that there were relevant psychological and neurodevelopmental factors that substantially contributed to or caused the applicant to leave Fort Eustis in an AWOL status in August 2003.

(3) From a neurodevelopmental perspective, the applicant remained in what is now considered late adolescence, while participating in his military training and his initial exit from the military. Individuals within this neurodevelopmental category (18-21 years of age) experience ongoing maturation of the brain and that continued development has substantial impacts on one's decision-making, self control, and emotional processing.

(4) In the case of the applicant, it appears quite evident that these maturational deficits were present and likely impacted his decisions and behaviors, at the time he left Fort Eustis. He was emotionally distressed by psychosocial stressors and the lack of assistance/support from his military superiors. While, the applicant described negative peer influences that seemed to encourage the idea of going AWOL, perhaps more influential to his decision-making was the experience of two peers leaving AWOL and with no detrimental effects that he could observe, at that time. That is, he had no reference point for potential consequences to the act. These things, coupled with the general absence of adaptive coping skills left him vulnerable to emotional decision-making, impaired judgement, and with much less ability to clearly consider the long-term effects of his decisions.

(5) The entire examination is available for the Board's consideration.

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

a. The applicant's DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army on 6 March 2003.

b. DA Forms 4187 (Personnel Action), shows the applicant's duty status was changed on: 4 August 2003, from present for duty (PDY) to absent without leave (AWOL) and on 3 September 2003, from AWOL to dropped from rolls (DFR)

c. DD Form 443 (Deserter/Absentee Wanted by the Armed Forces) prepared on 3 September 2003, shows the applicant went AWOL on 4 August 2003 and was identified as DFR on 3 September 2003.

d. DD form 616 (Report of Return of Absentee), dated 25 October 2004, shows the applicant surrendered to military control.

e. DA Form 4187, show the applicant's duty status was changed on 25 October 2004 from DFR to Attached/PDY. The applicant surrendered to authorities at Fort Knox, Kentucky. He was pending AWOL/DFR status from Fort Eustis.

f. DD Form 458 (Charge Sheet), dated 28 October 2004, shows court-martial charges were preferred against the applicant for one specification of AWOL from on or about 4 August 2003 to on or about 25 October 2004 was preferred against the applicant.

g. Memorandum subject Request for Discharge in lieu of (ILO) Court-Martial, dated 28 October 2004, shows the applicant consulted with legal counsel and voluntarily requested to be discharged ILO trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), chapter 10. Legal counsel advised him of the basis for his contemplated trial by court-martial and the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ); of the possible effects of a discharge UOTHC if the request was approved; and of the procedures and rights available to him. The applicant chose not to submit statements in his own behalf.

h. Memorandum Request for Discharge ILO Courts-Martial, dated 29 October 2004, shows the applicant's commander recommended approval of the applicant's request and that he be issued an UOTHC discharge. On 2 November 2004, by memorandum, the appropriate approval authority approved the applicant's request and directed he be issued an UOTHC discharge.

i. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was discharged on 10 November 2004 under the provisions of chapter 10 of AR 635-200 with an under other than honorable conditions characterization of service. . The applicant had completed 5 months and 7 days of active duty service. His separation code was KFS and his reentry code was 4. He had lost time from 4 August 2003 through 24 October 2004.

j. A letter from ADRB, dated 29 October 2009 in ADRB Docket Number AR20090006250, states after careful review of the applicant's application, military records, and all other available evidence, the ADRB determined the applicant was properly and equitably discharged. Accordingly, his request for a change in the character and/or reason of his discharge was denied. The entire ADRB application package is available for the Board's consideration.

6. Based on the applicant's assertion he suffered from other mental health issues and the Forensic Psychology Evaluation, the ARBA Medical Section provided a medical review for the Board's consideration.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting that his Under Other Than Honorable Conditions discharge be upgraded due to experiencing mental health difficulties during his time in service.

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 Regular Army on 06 Mar 2003. His military occupational specialty was Apache Helicopter Crew Chief.
- Applicant was charged for going AWOL from 04 Aug 2003 - 25 Oct 2004
- On 28 Oct 2004, applicant submitted a request for discharge in lieu of court-martial which was subsequently approved.
- The applicant's separation packet is partially available for review. However, the applicant's service record includes his DD Form 214 (Report of Separation from Active Duty), which shows that the Army discharged the applicant "Under Other Than Honorable Conditions" on 10 Nov 2004.

c. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his ABCMR Record of Proceedings (ROP), Personal Statement, his DD Form 214, as well as documents from his service record. The VA electronic medical record and DOD health record were reviewed through Joint Longitudinal View (JLV).

d. This applicant asserted that other mental health problems were mitigating factors in his discharge. He also contends his AWOL episode was due to the impact of his behavioral health conditions. His service record and supporting documents did contain a Confidential Forensic Psychological Evaluation (07 Nov 2022) at Cornerstone Psychology, LLC, Walton Beach, FL. The evaluation noted, "He enlisted in the US Army at the age 20 in May 2003, but he went 'AWOL' (absent without official leave) two weeks before he was to graduate from advance Individual training (AIT) in August 2003. He was subsequently granted an Other than Honorable Discharge from the military in late 2004." The evaluation also indicated, "as detailed above, Mr. Durham experienced a number of psychosocial stressors during the relatively brief period of his military training, to include his mother's divorce and related financial troubles, his grandmother's illness, and the loss of two close childhood friends. He described a feeling of lost control, and when he sought guidance and support from the chaplain and military leaders, he reportedly received none." He was diagnosed with an Adjustment Disorder with Mixed Anxiety and Depressed Mood. In his summary, the psychologist noted, "his coping strategies were lacking and, ultimately, removed from him with the loss of his

weekend pass. Despite his attempts to 'shut out' or distract himself from his emotional distress, he has reported symptoms suggestive of a stress response, including worry, diminished concentration, and anger which presented and persisted in the weeks before he left Ft. Eustis...While not revealed on current testing, his history suggests that this is someone who may have long struggled with anxiety, low self-esteem, indecisiveness, and brief bouts of emotional dysregulation suggestive of an underlying mood disorder, such as Generalized Anxiety Disorder.” Based on this documentation in its entirety, there is evidence the applicant was diagnosed or treated for mitigating condition(s) following his discharge, but one(s) that originated during his time in service.

e. Per the applicant's VA EHR, he is not service connected for any medical or behavioral health concerns. There was one medical entry in the VA outpatient encounters section. Aside from this, there was not any other available data in JLV.

f. In summary, although applicant is not service connected for any behavioral health conditions (likely due to the character of his discharge), there is the applicant's own assertion that he had struggled with other mental health problems during his time in service. Consequently, after reviewing the application and all supporting documents, it is the opinion of this Agency Medical Advisor that there is sufficient evidence of a mitigating condition (Trauma -and stressor-related symptoms) that contributed to the specific misconduct of an AWOL episode. Adequate behavioral health assessment was provided in the supporting documents (i.e. forensic psychological evaluation) to support the contention that the applicant had more likely than not experienced this condition during his time in service.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge. Yes, he more likely than not experienced “Trauma -and stressor-related symptoms” contributing to his AWOL episode while still on active duty that was subsequently identified by an independent psychologist.

(2) Did the condition exist or experienced occur during military service? Yes, there is evidence he encountered Trauma -and stressor-related symptoms while on active duty as a result of considerable traumatic and stressful events back home with family and friends.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, it mitigates for his misconduct of an AWOL episode as Trauma -and stressor-related symptoms are associated with going AWOL.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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 considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

a. The applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry and under other than honorable conditions discharge. He willingly and in writing requested to be discharged in lieu of trial by court-martial. The Board found no error or injustice in his separation processing or character of service.

b. However, the Board reviewed and agreed with the medical advisor's finding sufficient evidence of a mitigating condition (Trauma and stressor-related symptoms) that contributed to the specific misconduct of an AWOL episode. The Board determined that his service clearly did not rise to the level required for an honorable discharge (in view of his lengthy AWOL), however, an under honorable conditions (general) characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined no change to the reason for separation and/or associated separation and RE codes since the underlying reason for his separation did not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 for the period ending 10 November 2004 showing:

- Character of Service: General, Under Honorable Conditions
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

█

█ █

█

█

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. AR 15–185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

a. 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. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

3. AR 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations) sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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.

c. 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

d. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued in lieu of trial by court martial.

e. A Soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if he/she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel.

(1) The Soldier must certify in writing that he/she understands that he/she may receive a discharge under other than honorable conditions.

(2) The Soldier must understand the adverse nature and possible consequences of such a discharge.

(3) The Soldier must personally sign a request for discharge. A conditional request is not permitted.

(4) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. A Soldier may waive consultation with a consulting counsel. Counsel will prepare a statement to this effect that will be attached to the file; the Soldier will state that the right to counsel has been waived.

f. A Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the Manual for Courts-Martial includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

4. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code KFS is used for discharge In Lieu of Trial by Court-Martial.

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

7. On 25 August 2017 the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. 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. 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.

6 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 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.

7. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//