

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 December 2024

DOCKET NUMBER: AR20230007341

APPLICANT REQUESTS: reconsideration of his previous requests to have his under honorable conditions (General) discharge be changed to a medical discharge.

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

- Letter from the Army Board for Correction of Military Records (ABCMR) Director, 14 June 2023
- Letter from Applicant, 13 June 2023
- DD Form 149 (Application for Correction of Military Records), 28 October 2016
- DA Form 20 (Enlisted Qualification Record), 1 April 1971
- Letter to Applicant's Mother, 17 April 1971
- DA Form 188 (Extract Morning Report), 14 July 1971
- Receipt for Prisoner's Personal Property, 27 October 1971
- Request for Absentee Records, 28 October 1971
- Special Orders 307 Return from Absent Without Leave (AWOL), 3 November 1971
- DD Form 458 (Charge Sheet), 3 November 1971
- Request for Discharge for the Good of the Service, 3 November 1971
- Self-Authored Request for Discharge, 5 November 1971
- Special Orders Number 337, Reassignment, 3 December 1971
- Statement of Medical Condition, 7 December 1971
- Servicemen's Statement Concerning Application for Compensation from the Department of Veterans Affairs (VA), 7 December 1971
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 7 December 1971
- Request for Information, 23 October 1978
- VA Administrative Decision, 27 February 1979
- Letter from the VA, 21 July 1992
- Letter from the Applicant to National Personnel Records Center (NPRC), 27 April 2018
- Letter from NPRC, 4 May 2018
- Letters from Applicant, 28 May 2018, 2 June 2018, 6 August 2018, 10 August 2018, and 25 October 2018

- DD Form 149 (Application for Correction of Military Record) 29 October 2018
- Letter from Applicant, 1 November 2018
- Request for Medical Review, 1 February 2019
- Letters from Applicant, 15 February 2019, 25 May 2019, 29 July 2019, 31 July 2019, and 8 October 2019
- Letter from Applicant's Brother, 11 October 2019
- Case Applicant vs. Army Review Boards Agency (ARBA), 16 April 2021
- Letters from Applicant, 21 June 2021, 25 June 2021, and 31 December 2021
- Memorandum for Office of the Surgeon General (OTSG), 22 July 2022
- Letters from Applicant, 19 June 2023 and 26 June 2023
- Letter from Attorney, 17 July 2023
- Letter from VA, 19 August 2024
- Letter from Applicant, 6 September 2024
- Medical Records

**FACTS:**

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's cases by the ABCMR in Docket Numbers AC89-06710 on 4 April 1990, AC91-06343 on 27 November 1991, AR20170000156 on 10 June 2020, and AR20210008740 on 15 March 2022.
2. On 14 June 2023, the ABCMR Director responded to a letter the applicant sent to President Biden, stating:
  - a. The White House had forwarded his letter to ARBA, and ARBA was pleased to respond.
  - b. In his letter, the applicant raised concern about his request for a medical discharge. In ABCMR Docket Number AR20210008740, the Board partially granted his request by having his medical records reviewed by OTSG to determine whether referral to the Disability Evaluation System (DES) was warranted.
  - c. After a thorough review of his medical records, the OTSG determined his conditions did not warrant referral to the DES; therefore, his request for medical discharge was denied. However, based upon the received correspondence and the issues raised therein, the ABCMR is opening a new case to have his case reconsidered.
3. The applicant provides the following documents:
  - a. Self-authored letter, 13 June 2023, states, in effect:

(1) He is submitting new evidence, which was not considered by the ABCMR before they sent his case to the OTSG for review. One of those claims concerned a fracture of the styloid process of the temporal bone.

(2) He first became aware of the injury when he went for an examination at Dr. B's office, an Oral Surgeon in Salem, Oregon on 3 November 1977. At that visit, the doctor showed him an x-ray of what the doctor said was a fractured bone. The doctor said there was erosion around the bone and that it caused the applicant to alter his swallowing.

(3) The doctor never told him the name of the bone, but after doing some research, he discovered the name of the bone as the left styloid process of the temporal bone. After the visit, he drew a depiction of the bone the doctor showed him on the x-ray.

(4) A fractured styloid process bone can often be misdiagnosed because it is concealed and missed diagnosis may lead to the improper or various unnecessary treatments. Since seeing Dr. B-, he has seen numerous doctors and had numerous misdiagnoses. On 16 May 2019, a CT scan finally shows that he had a suspected chronic/healed fracture of the left styloid process bone.

(5) On 17 November 2022, Dr. P- performed an operation to remove the left styloid process bone. The doctor diagnosed him with left Eagle Syndrome, a perfect example of misdiagnosis, which has the same symptoms as a fractured styloid process bone.

(6) After the operation, a small portion of the bone was submitted for pathological examination. The final diagnosis was left styloid growth consistent with styloid outgrowth. Before the Pathologist could make his final diagnosis, the piece of bone had to go through decalcification because of the build-up of calcium on the bone.

(7) Prior to the operation, the University of Cincinnati did a CT scan on his neck, on 24 August 2022. They found that the left styloid process was asymmetric, which shows that when the fractured bone grew back together (chronic/healed fracture) the two pieces did not line up together. They also found that the left styloid process was sclerotic, which shows that the calcium build-up had caused the bone to become hardened.

(8) The two CT scans, taken together with the pathological report, shows that the left styloid process bone was fractured and Dr. P- had to perform an operation to remove it.

(9) He is submitting additional evidence that the Board did not consider before they sent his claim to the OTSG for review. This evidence concerns damage to the temporal mandibular joint.

(10) On 3 November 1977, Dr. B- diagnosed him with traumatic arthritis with malocclusion. On 25 March 1994, he was also diagnosed with malocclusion by Dr. W-L at the Dayton, Ohio VA Medical Center. On 17 November 2016, Dr. M- diagnosed him with temporomandibular joint dysfunction (TMD). TMD involves joint derangement and/or subluxation of the temporomandibular joint, cervicalgia, trauma to the face, vertical collapse, and headaches have been diagnosed. The doctor also stated that this syndrome affects the ability to ingest food, swallow, talk, yawn, and sustain any "jarring motions". Head posture is affected with associated "headaches" and ear pain.

(11) On 16 July 2019, a barium swallowing test was performed because he was having trouble swallowing his food. On 18 June 2021, Dr. R- wrote a letter to whom it may concern and stated the applicant often exhibited dysphagia or difficulty swallowing. The doctor stated that this is often due to neurological impairment or trauma. He has never had any neurological impairment so that only leaves the probability of trauma as the cause. The kind of trauma he experienced in basic training, on 12 April 1971.

(12) The evidence shows that he has displayed these symptoms since soon after the assault up until present. Sometime in November of 1971, he was instructed by his Army assigned counsel to fill out a Report of Medical History. It is noted on the form that he was having frequent or severe headaches, he was having "nervous trouble of any sort" and he was not sure if he had high or low blood pressure.

(13) On 12 October 1972, he was seen in the emergency room, at the Fairchild Air Force Base Hospital complaining about a sore hemorrhoid, which can be associated to swallowing and digestive problems. On 30 January 1973, he returned to the emergency room complaining of burping up food for five straight days. On 4 February 1973, he returned to the emergency room complaining of a swallowing problem with regurgitating discomfort. On 23 March 1973, he returned to the emergency room complaining about stomach and chest pain, which is associated to the swallowing problems he was having.

(14) On 14 April 2023, he saw his primary care doctor, Dr. P-, for an impacted cerumen of his right ear and chest wall pain. He has been experiencing chest wall pain since at least 10 April 1973. Chest pain is associated to swallowing problems, especially if no evidence of heart disease is found, which Dr. P- did not find evidence of. This is especially true if there is an extensive history of swallowing problems, which he had ever since the assault on him on 12 April 1971.

(15) He is submitting new evidence that the Board did not consider when they sent his claim to the OTSG for their review. This evidence concerns damage to the right middle ear. On 8 June 2023, he went to the emergency room with a complaint of otalgia. While examining him, the doctor noticed he had an infection in the middle ear. He was diagnosed with recurrent suppurative otitis media in the right ear. The doctor said she saw puss and inflammation in the area behind the ear drum. An infection in the middle ear can be associated to trauma such as the trauma from the assault on him in basic training. The doctor told him, at the time of his visit, that the assault on him did cause damage to his middle ear.

(16) This means he has had a chronic infection in his middle ear, since the assault. This assertion is supported by the fact that he was seen in the emergency room on 23 March 1973. The Board will notice on the attachments that they found fluid behind the right tympanic membrane. That record shows he was exhibiting symptoms of damage to the right middle ear, as early as 23 March 1973 about one year after he was released from the Army.

(17) For clarity, when he was assaulted by the platoon leader in basic training, the right side of his head was pressed against the pavement while the platoon leader punched him on the left side of his head about twelve times. The damage to his right middle ear was caused by the fact that the right side of his head was pinned against the pavement.

(18) It is apparent that he has had an infection in his right middle ear since he was assaulted, but when he was younger, his body could more easily keep it at bay. Since he has grown older, his body is not able to keep the infection at bay and it has become a more serious problem. The infection was hidden by a wax build-up. In fact, as the doctor was poking around trying to remove some of that wax, she noticed the infection.

(19) Another reason that the infection was not detected earlier is because adults do not generally get an infection in the middle ear. Children do, but not adults. It was only by luck that the doctor even saw that he had an infection in the middle ear. He is scheduled to see Dr. R- M. S- on 16 June 2023 perhaps he will get some answers then. If and when he gets any further information he will send it to the Board.

(20) Taken together, the evidence clearly shows that he had a fractured left styloid process bone, when he was discharged from the Army on 7 December 1971. The evidence also shows that he has TMD and that the malocclusion he has, due to lack of treatment, has evolved into advanced severe malocclusion with essentially complete joint loss as a result of the assault on him. In addition, it has recently been revealed that he has chronic suppurative otitis media in the right middle ear that has been a problem, since the assault.

(21) The ABCMR stated as a fact that, on 7 December 1971, he signed a statement of medical condition that he had a discharge physical on 10 November 1971. First of all, he signed that document on 5 November 1971 and the document was blank. His Army appointed counsel coerced him into signing the blank document by promising him that if he signed the blank form he would be released from the stockade on 20 November 1971. It is against the law to coerce someone into signing a blank form and filling in that form, at a later date.

(22) The DA Form 20 (Enlisted Qualification Record) shows he was in the stockade from 3 November 1971 until 20 November 1971. The DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) also shows that he was at Fort Ord for 18 days from 3 November 1971 to 20 November 1971. In addition, the Board has evidence from a forensic handwriting expert, that he submitted on 13 December 2021, who stated, without a doubt, that the handwriting on DA Form 3082 (Statement of Medical Condition) was not his handwriting. It is not his handwriting because, as the evidence clearly shows, he was not at Fort Ord on 7 December 1971.

(23) The Army failed to give him a complete discharge physical and a discharge dental examination prior to his discharge and did not preserve a copy of his entrance dental examination. As a result, the Army cannot prove one way or the other if he had a fractured styloid process bone, TMD, malocclusion, or chronic suppurative otitis media in his right middle ear trauma (induced damage to his right ear), when he was discharged from the Army on 7 December 1971. On the other hand, the preponderance of evidence does show that he had a fractured styloid process bone, TMD, malocclusion, and chronic suppurative otitis media in his right middle ear, when he was discharged from the Army on 7 December 1971.

b. DD Form 149 (Application for Correction of Military Record), 28 October 2016, wherein he requested that his UOTHC discharge be corrected to a medical discharge. He should have been issued a medical discharge instead of the illegal discharge he was issued.

(1) He was 17 years old when he joined the Army with a friend of his under the buddy system. His friend decided he did not like the Army and talked him into going AWOL with him. After they were AWOL about 5 days, their parents talked them into returning to the Army.

(2) Upon his return, the first sergeant (1SG) told him to go to the barracks to get his duffle bag and return to the 1SG's office. On his way back to the 1SG's office, his platoon leader assaulted him. The platoon leader pinned him to the pavement and hit him in the side of his head approximately twelve times. He escaped and ran to the car where his mother and younger brother and sister were waiting. They reported the

assault to the Headquarters on Fort Jackson, South Carolina, but the Army covered the assault up.

(3) The Army never let him see a doctor after the assault, and he eventually went AWOL again after the Army let the assailant go free. He was eventually arrested for being AWOL in California.

(4) The evidence he submitted with the DD Form 149 includes a letter to his mother from Lieutenant Colonel (LTC) K-, 17 April 1971 describing the assault. The only evidence that an assault took place because the Army destroyed the other records pertaining to the assault.

(5) An unsigned morning report, 14 July 1971 and Special Orders, 3 November 1971 assigning him to Personnel Control Facility, Fort Ord, California. The Army knew he was assaulted and rushed his discharge in violation of the pertinent Army regulations governing the type of discharge he was issued. He was issued a Chapter 10 Discharge for the good of the service resulting in a discharge UOTHC.

(6) He requested that discharge on 3 November 1971. Army regulations stipulate that a Soldier can request a Chapter 10 discharge for the good of the service after charges have been [p]referred. Charges could not have been [p]referred on him the same day he arrived at Fort Ord, California.

(7) Request for Absentee Records from Fort Jackson, South Carolina, 3 November 1971. The Army did not even have his records from Fort Jackson on 3 November 1971. The Army regulations stipulate that he was supposed to receive 72 hours of counseling in order to understand the consequences of the type of discharge he was requesting. There simply would not have been enough time to provide him with the required amount of counseling.

(8) Army regulations stipulate that he had to get a discharge physical, prior to being discharged. There are no Army records that he received a discharge physical, prior to being discharged from the Army on 7 December 1971.

(9) A statement regarding his request for discharge for the good of the service, 5 November 1971. Army regulations stipulate that the statement contain an admission of guilt to the preferred charges. The statement only states that charges were pending with no admission of guilt of any crime.

(10) A letter from the VA stating that his records show he was in the confinement facility until 20 November 1971 and the paperwork was completed on 7 December 1971.

(11) A receipt for prisoner's personal property showing he was released on 20 November 1971 with a balance of \$2.23. Title 10 U.S. Code (USC) 1168 stipulates that a member of the Armed Forces may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay are ready for delivery to him or his next of kin or legal representative. Title 10 USC 1169 stipulates that no regular enlisted member of an armed force may be discharged before his term of service expires, except (1) as prescribed by the Secretary concerned; (2) by sentence of a general or special court-martial; or (3) as otherwise provided by law. His discharge was not prescribed by the Secretary concerned, he was not sentenced by a general or special court-martial, and the Army did not follow the law and/or pertinent regulations so the discharge has no legal basis. He included his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge).

(12) Reports from Dr. W- B-, Dr. R- M, Dr. W- L- from the VA, and Dr. M- J. P- showing his disabilities.

(13) Taken together, the evidence shows the Army has no legal basis for the type of discharge he was issued and his disabilities were just as likely as not caused by the assault described by LTC K- in his letter to the applicant's mother. The only reasonable conclusion that can be drawn from the evidence is that the Army should have issued him a medical discharge instead of the illegal UOTHC discharge they issued him.

c. Letter to his mother from LTC K- M. K-, 17 April 1971, states, in pertinent part, the investigation of the assault on the applicant has been completed. The investigating officer took sworn testimony from many individuals in an attempt to find any eyewitness to the assault. In addition, the applicant was given an opportunity to identify his assailant. Positive identification could not be made and there was insufficient evidence to substantiate who committed the assault.

d. Receipt for Prisoner's Personal Property, 27 October 1971, shows the personal effects taken from him and that he had a balance of \$2.23 in his account.

e. Request for Absentee Records, 3 November 1971 shows he was AWOL from 17 April 1971 and was returned to military control on 28 October 1971. The records were being requested from Fort Jackson, South Carolina.

f. DA Form 3082-R (Statement of Medical Condition), 7 December 1971, which shows his signature. The applicant states that he filled in portions of the document, which show his name, that he had a physical on 10 November 1971 at the Fort Ord Army Hospital, and a mark in the statement "there has been no change in my medical condition" were not completed by him.

g. DA Form 664 (Serviceman's Statement Concerning Application for Compensation from the VA), 7 December 1971 shows his signature. The applicant states that the filled in portions of the document were not completed by him.

h. A VA administrative decision, 27 February 1979, states in pertinent part, the discharge for the period 26 March 1971 to 7 December 1971 is considered to be a bar to VA benefits.

i. Letter from the VA, 21 July 1992, states in pertinent part, the VA has considered the letters he sent, and they have considered the DA Form 20 (Enlisted Qualification Record) and DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) which he submitted. In addition, they have reviewed evidence previously of record. The material he sent is not relevant to his claim because it offers no compelling circumstances surrounding his prolonged period of AWOL. He did not need to be present for discharge at Fort Ord. His records agree with his statement that he was in the confinement facility until 20 November 1971. The fact that he was in Ohio and the paperwork was completed at Fort Ord on 7 December 1971 is immaterial. It has nothing to do with compelling circumstances as to 193 consecutive days of AWOL. Indeed the period 26 March to 7 December 1971 was a period of 8 months and 11 days, but he was AWOL or confined all but one month and 6 days of that time. In addition, the records show he was in confinement from 3 November to 20 November 1971 and that is not considered AWOL. But he was AWOL from 17 April to 26 October 1971, a period of 193 consecutive days. As a result, the VA denied his claim for veterans benefits.

j. Letter from the applicant, 1 June 2017, states, in pertinent part:

(1) It has recently come to his attention that the discharge that the Army issued to him was invalid. The DD Form 458 (Charge Sheet), 3 November 1971, is blank in the section regarding witnesses. The reason the witness information is blank is because officials at Fort Ord, California did not have his records on 3 November 1971. There is no way that officials in Fort Ord would have had his records jacket including the DA Form 188 (Morning Report) that would have contained the witness to the charges. Those records did not arrive at Fort Ord for several weeks after they were requested on 3 November 1971.

(2) The section titled documents and object, lists on the DD Form 458 the DA Form 188 but as explained, it was not in Fort Ord on 3 November 1971. The charge and specification is stated, but once again, how could the Army officials at Fort Ord know the specifics of the charge(s) without his record jacket being present?

(3) The DD Form 458 shows that K- A. S- personally appeared as the named accuser and signed the forgoing charges and specifications under oath that he either had personal knowledge of or had investigated the matter set forth therein, and that the

same are true in fact to the best of his knowledge and belief. Captain (CPT) S- did not have any personal knowledge of and he never investigated the matters set forth therein because as the evidence shows and common-sense dictates this could not be true because the applicant's records jacket was not in Fort Ord. It is further declared by CPT S- that on 3 November 1971, he informed the applicant of the charges against him. That never happened because the only person he had any contact with at Fort Ord was CPT K- W. F- who was supposedly his appointed counsel. The rest of the charge sheet is blank.

(4) The Army never gave him the opportunity to consent in writing to a trial by summary court-martial. He had a Constitutionally guaranteed right to a fair trial on the charge of being AWOL and the Army never afforded him that right. The Army refused to give him a fair hearing on the charge of AWOL because they knew they had ordered the assault on him and they covered up that assault. If they had afforded him a fair hearing on the AWOL, they knew that the cover up would be exposed. The Army made a conscientious effort to fake his discharge in the hope that he would never figure it out. Simply put the discharge that the Army issued to him was invalid.

k. Letter from the Document Lab Inc., 22 August 1997, states in pertinent part, on 19 August 1997 the Document Lab received a questioned handwriting and signature of the applicant on a photocopy of DA Form 3082-R (Statement of Medical Condition), 7 December 1971; questioned handwriting and signature of the applicant on a photocopy of DA Form 664 (Servicemen's Statement Concerning Application for Compensation from the VA), 7 December 1971; requested and collected handwriting of the applicant, 19 August 1997; photocopies of Standard form 89 (Maintenance Record for Security Containers/Vault Doors), 2 February 1971, and Standard Form 93 (Record of Emergency Data), 10 November 1971. These forms accompanied a request to effect handwriting studies, for the purpose of attempting to establish whether the questioned and known writings are of common authorship. The graphic differences between the handprinted line entries on the disputed documents, and the known standards are so pronounced, that it can be concluded they were not written by the applicant.

I. Letter from the applicant regarding ABCMR Docket Number AR2017000156, 28 May 2018, states:

(1) In the interest of justice he requests the Board make the following correction to his record. The DD Form 214 states he was AWOL from 7 April until 11 April 1971. It also states he was AWOL from 17 April until 26 October 1971. The DD Form 214 further states he had 1 month and 6 days of service creditable for basic pay purposes. The total number of days amounts to 234 days between the period of 25 March 1971 and 27 October 1971; however, there are only 215 days between the period. The record should correctly reflect that he went AWOL from 6 May 1971 to 27 October 1971 which equals the correct amount of days.

(2) He was in a military confinement facility, during the period between 27 October 1971 and 7 December 1971, so that period could not be credible for basic pay purposes. There is an obvious accounting error on the DD Form 214 which, in the interest of justice, requires a correction.

(3) On 7 February 1979, the VA made an administrative decision, which states he was 18 years old, when he entered the Army. He was born on 28 October 1953 and he joined the Army on 26 March 1971, can the Board confirm in their report that he was really only 17 years old, when he joined the Army. The decision states he was treated for his injuries, would the Board reflect in their report that there are no treatment records for his injuries, in his file. The decision states he was transferred from Company A to Company D, would the Board reflect, in their report, that there are no Army records of a transfer. The VA decision also states that the investigation of the assault had been completed. Would the Board reflect, in their report, that there are no Army records of an investigation into the assault on him in his file.

m. Letter from the applicant regarding ABCMR Docket Number AR2017000156, 2 June 2018, states:

(1) The Army records are inaccurate and contradictory at every turn. For instance the DA Form 20 and DD Form 214 shows he was in confinement from 3 November 1971 until 20 November 1971 and this is considered lost time per Title 10 USC 972. As he pointed out in his letter, 28 May 2018, Army records should show he was in confinement at the Fort Ord stockade from 3 November 1971 until 7 December 1971. What was his status from 20 November 1971 until 7 December 1971 since it was not considered lost time? No one could account for his status, during this time frame, which probably explains why the Army was unable to audit his DA Form 20.

(2) Based on available Army records one could make the argument that he was released from the stockade, at Fort Ord on 20 November 1971. If that was the case there are no orders indicating that he was released and if he was released then that would have been a violation of the law as he previously pointed out. In addition, he had no accrued leave so if the Army opened the gates of the Fort Ord stockade and sent him on his way, then the Army did not have the authority to do so and he would have been AWOL from 20 November 1971 and beyond, since he never returned to military control.

(3) On the other hand, one could make the argument, again based on available Army records, that he was in the stockade from 3 November 1971 until 7 December 1971, but you cannot have it both ways because he was either in the stockade until 7 December 1971 or he was released from the stockade on 20 November 1971 and allowed to go home, which is what really happened, and that would have been unauthorized per Army regulation and in violation of the law. It is also against the law to

get someone to sign blank documents, under duress, and fill in the information contained on those documents at a later date.

(4) The Army should have discharged him with a medical discharge due to the injuries he received, as a result of the assault on him on 12 April 1971. The fact is he was both physically and mentally unfit for military service as he was unable to even march in formation. He would get confused and just as likely turn left when commanded to turn right or vice versa. The Army manipulated the records and failed to give him a discharge physical per Army regulation in effect at the time he was discharged in an attempt to keep that assault a cover up. The Army was engaged in illegal activity and they did not want the fact to be exposed. They might gotten away with it had it not been for the letter to his mother from LTC K- and the dogged tenacity of his brother who has had to take care of him since the assault and helped him with filing this case to the Board.

n. Letter from the applicant regarding ABCMR Docket Number AR2017000156, 6 August 2018, states:

(1) On 19 April 1990, the Board made a decision on his case. In that decision it is stated that there are no medical records documenting the injuries or treatment received as a result of the assault. The original medical and dental records are in his file but contain little or no information. This statement, by the Board, only strengthens his assertion that the Army covered up the assault on him. The original medical and dental records contain little or no information because the Army was trying to cover up the assault on him. It simply would not make any sense to leave evidence of his injuries in the file. Since the Army was covering up the assault they certainly would not document any injuries or treatment as a result of the assault on him.

(2) On 27 April 2018, he requested records from the National Personnel Records Center. On 3 November 1971, his records jacket was forwarded from Fort Benjamin Harrison, Indiana to Fort Ord, California. The reason he requested those records is because it is apparent that records enclosed in that request that are now missing from his file. Among the missing records is the DA Form 188 (Morning Report), prepared on 17 April 1971. Also missing are health records including his dental entrance examination, which would have shown that he had perfect teeth with no occlusal slide, when he entered the Army.

(3) The reason these records are missing from his file is because the Army knew that he was assaulted and sustained irreparable injuries. There is simply no other reason to explain why these records, and many others, are missing from his file. In addition, the Army did not give him a discharge medical examination, which is required by Army regulation, prior to his discharge from the Army. The Army did not give him that examination because it would have revealed the irreparable injuries he sustained from

the assault and most certainly would have led to a medical discharge instead of the discharge the Army issued to him on 7 December 1971.

(4) A discharge examination would have revealed, for instance, that he was unable to follow commands, while marching in formation, due to the fact that his brain does not process information in rapid succession. That is why after the assault he was taken out of training and assigned to the task of collecting laundry, while riding in the back of a two and a half ton truck at Fort Jackson. When he was in the stockade at Fort Ord during a marching formation, he went right and everyone else turned left, which caused the other Soldiers to break out laughing. For obvious reasons, the guards did not like that and immediately told everyone to break ranks. Shortly thereafter, he was assigned to the kitchen where all he had to do was serve meals to the other inmates. The point is the Army knew, in basic training and at the stockade, that he was messed up in the head and purposely avoided any examination because that would have exposed the assault and cover-up.

(5) For the reasons stated, it is obvious he should have been issued a medical discharge in 1971. Since that did not happen, he respectfully requests, in the interest of justice, that the Board issue him a medical discharge, at this time.

o. Letter from the applicant regarding ABCMR Docket Number AR2017000156, 10 August 2018, states:

(1) In reference to a decision by the ABCMR, 19 April 1990, it is stated that Army Regulation 635-200 (Personnel Separations, Enlisted Personnel) sets forth the basic authority for separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment included a punitive discharge may, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of court-martial.

(2) On 1 June 2017, he submitted a copy of the charge sheet, which would have had to have been completed in order for the Army to have preferred charges against him.

(3) On 6 August 2018, he submitted a request for absentee records. That was a request for records from Fort Ord to Fort Benjamin Harrison with a forwarding date of 3 November 1971. One of the documents noted in those records is the morning report. The morning report cannot be at Fort Benjamin Harrison and Fort Ord at the same time on the same day.

(4) K- S- submitted an affidavit under oath that the foregoing charges are charges that he either had personal knowledge of or had investigated, and that the

same are true in fact, to the best of his knowledge and belief. K- S- had no personal knowledge of and had not investigated the matters set forth because the records that he would have had to use to investigate the matter were in Fort Benjamin Harrison on 3 November 1971, the same day K- S- stated under oath that he had investigated the matter.

(5) On 1 December 2016, the applicant submitted a DD Form 493 (Extract of Military Records of Previous Convictions). On that document the custodian of the military personnel records seems to indicate that he received the personnel records on 23 November 1971, which would seem to be the case since that is about the amount of time it would have taken for the records to arrive from Fort Benjamin Harrison to Fort Ord. They certainly would not have arrived at Fort Ord on 3 November 1971.

(6) On 28 October 2016, he submitted to the Board the request for discharge for the good of the service, 3 November 1971. Obviously charges could not have been preferred against him on 3 November 1971 because the charge sheet was incomplete and contained fraudulent submission of evidence and an inaccurate statement under oath.

(7) Additionally, under the provision of Chapter 10, Army Regulation 635-200, it is required that the member has to receive 72 hours of counseling in order to advise the member of the wisdom and consequences of requesting a discharge for the good of the service. The fact is this alleged counsel had a statement already prepared on 3 November 1971, the very same day he arrived at Fort Ord. The statement is not signed by him and the initials are in block print and not acceptable as being submitted by him. When initials are required on a document they are not your signed initials and not in block printed form. In addition, the initials are not even in his handwriting and he did not have access to a typewriter in order to prepare the document.

(8) What kind of ethical and competent counsel would advise a servicemember to accept any kind of discharge without reviewing the file of his client to ensure, for instance, that the morning report contained a valid signature, which it did not? A DA Form 188 that was not signed would, in fact, be grounds for challenging the charges contained on the charge sheet.

(9) The kind of counsel who would do such a thing is the kind of counsel who is, in fact, a co-conspirator engaged in an unlawful campaign to keep the assault covered up. The fact is the only evidence in existence that the assault even happened was the letter to his mother from LTC K-. In the Board's decision it is stated that LTC K- wrote the letter to his mother dated the same day that he allegedly went AWOL the second time. The Board states that the letter said that an investigation of the assault had been completed and positive identification could not be made to substantiate who committed the assault. The Board portrays this statement from LTC K- as though it is a fact when it

is really nothing more than hearsay. There is no collaborating evidence that an investigation of the assault ever even happened. There is no evidence in the file that an investigation of the assault took place and that fact is, he did identify the assailant and the Alpha Company Commander lied to LTC K- when he told him that the applicant was unable to identify the assailant.

(10) The applicant knew and LTC K- knew that the Army was engaged in a cover up of the assault. LTC K- wrote the letter to his mother in order to prevent the Army from making him the scapegoat in the cover up. He knew that if the applicant was arrested and went to trial, he would be implicated in the cover up of the assault so he simply wanted to establish a record that he was not involved in the cover up and he could say all of the information he was provided with came from his subordinates. Otherwise, why would his letter be the only evidence of record concerning the assault? The Army, not knowing of the existence of the letter to his mother from LTC K- wanted the record to reflect that he went AWOL from 7 April to 11 April 1971 returned from that AWOL and allegedly went AWOL again on 17 April until he was returned to military control on 27 October 1971 end of story, nothing else happened.

(11) That is why there are no records of the assault and/or any treatment records in his file. There should be treatment records because he was treated at the dispensary, after the assault. There appears to be a treatment record from the dispensary although it appears there was a concerted effort to blot out the word "dispensary" on the document. It also appears the date of treatment was blotted out as well. The fact is there was only one date that he went to the dispensary for treatment and that was on 12 April 1971. There should also be records of the assault because LTC K- 's letter clearly states that there was an investigation so what happened to those records?

(12) There are no orders showing he was transferred to a new company. LTC K- clearly states that he was placed in a new company. In the Board's decision, they seem to be trying to have it both ways on the issue of him being transferred to a new company. The board presents as fact that LTC K- 's letter states that he was placed in a new company. Then the Board states that a DA Form 188 shows that he wen AWOL again on 17 April 1971 from his original company. So was he in a new company or was he in his original company when he allegedly went AWOL the second time on 17 April 1971?

(13) Also in the Board's 19 April 1990 decision, they stated that he said there had been no change in his medical condition since his last examination. This information was obtained from a DA Form 3082-R allegedly filled out on 7 December 1971. That form and another form, DA Form 664, were blank when they were given to him on 3 November 1971. He was told if he wanted to go home on

20 November 1971, he had to sign where the "x" was on the forms and that they would be filled in later. He had both documents examined and it was determined that the signature on the forms were his signature but the handwriting on the forms were not in his handwriting. It is against the law to have someone sign a document under false pretense and then fill in that document at a later date. In addition, the DA Form 3082-R shows that his last separation examination took place on 10 November 1971 at Fort Ord Army Hospital. There is not any evidence in the file that he received a separation physical on 10 November 1971, or on any other date for that matter, at the Fort Ord Army Hospital. That examination never happened. Army Regulations, in effect at the time of his discharge, required a discharge physical examination for any Soldier returned to military control whose absence exceeded 180 consecutive days.

(14) Pertinent and relevant documents that were altered or are missing from his file are the statement he wrote about the assault at the Adjutant General's office on 12 April 1971. Records of the investigation that LTC K- referred to in his letter to the applicant's mother, such as the name of the investigating officer and the sworn statement from many individuals. The special orders assigning him to a new company, 12 April 1971. The record of treatment at the Fort Jackson dispensary, 12 April 1971. The dental entrance examination at the Fort Jackson Army hospital on 30 March 1971. There were no DA Forms 188 prepared on 7 April 1971 and 17 April 1971 or DA Form 3545 (Incident Report), DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), health records, separation medical examination from the Fort Ord Army Hospital, and the record of his status from 21 November 1971 through 7 December 1971 i.e. non pay period time lost or creditable service for basic pay purposes.

(15) The only conclusion that can be drawn from the available evidence contained in the file and the numerous critical records that are missing from his file is that a number of people apparently associated with the Army joined in the conspiracy to cover up the assault on him. The conspiracy consisted of a cover up of the assault as well as hiding the injuries he sustained as a result of said assault. The conspiracy also consisted of the well orchestrated fraudulent discharge proceedings against him in violation of Army regulations and long standing laws such as Title 10 USC 1168, which provides that a member of the Armed Forces may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay are ready for delivery to him. He was released from the Personnel Confinement Facility at Fort Ord on 20 November 1971 and his discharge certificate and/or substantial portion of his pay was not available for delivery to him until 7 December 1971. The fact is, he never received any pay for the 1 month and 6 days of creditable service for basic pay purposes, from the Army and he did not receive his discharge certificate until he sent for a copy of his records from the National Personnel Records Center in the latter part of 1975.

(16) In an unfortunate twist of fate, which ultimately worked in favor of the Army's cover up of the assault, he developed a case of amnesia of the assault on him during his lengthy AWOL. He regained his memory just prior to sending for a copy of his records in 1975. The recall of his memory was triggered by a visit to a counselor who was an African American, the same as the platoon leader who assaulted him in the Army. He suddenly blurted out the incident to the counselor and he slowly regained most of his memory of the events surrounding the assault, over the course of the following years.

p. Letter from the applicant regarding ABCMR Docket Number AR2017000156, 1 November 2018, states:

(1) He provided a doctor's report showing a history of psychological defects associated with post-traumatic stress disorder (PTSD) secondary to an assault on 12 April 1971, while he was in basic training in the Army.

(2) The reports document his psychological difficulties from 1992 and continuing up to the present. In 1992, he was diagnosed with organic brain syndrome and it was felt that it would be difficult for him to maintain any job, because of the fact that he would not be able to remember basic instructions and may not even remember the exact way to leave the work situation.

(3) In 1994, the Air Force determined he was incapable of self-support because of a permanent or mental physical incapacity, which had existed on a continuous basis since before his 21st birthday. In 1995, after further testing, it was felt that he remained a neurologically handicapped individual that would have a difficult time functioning in any day-to-day work or living situation without assistance. Further testing in 1995 and 2017 as well as the recently submitted report from a forensic psychologist shows more of the same and all of the reports support the conclusion of psychological damage associated to PTSD as the underlying consequence of the assault that happened to him in basic training on 12 April 1971.

(4) A recent CT examination of his neck with contrast was done at OSU Wexner Medical Center. The CT was taken of the styloid processes from the front side of his face, which does not show a clear image of the styloid process so no determination of a fracture of the styloid process could be made. He is presently seeking an expert in the field to do a CT of the back side of his skull to reveal whether or not the left styloid process is indeed fractured.

q. Memorandum for ARBA Clinical Psychologist/Psychiatrist, 1 February 2019, requesting a medical review for ABCMR Docket Number AR2017000156.

r. Letter from the applicant regarding ABCMR Docket Number AR2017000156,

15 February 2019, states:

(1) In his last correspondence of 1 November 2018, he indicated he was seeking an expert in the field of Oral and Maxillofacial Surgery in order to determine whether or not his styloid process bone is fractured. He secured an oral surgery referral with an appointed set for 26 April 2019.

(2) He included a print out of a CT scan of a fractured styloid process bone and some literature associated with a fracture of the styloid process. As the Board can see from the literature, such a fracture is an uncommon injury. The injury is concealed and often misdiagnosed leading to a paucity of literature on the injury. These facts have contributed to the reason he has been unable to present this new evidence to the Board for their consideration, in this matter.

(3) This leaves the Board with two options to consider. On the one hand, the Board can make a long overdue decision in this case based on the PTSD aspect of his case and avoid the optics of what a fractured styloid process bone would present. Alternatively, the Board could gamble and take the chance that his styloid process bone is not fractured and continue to delay their decision in this case. Keep in mind that if it is discovered that his styloid process is fractured, the Board will have the added burden of explaining the fact that he has been suffering for the last 48 years because the Army chose to attempt to cover up the assault on him on 12 April 1971.

s. Letter from the applicant regarding ABCMR Docket Number AR2017000156, 25 May 2019, states:

(1) In his last correspondence of 15 February 2019, he stated he had an appointment on 26 April 2019. The doctor ordered a CT scan of the maxillofacial, which was completed on 16 May 2019. The scan revealed a closed nondisplaced fractured styloid process of left radius with nonunion, subsequent encounter. The subsequent encounter was the assault on him described by LTC K's letter to his mother, 17 April 1971.

(2) A fracture of the styloid process is a concealed and extremely rare occurrence often leading to misdiagnosis and unnecessary treatment resulting in a prolonged pain and suffering. This would help explain why it has taken over 48 years to diagnose the fracture. He had to seek out the best and brightest doctors in the country, which by a stroke of luck happen to be at the University of Cincinnati Medical Center approximately 50 miles from where he lives.

(3) In conclusion and in the interest of justice, the Board should conclude that he be issued a medical discharge due to the fractured styloid process and PTSD resulting from the assault on him in basic training on 12 April 1971.

t. Letter from the applicant regarding ABCMR Docket Number AR2017000156, 29 July 2019, states:

(1) In a recent barium swallow study, 26 July 2019, it was revealed that he has poor bolus control with loss to the pharynx with liquids, delayed swallow timing, decreased pharyngeal constriction, and decreased hyolaryngeal elevation with delayed epiglottic inversion and decreased CP [sic] opening. This examination could not definitively determine the exact cause of the problem and follow up fiberoptic endoscopic evaluation of his swallowing was recommended. In addition, the Ear Nose Throat doctor could not rule out a possible MRI study of connective tissue associated with the styloid process bone.

(2) This is the same swallowing problem he reported to the Air Force doctor's that treated him on 30 January 1973. He was referred for x-rays and family clinic follow up on 4 February 1973. On or about March or April 1973, the Air Force administered a barium swallow study. The records pertaining to the barium swallow study were purged (removed) from the records in his file in the same manner the Army purged the records pertaining to the assault from his file. Perhaps the study revealed he had a swallowing problem soon after his discharge from the Army and the Air Force did not want that revealed.

(3) The only record of the assault was LTC K-'s letter to his mother, 17 April 1971. He had no control over what the records the Army and/or Air Force maintained pertaining to the assault and/or treatment he received from them. He will leave that for them to explain their actions or lack thereof, but the fact is he reported the assault as well as the residual problems he was suffering from so it cannot be said that he failed to report these matter to the proper authorities.

(4) In conclusion, the evidence shows he was and still is suffering from the residual effects of a fractured styloid process bone, which was the result of an assault on him on 12 April 1971. Furthermore, the evidence leaves no doubt that the Board should conclude that he be issued a medical discharge with an effective date of 12 April 1971. The Board has had this case for about three years now and has stated that complicated cases take longer for the Board to resolve. This new evidence shows this is not a complicated case. He was assaulted in basic training and there is evidence of residual damage from that assault documented from soon after he was discharged and continuing up until the present time.

u. Letter from the applicant regarding ABCMR Docket Number AR2017000156, 31 July 2019, states the VA records, 25 March 1994 are further evidence that he had a history of difficulty swallowing. In the history and physical section of the VA treatment records, it says has had difficulty chewing, swallowing, and persistent pain over left jaw. Following this examination, the VA denied him any further medical treatment.

v. A letter from the applicant's brother, 11 October 2019, states:

(1) R- J-, the brother of the applicant, has been the applicant's advocate and caregiver for the past 48 years. Due to his head injury, the applicant needs help writing letters, due to his inability to type and/or use a computer. He needs R- J- to give him rides to where he needs to go such as doctor's appointments and the like. These are but a few of the tasks he is unable to perform and needs assistance with.

(2) The reason for this letter is to inform the Board that as the applicant's caregiver, R- J- has noticed his condition getting worse over the last several years. He is having a harder and harder time swallowing his food without choking. He says that his jaw feels like it is increasingly feeling like it is trying to lock up on him.

(3) What concerns R- J- the most, though, is his depressed mood as a result of the PTSD he is suffering from. Since the assault he has always felt he would be better off dead but these thoughts have become more and more frequent over the last several years. R- J- cannot own a gun, since that would be too easy for the applicant to end it all. The problem is though that there are a great number of ways to end one's life.

(4) R- J- is seriously concerned that he will join the many number of veterans who commit suicide every single day. In the event he does end up dead, R- J- will continue to pursue this case to clear his name from the unjust discharge he received from the Army, which was a result of an assault on him, which was orchestrated by and then covered up by the Army.

w. United States District Court for the Southern District of Ohio Western Division, 16 April 2021 wherein the applicant is the plaintiff and ARBA, et al., are the defendants shows judgement was entered in favor of defendant ARBA and against plaintiff. The entire document is available for the Board's review.

x. Letter from the applicant regarding ABCMR Docket Number AR20210008740, 21 June 2021, states:

(1) A letter from Dr. R- states he has had a number of teeth removed and it is not clear to him why the teeth were removed. The doctor states he has maxillary and mandibular ridges with areas of irregularity, which may be a result of bone removal, during tooth extraction or facial trauma. He also states the applicant exhibits dysphagia or difficulty swallowing. This is often due to neurological impairment or trauma.

(2) In the Board's 1990 decision the Board stated that the original dental records were in the file. He recently requested those dental records from the Board but was informed that those records were removed from his file. He does not know who removed the dental records from his file but it is apparent that the removal was to

destroy the evidence that the oral health problems, cited by Dr. R-, were, in fact, caused by the trauma to his jaw when he was assaulted in basic training.

y. Letter from the applicant regarding ABCMR Docket Number AR20210008740, 25 June 2021, states:

(1) The evidence he submitted on 21 June 2021 included a letter from Dr. R- who was not clear on what condition his teeth were in and why the teeth were removed because he was not the treating physician, at the time the teeth were removed. The applicant was providing doctor reports from two of the doctors who were two of the many treating physicians, at the time the teeth were removed. The first report is from Dr. H- who reports that the applicant has severe bone loss and referred him to Dr. Z-.

(2) Dr. Z's notes are hard to read but he states that he first treated the applicant on 15 November 1993 on referral from Dr. H-. On 18 March 1994, he states that tooth #31 was extracted three weeks ago and now #30 is tender exam looks okay some dental root exposed. On 29 March 1994, the applicant reports pain in tooth #29, tooth looks okay on x-ray. On 4 April 1994, the applicant reports the pain is no better. Exam shows that the tooth is slightly mobile but tooth looks okay. On 27 April 1994, the applicant requests that remaining teeth be extracted. Finally between 5 May 1994 and 3 October 1994 the record shows removal of bone spurs as a result of the mobile teeth. This is consistent with Dr R's findings of severe bone loss and ridges. The last dental record is a chart showing the cost of the dental exams and teeth extractions from 1993 through 1994.

(3) These records show that the teeth were in good shape but became loose and needed to be extracted due to pain as a result of the mobility in the teeth. On 26 July 2019, he had a barium swallow test due to his swallowing problems. The report notes that he suffers from a chronic/healed fracture of the left styloid process. A chronic/healed left styloid process would explain why the teeth had to be extracted because the fracture would have caused a swallowing problem, which would have caused him to alter his swallowing process. In order to swallow his food, he had to clamp down with his teeth to keep from choking on his food. That is why his otherwise healthy teeth became mobile and had to be removed due to the pressure exerted on them, during the swallowing of his food.

(4) The reason he is still having trouble swallowing food is because, as the report states, he has a chronic/healed fracture of the left styloid process bone, which means that the fractures has not fully healed and/or was not properly healed and is still causing pain and a multitude of other health issues, at the present time. The fact is if the styloid process bone was indeed healed, the the report would state that. Chronic by definition means an ongoing problem. These records show that the chronic left styloid

process fracture, which happened on 12 April 1971, has caused continuous mental and health issues throughout the last 50 years of his life.

z. Letter from the applicant regarding ABCMR Docket Number AR20210008740, 13 December 201, states:

(1) He would like to add the handwriting examination to his case. The handwriting examiner's conclusion was that the graphic differences between the hand printed line entries on the disputed documents, and the known standards are so pronounced that it can now be concluded they were not written by the applicant.

(2) In the Board's decision in 1990, the Board stated that on DA Form 3082-R, 7 December 1971, his condition had not changed since his last physical examination. When he was offered a discharge for the good of the service and he would be released from the stockade and allowed to go home on 20 November 1971, the offer came with a condition. The condition was that he had to sign some forms where the "x" appeared on some documents. One of those documents was the DA Form 3082-R that the Board referred to in their decision

(3) He also included a letter from the VA that shows he was not present on 7 December 1971 according to the Army records specifically his DA Form 20 and DD Form 214. The VA stated that the records agree with his statement that he was in the confinement facility until 20 November 1971. The fact that he was in Ohio and the paperwork was completed at Fort Ord on 7 December 1971 is immaterial for VA purposes.

aa. Memorandum for OTSG DES Service Line from Headquarters, U.S. Army Medical Department Activity, 22 July 2022 states in pertinent part, after reviewing all available medical records concerning the applicant, it is the opinion of the Medical Evaluation Board that his condition, at his military discharge, did not warrant DES referral. The entire document is available for the Board's review.

bb. Letter from the applicant regarding ABCMR Docket Number AR20230007341 (the present case), 26 June 2023, states:

(1) He is submitting new evidence, in support of his claim of a service-connected closed head injury. This evidence concerns damage to the cervical spine at the base of the skull.

(2) On 20 June 2023, he went to the Dayton, Ohio VA Hospital to get x-rays of his spine. The x-rays revealed severe left C2-3 neural foramen stenosis and moderate left C3-4 and left C4-5 neural foramen stenosis in his spine. The x-ray also revealed mild right C4-5 neural foramen stenosis.

(3) These findings show damage to his spine, which is most severe in the upper area of his spine on the left side. This would correspond to the area on the left side of his head, where he was struck, when he was assaulted on 12 April 1971. This damage was caused by the assault because all of the severe to moderate damage was only on the left side of his spine and not on the right side.

cc. Letter from the VA, 19 August 2024, stating they are giving him a certificate so he may receive commissary store and exchange privileges from the Armed Forces. The certificate states the applicant is an honorably discharged veteran of the Army and receives benefits at the 100 percent rate due to service-connected disability(ies).

dd. Medical documents, which are available for the Board's review. The medical documents include a Report of Medical History, 10 November 1971 wherein the applicant states he is in good health. He marked yes to frequent or severe headaches and nervous trouble of any sort. The medical documents will be reviewed by the ARBA Medical Section who will provide an advisory.

4. The applicant's complete service record is not available for the Board's consideration; however, the documents provided by the applicant and those contained in his service record are sufficient for the Board to make a decision in his case. The following documents were contained in his service record:

a. DA Form 20 (Enlisted Qualification Record, 1 April 1971, shows in item:

(1) 11 (Enlisted, Inducted, Reenlisted, Extended): he enlisted in the Regular Army on 26 March 1971.

(2) 44 (Time Lost) 7 April 1971 to 11 April 1971, 5 days, AWOL; 17 April 1971 to 15 May 1971 24 days, AWOL; 16 May 1971 to 26 October 1971, 164 days dropped from rolls; and 3 November 1971 to 20 November 1971, 18 days, confined.

b. DA Form 188 (Extract Copy of Morning Report), 14 July 1971, he departed in an AWOL status on 17 April 1971, he was dropped from rolls on 16 May 1971. The DA Form 188 is not signed.

c. Special Orders 307, published by Headquarters, U.S. Army Training Center, Infantry and Fort Ord, 3 November 1971, shows he returned from a dropped from rolls status effective 27 October 1971.

d. DD Form 458 (Charge Sheet), 3 November 1971 shows he was charged with AWOL from on or about 17 April 1971 to on or about 27 October 1971. He was placed in pretrial confinement on 3 November 1971.

e. After consulting with legal counsel on 3 November 1971, the applicant voluntarily requested discharge for the good of the service, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In doing so, he acknowledged that the charge preferred against him under the Uniform Code of Military Justice (UCMJ), authorized the imposition of a bad-conduct discharge discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charge against him which also authorized imposition of a bad conduct
- he could be discharged UOTHC and he could be ineligible for many or all benefits administered by the VA
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he would forfeit all accrued leave and be reduced to the lowest grade of E-1
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and he elected to do so

f. On 5 November 1971, the applicant provided a statement that he enlisted on 26 March 1971 for 3 years. He now has one month of good time and 7 months of bad time. He has had one Article 15 for being AWOL for one week. He is now pending a charge for being AWOL from Fort Jackson for six and a half months. He cannot adjust to military life. If he does not get out, he will go AWOL again. The statement is true to the best of his knowledge and belief. The applicant and his attorney signed the form.

g. DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged with an UOTHC discharge on 7 December 1971. He completed 1 month and 6 days of active service. His separation code is listed as 246 and his reenlistment code as 3B. He had non pay periods from 7 April 1971 to 11 April 1971, 17 April 1971 to 26 October 1971, and 3 November 1971 to 20 November 1971.

h. Medical records, which are available for the Board's review and will be reviewed by the ARBA Medical Section.

i. Letter from the Army Discharge Review Board (ADRB), 28 October 1981 states the ADRB, after careful consideration of his military records and all other available evidence has determined that he was properly discharged. Accordingly, the Secretary of

the Army has directed that he be advised that his request for a change in the type and nature of his discharge has been denied.

5. On 4 April 1990, the ABCMR made a decision regarding the applicant's request in Docket Number AC89-06710 stating the Board determined that no error or injustice existed in his service record and his application was denied.

6. On 27 November 1991, the ABCMR made a decision regarding the applicant's request in Docket Number AC91-06343 stating the Board determined that no error or injustice existed in his service record and his application was denied.

7. On 10 June 2020, ARBA responded to the applicant in reference to ABCMR Docket Number AR20170000156 stating they received information he had a pending court case pertaining to his military records. Therefore, ABCMR was closing his case without prejudice or action by the Board until they receive further guidance from the Department of Justice.

8. On 19 August 2022, the Deputy Assistance Secretary of the Army (DASA) (Review Boards) reviewed the evidence presented, findings, conclusions, a medical review, and Board member recommendations in ABCMR Docket Number AR20210008740. The DASA found there was sufficient evidence to grant partial relief. Therefore, he directed that the Department of the Army records of the applicant be corrected by reissuing his DD Form 214 for the period ending 26 March 1971 [sic] with the following change: Item 13a (Character of Service) to read under honorable conditions (General). No further changes were directed. The Board stated there was sufficient evidence to warrant further evaluation by OTSG for possible referral into the DES.

9. A member who has committed an offense or offenses, the punishment of which under the UCMJ includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

10. Based on the applicant's conditions/contention, the Army Review Boards Agency medical staff provided a medical review for the Board members.

#### MEDICAL REVIEW:

11. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART)

application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

The applicant is again applying to the ABCMR requesting an upgrade of his 7 December 1971 discharge characterized as under conditions other than honorable and a permanent retirement for physical disability. He claims his period of absences without leave was due to a traumatic brain injury sustained during an assault.

The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows he entered the regular Army on 26 March 1971 and was discharged on 7 December 1971 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel: Discharge for the Good of the Service. The DD 214 the applicant was a trainee (09B) at the time of discharge.

This request has been made several times. It was denied by the ADRB on 28 October 1981, and by the ABCMR on 22 August 1990, and 27 November 1991. The most recent application, (AR20170000156), was returned with action on 10 June 2020. ARBA informed the applicant:

"We recently received information stating you have a pending court case pertaining to your military records. Therefore, we are closing your case without prejudice or action by the Board until we receive further guidance from the Department of Justice (DOJ)."

Rather than repeat their findings here, the board is referred to the record of proceedings for that case. This review will concentrate on new probative evidence submitted by the applicant. In addition, specific attention will be placed on psychiatric and neurological conditions as this appears to be the first case filed after the institution of liberal consideration policies.

A review from the 1981 ABCMR memorandum of consideration:

"The applicant arrived for basic training at Fort Jackson, South Carolina, and was assigned to Company A, 3d Battalion, 1st Training Brigade. He was reported as being AWOL from 7 to 11 April 1971.

Available records show that on 17 April 1971 the battalion commander wrote a letter to the applicant's mother and stated that the investigation of the 12 April 1971 assault on her son had been completed and positive identification could not be made to substantiate who committed the assault. The letter also stated that her son had been placed in a new company.

There are no medical records documenting the injuries or treatment received as a result of the assault. The original medical and dental records are in the applicant's file but contain little or no information.

After he returned to military control, charges were preferred against him for being AWOL from 17 April 1971 to 27 October 1971 in violation of Article 86 of the UCMJ. After being advised of his rights, he submitted a request for discharge for the good of the service in lieu of trial by court-martial. He stated that he could not adjust to military life and he would go AWOL again if not released. Also, he stated that there had been no change in his medical condition since his last examination. The appropriate authority approved his request for discharge and directed that he be issued an Undesirable Discharge Certificate."

From a psychological evaluation dated 12 August 1992:

"The Wechsler Memory Scale was administered at this time, to obtain a recent memory quotient. A memory quotient was obtained of 64, which falls three standard deviations below the mean, for an individual his age. Where {applicant} had the most difficulty was remembering a small short story after it was read to him, being able to remember only two facts of a possible 20 to 25. He also had a difficult time remembering more than 5 digits forward.

This is a type of protocol generally associated with an individual with rather severe memory loss and possible neurological damage."

The psychologist diagnosed the applicant with "Amnestic Disorder due to Self-Reported Head Trauma."

From a neuropsychological evaluation on 28 August 1995:

"He described the incident as having occurred after he had just returned from being AWOL. He stated that after reporting to his drill sergeant he left the drill sergeant's office and was walking through a hall, when he was attacked by an individual. He said this individual forced him to the floor and beat his head onto the concrete floor approximately a dozen times. Mr. {Applicant} said he did not lose consciousness at the time although he was functioning in daily tasks for some period of time after that, for example he was unable to march with the other soldiers because he couldn't keep step, and regularly forgot to salute commanding officers.

'It set me way back. I lost everything that I had learned in school.' When asked for a self-description, the client described himself as 'at one time I was O.K., I had good abilities, now I can't do the things that I need to do.'

The client said that he was hospitalized psychiatrically in 1973 for depression. He has had a number of periods of outpatient mental health evaluation and therapy since that time. He has formed a therapy relationship with Alan Matthews at the Clark County Mental Health Center.

The client's brother corroborated the client's memory and cognitive functioning problems.

**CONCLUSIONS:** Mr. Applicant showed performance ranging from mildly impaired to low Average range on tests ... Also, Mr. {Applicant} appeared to be mildly or moderately depressed at this time, showing significant dysphoria and lack of self-esteem. The client seems to have a reasonable level of awareness of his cognitive and memory deficits, as well as his needs for supervision from family in daily living tasks as well as occupationally related tasks.

In summary, it appears that Mr. {Applicant} has mild-to-moderate cognitive impairments, particularly in verbal memory/attention, that significantly impair his daily functioning. The client's brother's account completely corroborated the client's report, and also seemed to indicate that these problems have occurred on a continuing basis since the incident in 1971, and were not present prior to that time. Little or no documentation from military records was present."

From a neuropsychological evaluation on 4 January 2017:

In sum, the patient's neuropsychological profile reflected relative inefficiencies in executively mediated tasks, as well as teaming inefficiency. These inefficiencies occurred in the context of very prominent reported psychiatric distress. Distress in this range would be expected to be associated with cognitive complaints. With attenuation of his distress, the patient is likely to see improvements in his physical, cognitive, and emotional functioning. At present, however, the patient meets criteria for disability due to severe, poorly controlled depression.

Finally, from a forensic psychology evaluation dated 23 February 2017:

"Mr. Jarrell reported that he is seeking disability benefits for a head injury he sustained while in the military. He complained of cognitive deficits. He obtained an FSIQ score lower than what would be expected based on his clinical presentation. Another measure revealed that aspects of his memory functioning are poor. In addition, he reported that he has struggled with depression for many years. Finally, he described some symptoms associated with PTSD from the assault."

The final diagnoses were moderated dementia, dysthymia, and traumatic brain injury secondary to assault while in the Army in 1971

There are no clinical encounters in JLV.

Based on the information currently available and in accordance with Liberal Consideration guidance, it is the opinion of the ARBA medical advisor that the applicant's traumatic brain injury with resultant deficits mitigate his UCMJ violation. This condition is associated with avoidant behaviors, thus there a nexus between this condition and his period of absence without leave. Furthermore, there is sufficient evidence to warrant further evaluation by The Office of the Surgeon General for possible referral into the Disability Evaluation System.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. One potential outcome was to deny relief based on the applicant going AWOL and not completing training. However, upon further review of the applicant's petition, available military records and the medical review, the Board concurred with the advising official finding sufficient evidence to warrant further evaluation by The Office of the Surgeon General for possible referral into the Disability Evaluation System. The opine noted the applicant's traumatic brain injury with resultant deficits mitigate his UCMJ violation. The Board determined based on the medical opine there is sufficient evidence to support referral to the disability evaluation system. Therefore, the Board granted partial relief for the applicant's records be reviewed by the office of the surgeon general.

**BOARD VOTE:**

Mbr 1    Mbr 2    Mbr 3

:        :        :        GRANT FULL RELIEF

    :                GRANT PARTIAL RELIEF

:        :        :        GRANT FORMAL HEARING

:                :        DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by directing the applicant be entered into the Disability Evaluation System (DES) and a Medical Evaluation Board concerned to determine whether the applicant's condition(s), met medical retention standard at the time-of-service separation.
  - a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned may be issued invitational travel orders to prepare for and participate in consideration of his case by a formal PEB if requested by or agreed to by the PEB president. All required reviews and approvals will be made subsequent to completion of the formal PEB.
  - b. Should a determination be made that the applicant should have been separated under the DES, these proceedings will serve as the authority to void his administrative separation and to issue him the appropriate separation retroactive to his original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received.
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to (reconsideration of his previous requests to have his under honorable conditions (General) discharge be changed to a medical discharge.

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. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR), prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. It states, the ABCMR begins its consideration

of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set 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.

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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

b. 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 active duty.

c. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

3. Army Regulation 635-5 (Separation Documents), then in effect, prescribed the separation documents that would be furnished each individual who was separated from the Army, including Active Duty Training (ACDUTRA) personnel, and established standardized procedures for the preparation and distribution of these documents.

a. A DD Form 214 will be issued at the time of separation to each member of the Regular Army and to each member of the Reserve Components, and the Army of the United States without component, call or ordered to active duty for ACDUTRA for a period of 90 days or more.

b. Appendix A. Separation Program Number and Authority Governing Separation. The separation program designator "246" corresponded to "For the Good of the Service" and the authority, Army Regulation 635-200, Chapter 10.

4. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

- b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waivable.
- c. RE-4: Applies to: Person separated from last period of service with a nonwaivable disqualification.
- d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, established the Army Physical Disability Evaluation System according to the provisions of chapter 61 of Title 10 U.S. Code and Department of Defense Directive 1332.18. It set forth policies, responsibilities, and procedures that apply in determining whether a member was unfit because of physical disability to perform the duties of his office, grade, rank, or rating. If a member was found unfit because of physical disability, it provided for disposition of the member according to applicable laws and policies. Paragraph 4-24e(3) provided that Based upon the final decision of the Commanding General, U.S. Army Physical Disability Agency, or the Army Physical Disability Review Board, the Commanding General, Military Personnel Center would issue retirement orders or other disposition instruction separation for physical disability with severance pay.

6. 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 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. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

8. 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. 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 based on 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.

9. Title 10, U.S. Code, chapter 61, provides for disability retirement or separation for a member who is physically unfit to perform the duties of his office, rank, grade, or rating because of disability incurred while entitled to basic pay.

10. Title 38, U.S. Code, sections 310 and 331, permit the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

11. There is a difference between the VA and the Army disability systems. The Army's determination of a Soldier's physical fitness or unfitness is a factual finding based on the individual's ability to perform the duties of his or her grade, rank, or rating. If the Soldier is found to be physically unfit, a disability rating is awarded by the Army and is permanent in nature. The Army system requires that the Soldier only be rated as the condition(s) exist(s) at the time of the PEB hearing. The VA may find a Soldier unfit by reason of a service-connected disability and may even initially assign a higher rating. The VA's ratings are based on an individual's ability to gain employment as a civilian and may fluctuate within a period of time depending on changes in the disability.

12. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries

of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//