

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230007664

APPLICANT REQUESTS:

- reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable
- as a new request to expunge his administrative discharge (Chapter 10) from his record
- personal appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- Cover letter, T.W.R., Attorney at Law, dated 7 April 2023
- Index of Attachments, undated
- Item A, Self-authored statement, undated
- Item B, Opinion, Dr. A.B.B., Licensed Psychologist, dated 14 March 2023
- Item C, Self-authored statement and 49 statements of support, dated 26 January 2021 to 17 March 2021
- Item D, DD Form 214 (Report of Separation from Active Duty), for the period ending 19 September 1975
- Item E, Article "Post-traumatic Stress Disorder and Racial Trauma," Research Quarterly, National Center for Post-Traumatic Stress Disorder (PTSD)
- Item F, Weblink, "Racism and Psychological and Emotional Trauma...", Robert T. Carter, The Counseling Psychologist, 13-105, volume 35 (2007)
- Item G, "Racial Trauma," National Center for PTSD
- Item H, Trauma Assessments: A Clinician's Guide, Eve B. Carlson, page 37, (New York: The Guilford Press 1997)
- Item I, Memorandum, Secretary of Defense, Chuck Hagel, dated 3 September 2014
- Item J, Memorandum, Acting Under Secretary of Defense for Personnel and Readiness, A.M. Kurta, dated 24 August 2017
- Item K, Memorandum, Under Secretary of Defense, Robert L. Wilkie, dated 25 July 2018

- Item L, list of reports, studies and articles on disparities in treatment of black and whites in Military Justice and discharges
- Item M, Service Record (68 pages), dated 20 March 1974 to 11 July 2019
- Item N, Legal Statement, undated

### FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190004247 on 27 June 2019.

2. The applicant states, in effect:

a. He was the subject of racial discrimination while in the service, resulting in race-based trauma. Racial trauma is recognized as a form of PTSD. His conduct in the service, to include his period of absence without leave (AWOL), was a reaction to the discrimination he experienced. Under the effects of discrimination, threats from his commander, and on the advice of counsel, he was pressured into agreeing to a separation even though he did not commit the crime he was accused of committing. He has experienced continued hardship because of the UOTHC characterization of service.

b. He enlisted at 17 years of age to get away from the social and racial differences displayed in Kansas City. He thought the Army was his way out. It was worse in the service. Blacks were treated badly. He and his friend enlisted on the Buddy Plan. They were separated, and he did not get the military occupational specialty he selected. Black Soldiers were told not to sit together. White Soldiers received higher rank. Black Soldiers were called "ni\*\*er," accused of smoking marijuana, and gathering to cause disturbances. He was targeted due to the fact he drove a Lincoln Continental. Black Soldiers were told to cut their hair, and their personal areas were messed up to fail inspections. He was put in the stockade, spit on, and tortured by having a light shining into his cell at night. Discrimination was blatant. He was put at the back of the line, put in the worst squad, and assigned the worst jobs.

c. He does not claim to always have been correct in his thinking. He was raised to respect others but to stand up for himself. He quickly forgot he was in the service and simply made some bad choices. He should have done things differently. He had some great leaders, but he also had some who did not care. He was young, foolish, and immature. He has been married to a wonderful woman for over 25 years with a family of seven children. He and his wife founded a youth ministry called L.I.F.E. (Love Is for Everyone) ministries. They try to demonstrate Christian values, and instill good morals, behavior, respect, and responsibility in the youth of today.

3. Counsel states, in effect:

a. The applicant is requesting clemency based upon his post-service conduct and achievements, the hardship and stigma his UOTHC discharge has placed upon him, and the effect on his behavior from racial discrimination and mistreatment he experienced while in the service. He did not become aware of the behavioral health conditions associated with race-based trauma until meeting with counsel in October of 2021. He obtained a professional psychological opinion in 2023, concerning the effect of race-based trauma on his behavior and decision to accept a discharge for the good of the service.

b. The applicant was directly subjected to racial harassment, mistreatment, and abuse. He was referred to by racial epithets, harassed because of the car he drove, told he would never amount to anything, accused of things he did not do, made to work in a demeaning manner, and singled out adversely because of his race. The racist incidents and environment had a psychological effect on him, known in psychology as race-based trauma. Racial trauma can lead to anger, acting out, and misbehavior. Racist incidents are a form of victimization and emotional abuse which can result in trauma and post-traumatic symptoms.

c. Multiple hearings, reports, and studies corroborate the existence of racism throughout the military. The applicant was a 17-year old high school dropout at the time of his enlistment. He was only 18 years old when he was discharged. He was more biologically vulnerable to racism than older and more mature black Soldiers. He experienced a change in behavior, attitude, and work performance in response to the racial abuse. The young man striving to be a good Soldier, became an uncaring Soldier. Fear of racial abuse and mistreatment were ever present.

d. His period of absence in 1975 was in response to the racism he experienced. Upon returning, he was placed in the stockade where he was mistreated because of his race. He was found not guilty of the charges and released. The defense presented was that of a conspiracy in the charges brought against him. After being found not guilty, he filed for back pay. He believes the subsequent charges brought against him for assault and theft were retaliatory. The assault charge stemmed from an incident in the mess hall where he was called a "ni\*\*er" and pushed by a white Soldier. He does not remember anything about the theft charge. He was pressured to accept a discharge, or he would be "hung out to dry."

4. The applicant enlisted in the Regular Army on 20 March 1974 for a 3-year period. Upon the completion of initial entry training, he was awarded military occupational specialty 12B (Combat Engineer). The highest rank he attained was private/E-2.

5. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 6 January 1975 for absenting himself from his unit without authority (AWOL) on or about 12 November 1974 until on or about

14 November 1974 and on or about 14 November 1974 until on or about 25 November 1974. His punishment consisted of forfeiture of \$125.00 pay per month for two months.

6. A DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized Absence) shows the applicant was reported as AWOL on 14 February 1975 and subsequently dropped from the rolls on that same date. He surrendered to military authorities and was returned to military control at Fort Riley, KS, on 12 May 1975.

7. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two additional occasions:

a. On 9 July 1975, for failure to go at the time prescribed to his appointed place of duty, on or about 4 July 1975. His punishment consisted of forfeiture of \$50.00 pay, 14 days of extra duty, and 14 days of restriction.

b. On 23 July 1975, for participating in a breach of the peace by wrongfully engaging in a fist fight, on or about 25 June 1975. His punishment consisted of reduction to private/E-1, forfeiture of \$80.00 pay, two hours of extra duty per day for 14 days, and 14 days of restriction. His appeal of his punishment was denied.

8. Court-martial charges were preferred against the applicant on 15 August 1975 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with assaulting Specialist R.D.W. and Private R.D.V by striking them with his fists, on or about 11 July 1975.

9. Before a special court-martial at Fort Riley, KS, on or about 16 July 1975, the applicant was tried before a military judge for the following charges:

- Charge I – for being AWOL on or about 14 February 1975 until on or about 12 May 1975
- Charge II – wrongfully having in his possession 28.80 grams, more or less, of marijuana, on or about 19 April 1973
- Charge III – disposing of an unknown amount of suspected marijuana, on or about 12 February 1975
- Charge IV – stealing a portable radio, of a value of about \$125.00, on or about 12 February 1975

10. The applicant was found not guilty of all charges against him.

11. The applicant underwent a pre-separation medical examination on 3 September 1975. The relevant Standard Form 88 (Report of Medical Examination) shows the applicant reported being in fair health, and he was deemed physically qualified for separation.

12. The applicant's service record is void of the complete facts and circumstances surrounding his discharge. However, his DD Form 214 shows he was discharged on 19 September 1975, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. His character of service was UOTHC, with separation code KFS [conduct triable by court-martial] and reenlistment code RE-4. He was credited with 1 year, 2 months, and 20 days of net active service, with 100 days of lost time from 12 November 1974 to 24 November 1974 and 14 February 1975 to 11 May 1975.

13. The Army Board for Correction of Military Records (ABCMR) reviewed the applicant's request for an upgrade his characterization of service on 27 June 2019. After carefully reviewing the applicant's request, supporting documents, evidence in the record, and published Department of Defense liberal consideration guidance, the Board determined the applicant's characterization of service was not in error or unjust. The Board denied his request.

14. As new evidence, the applicant provides the following:

a. An opinion from A.B.B., Ph.D. DAPBS, Licensed Psychologist, provides historical context and an explanation regarding the effects of racism on behavior and mental health as it pertains to [the applicant's] military service. Although the author did not perform a clinical evaluation of [the applicant], she states, in effect, racism existed in the military at the time of his service. He clearly and unequivocally suffered from racial harassment and discrimination that he could not escape through conventional methods. This suffering was likely the primary etiology for going AWOL. The majority of the charges against him were petty and based primarily on his race. With reasonable psychological certainty, the targeted racism, harassment, and discrimination in service have caused trauma that continues to date. Dr. A.B.B. also provides a list of sources cited and her curriculum vitae.

b. In 49 statements of support from the applicant's family and friends, dated between 26 January 2021 to 17 March 2021, the authors attest to the applicant's good character. He is a hard-working, trustworthy man of great integrity. He is seen as a father figure and role model by many of the young people in his extended family and community. He is an exceptional husband, father, uncle, mentor, and friend. He and his wife founded and run a youth ministry program for inner-city children. In addition to bible study, they provide a cost-free summer camp and weekend outings. The name of his HVAC business, "Servant of Service," speaks directly to his work-ethic and commitment to his community. He and his wife also volunteer with an organization that supports homeless families. He is an unselfish, humble man who has made a difference in the lives of others.

c. Two articles, published by the National Center for PTSD, and an additional article published by The Counseling Psychologist, discuss PTSD and racial trauma. Racial trauma being defined as the cumulative traumatizing impact of racism on an individual, which can include individual acts of racial discrimination combined with systemic racism, and typically includes historical, cultural, and community trauma as well. These experiences can negatively affect physical, mental, and emotional health and may lead to anxiety, depression, or PTSD. People can experience racial trauma directly or indirectly.

d. Trauma Assessments, A Clinician's Guide, discusses why some individuals develop PTSD in response to exposure to trauma.

e. The Kurta, Hagel, and Wilkie Memoranda provide clarifying guidance to Military Discharge Review Boards and Boards for the Correction of Military Records on liberal consideration and requests by Veterans for modification of their discharge due to mental health conditions, sexual assault/harassment, PTSD, and traumatic brain injury.

f. A list of reports and studies which shows disparities in the treatment of blacks and whites in the Military Justice and discharges.

g. 68 pages of military service records which are summarized, in pertinent part, above.

15. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An UOTHC character of service is normally considered appropriate.

16. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

17. MEDICAL REVIEW:

a. Reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable, and a new request to expunge his administrative discharge (Chapter 10) from his record.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted into the Regular Army on 20 March 1974; 2) The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on 6 January 1975 for absenting himself from his unit without authority (AWOL) on or about 12 November 1974 until on or about 14 November 1974 and on or about 14 November 1974 until on or about 25 November 1974. His punishment consisted of

forfeiture of \$125.00 pay per month for two months; 3) On 23 July 1975, for participating in a breach of the peace by wrongfully engaging in a fist fight, on or about 25 June 1975. His punishment consisted of reduction to private/E-1, forfeiture of \$80.00 pay, two hours of extra duty per day for 14 days, and 14 days of restriction; 4) Court-martial charges were preferred against the applicant on 15 August 1975 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows the applicant was charged with assaulting Specialist R.D.W. and Private R.D.V by striking them with his fists, on or about 11 July 1975; 5) Before a special court-martial at Fort Riley, KS, on or about 16 July 1975, the applicant was tried before a military judge for AWOL, wrongful possession of marijuana, suspected disposing of marijuana, and stealing a radio. The applicant was found not guilty of all charges; 6) The applicant's service record is void of the complete facts and circumstances surrounding his discharge. However, his DD Form 214 shows he was discharged on 19 September 1975, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10.

c. The VA electronic medical record (JLV), ROP, and casefile were reviewed. The military electronic medical record, AHLTA, was not reviewed as it was not in use during the applicant's period of service. No military BH records were provided for review.

d. A review of JLV was void of any treatment for the applicant and he does not have a SC disability. Included in the applicant's casefile was an opinion from a civilian provider who opined, in part, that the applicant's record and narrative suggest with a reasonable degree of psychological certainty that the applicant's negative experiences/trauma regarding racism/harassment/discrimination, in service caused psychological trauma that continues to date. It should be noted however, that the provider also noted that she did not perform a clinical evaluation of the applicant to render a diagnosis and instead relied on his service record, detailed statements of his experiences, and literature supporting the link between PTSD and race-based trauma. Also included in the casefile were article's supporting a link between PTSD and racism, and a list of studies and articles on the disparities in treatment of blacks and whites in Military Justice and discharges.

e. The applicant requests reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable, and a new request to expunge his administrative discharge (Chapter 10) from his record. He contends his misconduct was related to PTSD. A review of the records was void of any BH treatment history for the applicant before or after service, however, included in the applicant's casefile was an opinion of from a civilian provider who opined, in part, that the applicant's record and narrative suggest with a reasonable degree of psychological certainty that the applicant's negative experiences/trauma regarding racism/harassment/discrimination, in service caused psychological trauma that continues to date. It should be noted however, that the provider also noted that she did not perform a clinical evaluation of the applicant to render a diagnosis and instead relied on his service record, detailed statements of his experiences, and literature

supporting the link between PTSD and race-based trauma. This ARBA medical advisor recognizes that racism was prevalent during the applicant's time in service, and given information outlined in the ROP, this medical advisor also concedes there was the likelihood the applicant experienced racism and harassment during his time in service, though there is insufficient evidence to support the applicant suffered from PTSD as a result. However, in applying liberal guidance, this medical advisor recognizes that given the association between racism/harassment and a desire to avoid continued exposure to such, there is a nexus between the applicant's misconduct characterized by AWOL and FTR and his experience, such that the AWOL is mitigated. However, the applicant's misconduct characterized by assault by striking two Soldiers with his fist is not mitigated by the disorder as the applicant's experiences did not impact his ability to differentiate between right and wrong and adhere to the right. Further, even if the applicant met criteria for PTSD during his time of service, the misconduct characterized by assault would still not have been mitigated.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is sufficient evidence that the applicant had an experience or condition during his period of service that partially mitigated his misconduct

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts his misconduct was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. A review of the records was void of any BH treatment history for the applicant before or after service, however, included in the applicant's casefile was an opinion of from a civilian provider who opined, in part, that the applicant's record and narrative suggest with a reasonable degree of psychological certainty that the applicant's negative experiences/trauma regarding racism/harassment/discrimination, in service caused psychological trauma that continues to date. It should be noted however, that the provider also noted that she did not perform a clinical evaluation of the applicant to render a diagnosis and instead relied on his service record, detailed statements of his experiences, and literature supporting the link between PTSD and race-based trauma. This medical advisor recognizes that racism was prevalent during the applicant's time in service, and given information outlined in the ROP, this medical advisor concedes there was the likelihood the applicant experienced racism and harassment during his time in service, though there is insufficient evidence to support the applicant suffered from PTSD as a result. However, in applying liberal guidance, this medical advisor recognizes that given the association between racism/harassment and a desire to avoid continued exposure to such, there is a nexus between the applicant's misconduct



characterized by AWOL and FTR and his experience, such that the AWOL is mitigated. However, the applicant's misconduct characterized by assault by striking two Soldiers with his fist is not mitigated by the disorder as the applicant's experiences did not impact his ability to differentiate between right and wrong and adhere to the right. Further, even if the applicant met criteria for PTSD during his time of service, the misconduct characterized by assault would still not have been mitigated.

#### BOARD DISCUSSION:

1. 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 partially 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 and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.
  - a. Although the applicant's separation packet is not available, the Board noted that other evidence shows the applicant was charged with commission of an offense 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 an under other than honorable conditions discharge.
  - b. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewer. The Board concurred with the medical reviewer's finding there is a nexus between the applicant's misconduct characterized by AWOL and failure to report and his experience, such that the AWOL is mitigated. However, the applicant's misconduct characterized by assault by striking two Soldiers with his fist is not mitigated by the disorder as the applicant's experiences did not impact his ability to differentiate between right and wrong and adhere to the right. Further, even if the applicant met criteria for PTSD during his time of service, the misconduct characterized by assault would still not have been mitigated.
  - c. The Board further noted that the applicant provides several statements of support from family and friends, in support of a clemency determination. The authors speak of the applicant's taking on the role of a father figure and role model by many of the young people in his extended family and community. They also speak of his work-ethic and commitment to his community as well as volunteering with an organization that supports homeless families. As a matter of clemency, the Board determined the applicant's

service did not rise to the level required for an honorable discharge; however, a general, under honorable conditions discharge is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined no change to the narrative reason for separation or corresponding Separation and RE Codes is warranted.

d. Regarding the applicant’s request to expunge his administrative discharge (Chapter 10) from his record, the Board determined his request is not supported by any evidence that warrants such removal. The Army has an interest in maintaining the integrity of its records for historical purposes. The data and information contained in those records should reflect the conditions and circumstances that existed at the time the records were created. At the time these records (chapter 10 documents) were created, there was no error or injustice in those records.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. As for the issue being reconsidered (discharge upgrade):

a. The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Dockets Number AR20190004247 on 27 June 2019. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing him a DD Form 214 for the period ending 19 September 1975 showing:

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

b. 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 an honorable characterization of service.

2. As for the new issue (expunge chapter 10 from record), the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

[REDACTED]

[REDACTED]

[REDACTED]

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. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

2. Army Regulation 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 regulation provides the ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

b. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The ABCMR is not an investigative body and decides cases

based on the evidence presented in the military records provided and the independent evidence submitted with the application.

3. Army Regulation 340-21 (The Army Privacy Program) paragraph 2-10 (Amendment of Records) states individuals may request the amendment of their records, in writing, when such records are believed to be inaccurate as a matter of fact rather than judgement, irrelevant, untimely, or incomplete. Consideration of a request for amendment would be appropriate if it can be shown that circumstances leading up to the event recorded on the document were challenged through administrative procedures and found to be inaccurately described.

4. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

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.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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 (UOTHC) and who have been diagnosed with post-traumatic stress disorder (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.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. 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.

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

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

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

//NOTHING FOLLOWS//