

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20230007807

APPLICANT REQUESTS:

- reconsideration of his previous request to upgrade his undesirable discharge (under other than honorable conditions) to honorable
- as new requests:
 - amend the reason for discharge to reflect a disability separation
 - a personal appearance before the Board

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

DD Form 149 (Application for Correction of Military Record)

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 AR2001062406 on 1 November 2001.

2. The applicant states in addition to upgrading his character of service, he needs his DD Form 214 (Report of Separation from Active Duty) to show a disability separation.

a. The applicant declares he suffers from sickle cell anemia and none of the negative actions that later occurred would have ever happened if the Army had simply given him a medical discharge during basic combat training.

b. (The applicant may be referring to separations under the provisions of paragraph 5-9 (Discharge of Personnel Who Did Not Meet Procurement Medical Fitness Standards), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time; according to paragraph 2-4 (Blood and Blood-Forming Tissue Diseases), AR 40-501 (Standards of Medical Fitness), then in effect, having sickle cell anemia was a cause for rejecting a prospective enlistee for Army service.)

c. On his application, the applicant checked the block for "Other Mental Health" issues; he additionally lists "Medicaid Records" as evidence to support his claim, but, apart from the application, no other documents were received.

3. A review of the applicant's service record shows the following:

a. On 31 July 1975, the applicant enlisted in the Regular Army.

b. On four occasions between February and August 1976, the applicant accepted nonjudicial punishment (NJP), under Article 15, Uniform Code of Military Justice (UCMJ); each involved being disrespectful in language or actions toward noncommissioned officers (NCO). The punishment for his first NJP included a reduction to private (PV1)/E-1; the remainder consisted of forfeitures of pay, extra duty, and, in one instance, a verbal reprimand.

c. At some point prior to 30 August 1976, the applicant's unit initiated separation action; his service record is void of his associated separation packet.

c. On 8 July 1977, the applicant accepted NJP for having been disorderly in station. The imposing commander's punishment was a suspended reduction to PV2; however, on 11 August 1977, the commander vacated that suspension, based on a violation of Article 117 (Provoking or Reproachful Words or Gestures), UCMJ.

d. In or around August 1977, the applicant's command initiated separation action under chapter 13, AR 635-200 (Separation for Unfitness or Unsuitability); no separation documents are available for review. On 8 September 1977, an administrative separation board recommended the applicant's retention on active duty and a rehabilitative reassignment. On 9 September 1977, the applicant's battalion commander moved the applicant from Company A to Company B.

e. On 22 September 1977, the applicant's new company commander preferred court-martial charges against the applicant for violating the UCMJ.

(1) The charges consisted of the following:

- Article 87 (Missing Movement by Design), two specifications – failing to board two flights on 13 and 19 September 1977, respectively
- Article 90 (Willful Disobedience of a Commissioned Officer's Order), two specifications – disobeying two orders to be at ease, received from First Lieutenant (1LT) [REDACTED] on 19 and 20 September 1977
- Article 89 (Disrespect Toward a Commissioned Officer), two specifications – being disrespectful in language and in behavior toward 1LT [REDACTED] on 19 September 1977

(2) On 22 September 1977, The company commander forwarded the charges through the chain of command and recommended a special court-martial empowered to adjudge a bad conduct discharge.

(3) On 11 October 1977, a legal review returned the charges to the command, stating the evidence was insufficient to support either of the two specifications in charge I, and the respective first specifications for charges II and III appeared to have arisen from the same transaction.

f. On 12 October 1977, the applicant's company commander returned a corrected charge sheet, and the command preferred additional charges on a second charge sheet.

(1) On the original charge sheet, the command deleted specification 2 of charge I (missing movement on 19 September 1977) and the first specification for charge III (disrespectful language toward 1LT [REDACTED] on 19 September 1977).

(2) The command added the following charges:

- Article 86 (Failure to Report to Place of Duty at the Time Prescribed) – failed to report to battalion headquarters, on 19 September 1977
- Article 117 (Wrongful Use of Provoking Words) – used provoking words towards a medic (Specialist Five (SP5) [REDACTED]), on 26 September 1977
- Article 128 (Assault) – wrongfully struck medic SP5 [REDACTED] in the chest using his right shoulder

(3) The company commander additionally included six statements:

(a) Lieutenant Colonel (LTC) [REDACTED] stated, on 9 September 1977, the Company A commander (1LT [REDACTED]) approached him because the applicant had been "totally disrespectful" toward him (1LT [REDACTED]). This occurred the day after an administrative separation board had recommended the applicant's retention and rehabilitative transfer.

- The battalion commander consulted with the applicant's defense counsel, who maintained the Company A leadership was "out to get" the applicant. Because the convening authority had not approved the board results yet, the battalion commander proposed reassigning the applicant to Company B
- On 9 September 1977, the applicant reported to the battalion commander; the battalion commander said he knew how the applicant felt about his prior command and assured him that, if he disciplined himself, the battalion commander would make a favorable recommendation to the new battalion

- Furthermore, a favorable recommendation to the applicant's new battalion would be contingent on the applicant respecting his new chain of command and deploying with his unit to PTA (Pohakuloa Training Area)
- The battalion commander added, if the applicant met them half-way, the unit would be particularly sensitive to the applicant's needs; "throughout the process, my chief concern has been the desire to make [applicant] a productive Soldier"

(b) Company B commander (Captain [REDACTED]) described his initial interview of the applicant and that he asked if the applicant required anything prior to the unit's departure for PTA; the applicant replied he had to pay his landlord and obtain additional equipment for deployment. After promising to have an NCO accompany the applicant to ensure all went smoothly, the commander ordered the applicant to report on 13 September 1977 for movement to PTA.

(c) First Sergeant (1SG) [REDACTED] and Staff Sergeant (SSG) [REDACTED] (applicant's new platoon sergeant) essentially reinforced the information provided by the company commander.

(d) 1LT [REDACTED] rear detachment commander, stated, on 19 September 1977, he called the applicant into the battalion legal clerk's office to read him court-martial charges for disobeying a lawful order and missing movement. The applicant became disruptive and continuously interrupted 1LT [REDACTED] the applicant refused to obey 1LT [REDACTED] order to be at ease and "kept talking and screaming very loud..." "As I (1LT [REDACTED]) was walking out of the office, [applicant] looked up at me straight in the eye and said "m__ f__, kiss-my-a__, " or; words to that effect by pursing his lips."

(e) SP5 [REDACTED] medic, stated, on 26 September 1977, at the PTA Base Camp Dispensary, a doctor directed that the applicant have blood drawn for testing. When the results came back, SP5 [REDACTED] told the applicant they would have to draw more blood for a larger sample; he explained the mistake and the reason for the mistake.

- The applicant became very belligerent and yelled, "Medics don't know a f__ing thing!" SP5 [REDACTED] asked if the applicant was refusing to take the test
- The applicant then walked directly toward SP5 [REDACTED] "stuck his right index finger in my face pointing directly at my nose and called me a "M__ F__" and said, "YOU DON'T KNOW S__"
- "[Applicant] then walked into me, with his right shoulder striking my middle chest, which subsequently knock me up against the wall"

g. On 2 November 1977, after consulting with counsel, the applicant requested discharge, in accordance with chapter 10 (Discharge for the Good of the Service), AR 635-200; in his request, he acknowledged that no one had forced him to ask for this

separation, and he was guilty of the charges preferred against him. He elected to submit a statement in his own behalf.

(1) The applicant stated where he was born and that he was the oldest of three children; because his parents had separated when he was young, his grandmother raised him. Shortly after completing IET, he married, and he and his wife had three children.

(2) The applicant affirmed his main reason for requesting separation was because his family needed him. Additionally, "I was treated very poorly when I arrived at PTA after being retained by a board after being retained in the Army by a board of officers at a chapter 13 elimination. After getting off the plane at Bradshaw, I was placed in handcuffs and transported to the base camp. I feel that this is illegal and a violation of Article 55 (Cruel and Unusual Punishments Prohibited), UCMJ...."

h. On or about 2 November 1977, the applicant's company commander endorsed the applicant's separation request and recommended an under other than honorable conditions character of service. On the endorsement, the commander wrote:

(1) "[Applicant's] problems are not just service-oriented; his disrespect for authority came with him when he entered the Army. Counseling, rehabilitative attempts, and NJP have had no effect on his behavior."

(2) "[Applicant's] dislike for authority will not improve in a military setting. Approval of this request will benefit both [applicant] and the U.S. Army."

i. The battalion commander added a six paragraph endorsement and recommended an under other than honorable conditions discharge. In his endorsement, the battalion commander explained:

(1) "The time and resources devoted to making [applicant] a productive member of the United States Army have been disproportionate to the contributions made by SM (service member). He has been the subject of two separate chapter 13, AR 635-200, actions by two different battalions. He has received five Article 15 punishments under the provisions of the UCMJ."

(2) "[Applicant], at his attached statement of 2 November 1977, complains of mistreatment because he was placed in handcuffs after arrival at Bradshaw Army Airfield, PTA, on or about 20 September 1977. He was placed in handcuffs by the military police to assure his safe transport from the airfield to the PTA Base Camp. The basis for this action was [applicant's] belligerency at the requirement to join his unit at PTA. In fact, the root of SM's problems have been his inability to control his temper when instructed to do things by his chain of command."

j. On 14 November 1977, the separation authority approved the applicant's separation request and directed his undesirable discharge under other than honorable conditions; in addition, the separation authority ordered the applicant's reduction to the lowest enlisted grade.

k. On 22 November 1977, he was discharged with an undesirable (under other than honorable conditions) characterization of service; his DD Form 214 shows he completed 2 years, 3 months, and 22 days of active service. It also shows in:

- Items 6a (Grade, Rate, or Rank) and 6b (Pay Grade) – PV1/E-1
- Item 7 (Date of Rank) – 14 November 1977
- Item 9e (Authority and Reason) – chapter 10, AR 635-200; separation program designator (SPD) "JFS"
- Item 10 (Reenlistment (RE) Code) – RE-3
- Item 26 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – Sharpshooter Marksmanship Qualification Badge with Rifle Bar

l. On 12 August 2001, the applicant petitioned the ABCMR, requesting an upgraded character of service.

(1) The applicant argued his leadership had harshly punished him and, in any case, the Army should have given him a medical discharge due to his sickle cell anemia.

(2) On 1 November 2001, the Board voted to deny relief. The Board noted the applicant had failed to provide evidence to support his request and added that neither the applicant nor the available service record indicated he suffered from sickle cell anemia.

m. On 26 December 2011, the applicant requested reconsideration of his upgrade request; he included the first page of his DA Form 2-1 (Personnel Qualification Record – Part II), which showed the following comment in item 4 (Assignment Considerations): "Sickle Cell Trait, Code U: No flying in aircraft that is unpressurized; no duty at altitudes over 4,000 feet; no duty at PTA." On 18 January and again on 1 March 2012, the Army Review Boards Agency administratively closed the applicant's request.

4. MEDICAL REVIEW:

a. 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 (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical

Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 22 November 1977 under other than honorable conditions discharge and, in essence, a referral to the Disability Evaluation System (DES). On his DD 149, he has indicated that Other Mental Health Conditions is an issue related to his request. He states:

“Because I should have had my medical discharge at basic training. I had Sickle Cell. All this action would have never [happened] if they would've gave {sic} me my medical discharge.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of service under consideration shows he entered the regular Army on 31 July 1975 and was discharged under other than honorable conditions on 22 November 1977 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 December 1975): Discharge for the Good of the Service – Conduct Triable by Court Martial. His separation code of JFS denotes this was an administrative separation in lieu of trial by court martial.

d. Part II of the applicant's Personnel Qualification Record shows the applicant did not sickle cell disease but only sickle trait, i.e., one defective gene versus both genes being defective. It also shows he carried a physical profile code U: “No flying in aircraft that is unpressurized. No duty at altitudes over 4,000 feet, No duty at PTA [Puhakuloa Training Area on the island of Hawaii, Hawaii].”

e. From the National Heart, Lung, and Blood Institute's website:

“People with sickle cell trait have only one copy of the hemoglobin S (sickle) gene and usually do not have symptoms related to the disease. Sickle cell trait does not turn into sickle cell disease.

In contrast, people with sickle cell disease have two copies of the hemoglobin S gene. Some people have sickle cell disease because they have one hemoglobin S gene and another gene for a different faulty hemoglobin. Without a gene to produce normal hemoglobin A, red blood cells break down quickly. This leads to long-lasting, serious anemia. Red blood cells lose their normal shape and form a crescent or

sickle shape, which gives the disease its name.”



f. The applicant received five Article 15's.

6 February 1976 Disrespectful language toward a superior NCO

22 June 1976 Disrespectful language toward a superior NCO

13 July 1976 Wrongful use of reproachful gestures toward a superior NCO

11 August 1976 Wrongful use of reproachful words toward a superior NCO

8 July 1977 Disorderly in station, to wit: Malcomb Gate

g. A 22 September 1977 Charge Sheet (DD Form 458) shows the applicant was charged with missing movement on 13 September 1977, two specifications of failure to obey the lawful order of a commissioned officer, and disrespect in deportment toward a commissioned officer. A 12 October 1977 DD 458 shows the applicant was charged with failure to report, wrongful use of provoking language toward a superior enlisted Soldier, and unlawfully striking a superior enlisted Soldier.

h. On 2 November 1977, the applicant voluntarily requested discharge for the good of the Service under the provisions of Chapter 10, AR 635-200. The Commanding General of the 25th Infantry Division (Light) approved his request on 14 November 1977 with the direction his service be characterized as under other than honorable conditions.

i. No medical documentation was submitted with the application, the applicant's period of service predates the EMR, and JLV contains no clinical encounters or diagnoses on his medical problem list.

j. Paragraph 2-4a(4) of AR 40-501, Standards of Medical Fitness (29 January 197), states sickle cell anemia is a cause for rejection for enlistment and induction. As noted above, the applicant had sickle cell trait and not sickle cell anemia.

k. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, prior to his voluntary separation; or which contributed to the misconduct which led him to request separation under Chapter 10 of AR 635-200. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical

condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

l. Even if he had sickle cell anemia, it was a pre-existing condition and so not eligible for referral to the DES.

m. In addition, his misconduct made him ineligible for referral to the DES. Paragraph 1-2c of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (25 February 1975) states:

“A member who is charged with an offense for which he could be dismissed or given a punitive discharge may not be referred for disability processing. However, if the officer exercising appropriate court-martial jurisdiction dismisses the charge or refers it for trial to a court-martial which cannot adjudge such a sentence, the case may be referred for disability processing.”

n. Paragraph 1-2e provides similar guidance:

“No enlisted member may be referred for physical disability processing when action has been or will be taken to separate him for unfitness under chapter 13 or misconduct under chapter 14, AR 635-200, except when the officer exercising general court-martial jurisdiction determines that the disability was the cause or substantial contributing cause of the misconduct, or that circumstances warrant physical disability processing in lieu of administrative processing.”

o. It is the opinion of the ARBA medical advisor that neither a referral of his case to the DES nor a discharge upgrade is warranted.

p. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts he has mental health condition.

(2) Did the condition exist or experience occur during military service? Applicant asserts the mental health condition was related to his service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There was no probative evidence submitted, found in the EMR, other electronic records, or in JLV (to include VA endorsement), indicating the applicant has been diagnosed with PTSD or a behavioral health disorder of any kind.

q. If the applicant were to have a mitigating mental health condition, it would mitigate most of his misconduct. However, it would not have negatively affected his ability to differentiate right from wrong and adhere to the right and therefor would not mitigate his striking a superior enlisted Soldier.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the following findings outlined in the medical review:

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts he has mental health condition.
- (2) Did the condition exist or experience occur during military service? Applicant asserts the mental health condition was related to his service.
- (3) Does the condition or experience actually excuse or mitigate the discharge? No.

as well as the short term of honorable service completed prior to the pattern of misconduct leading to the applicant’s separation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant’s characterization of service.

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:

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.

X

CHAIRPERSON

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

REFERENCES:

1. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

2. Army Regulation (AR) AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, prescribed policies and procedures for enlisted administrative separations.

a. Paragraph 1-9d (Honorable Discharge). An honorable discharge was a separation with honor; commanders issued an honorable discharge certificate based on the Soldier's proper military behavior and proficient duty performance. Separation authorities could characterize a Soldier's service as honorable if he/she received at least "Good" for conduct, and at least "Fair" for efficiency. In addition, the Soldier could not have one general court-martial or more than one special court-martial conviction.

b. Paragraph 1-9e (General Discharge). A general discharge was a separation from the Army under honorable conditions, where the Soldier's military record was not sufficiently meritorious to warrant an honorable discharge.

c. Section II (Secretarial Authority), paragraph 5-3 (Authority) stated the Secretary of the Army had the prerogative to separate enlisted personnel for the convenience of the Government, and such a separate would only be accomplished per the Secretary's authority. Except as delegated by this regulation or by special Department of the Army directives, the discharge or release of any enlisted member of the Army for the convenience of the government would, at the Secretary's discretion, result in the issuance of either an honorable or a general discharge certificate.

d. Chapter 10 permitted a Soldier to request discharge for the good of the service when they had committed an offense or offenses which, under the UCMJ and MCM, included a punitive discharge as a punishment.

(1) The Soldier could submit such a request at any time after court-martial charges were preferred; commanders had to insure no one coerced the Soldier into submitting a request for discharge and that the Soldier had a reasonable amount of time to consult with counsel. If, after consulting with counsel, the Soldier chose to submit a separation request, he/she had to do so in writing, and the Soldier's counsel had to sign as a witness.

(2) Once the separation authority approved the Soldier's discharge request, an undesirable discharge was normally furnished, but the separation authority could direct either an honorable or a general discharge, if warranted.

3. The MCM then in effect stated punitive discharges were available maximum punishments for the following violations of the UCMJ:

- Article 87 (Missing Movement through Design)
- Article 89 (Disrespect toward a Commissioned Officer)
- Article 90 (Willful Disobedience of a Commissioned Officer's Order)

4. AR 600-200 (Enlisted Personnel Management System), in effect at the time, prescribed policies and procedures for the management of enlisted personnel. Paragraph 7-64c (Reasons for Reduction – Approved for Discharge from Service with an Undesirable Discharge) stated Soldiers approved for separation with an undesirable discharge were required to be reduced to the lowest enlisted grade.

5. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for the completion of the DD Form 214. To find entries for the separation program designator (SPD), DD Form 214 preparers were to review AR 635-5-1 (SPD). The reenlistment (RE) code for item 10 was found in AR 601-280 (Army Reenlistment Program).

6. AR 635-5-1, in effect at the time, stated Soldiers separated under the provisions of chapter 10, AR 635-200 received "JFS" for their SPD; the narrative reason for separation was "Administrative Discharge Conduct Triable by Court-Martial."

7. AR 601-280, in effect at the time, included guidance on RE codes:

a. Paragraph 2-23 (Persons Ineligible for Immediate Reenlistment). Persons discharged under the provisions of chapter 10 of AR 635-200 required a waiver to reenter Army service.

b. Appendix D (RE Codes) stated:

- RE-1 – applied to former Soldiers who were qualified for reentry
- RE-3 – former Soldier had a disqualification that could be waived

8. AR 40-501 (Standards of Medical Fitness), in effect at the time, included policies and procedures for identifying medical disqualifications for entry into Army service and retention for continued military service.

a. Paragraph 2-4 (Blood and Blood-Forming Tissue Diseases) stated having sickle cell anemia was a cause for rejecting a prospective enlistee for Army service.

b. Paragraph 3-7 (Blood and Blood-Forming Tissue Diseases) stated, Soldiers could be referred into the Army's Physical Disability Evaluation System (PDES) when response to therapy for anemia was unsatisfactory or the therapy would require prolonged and intensive medical supervision.

9. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation), in effect at the time, prescribed policies and procedures for processing members who were determined to be unfit for continued military service.

a. Paragraph 1-2 (Scope). A member who has been charged with an offense for which he/she could be given a punitive discharge could not be referred for disability processing.

b. Paragraph 2-3 (Conditions Originating Prior to Active Military Service). According to accepted medical principles, there were certain abnormalities and residual conditions which, when discovered, impelled the conclusion that they had to have existed or originated before the individual entered military service. This included conditions in which medical authorities were in such consistent and universal agreement as to their cause and time of origin that no additional confirmation is needed to support the conclusion of their existence prior to military service.

c. Paragraph 4-6 (Medical Boards). As prescribed in AR 40-3 (Medical, Dental, and Veterinary Care), medical evaluation boards were appointed by the commander of a medical treatment facility (MTF) for the purpose of assisting him/her in the determination of medical fitness, mental competence, mental responsibility, and disposition of patients. In the initiation and processing of disability evaluation cases, special liaison and direct communication with other agencies and activities in the disability system was authorized as required.

d. Paragraph 4-8 (Referral to a Physical Evaluation Board (PEB)). Medical boards were to recommend referral of members who did not meet medical retention standards to a PEB.

e. Paragraph 4-12 (Initial Processing).

(1) The PEB determined whether the Soldier was fit or unfit by reason of physical disability; if fit, no further determinations were needed. If, however, the Soldier was unfit, the PEB then had to ascertain whether the disability resulted from intentional misconduct or willful neglect; whether the disability was permanent or temporary; and what disability percentage was appropriate. Additionally, the PEB had to assess whether the Soldier incurred the disability while entitled to basic pay, and, for Soldiers with less than 8 years of service, whether the performance of active duty was the proximate cause of the disability.

(2) For conditions that existed prior to service (EPTS), a Soldier was not to be found unfit due to physical defects that were known to exist at the time of his/her acceptance for military service and which had remained essentially unchanged since acceptance and had not interfered with his/her performance of effective military service.

(3) When it was determined that a Soldier had an EPTS physical defect, the PEB had to further consider whether the defect was aggravated by military service. If the worsening of such condition was attributable to or had been accelerated by the member's military service beyond the normally anticipated rate, had he not been exposed to such service, a finding of aggravation had to be considered.

(4) Unless eligible for retirement, Soldiers found to be unfit due to a disability neither incurred nor aggravated by military service were to be recommended for one of the following:

- When eligible, Soldiers could be separated per chapter 5 (Expeditious Discharge) of the regulation
- Soldiers meeting the above-stated criteria were to be discharged without entitlement to disability benefits

(5) If the PEB finds that a member is physically unfit for military service, the board must then determine whether the member is eligible for physical disability retirement or severance pay. A member was eligible for consideration for physical disability benefits if his/her physical defects were incurred or were aggravated while entitled to basic pay, were not the result of intentional misconduct or willful neglect and were not incurred during a period of unauthorized absence.

f. Paragraph 4-17 (Commanding General (CG), U.S. Army Physical Disability Agency (USAPDA) – Determinations). The USAPDA reviews all of the PEB's cases. If USAPDA concurs with the PEB's findings and recommendations, the case is forwarded to U.S. Army Military Personnel Center (MILPERCEN) for final disposition. If USAPDA does not concur, it can send the case back for PEB reconsideration or refer the case to the Army Physical Disability Appeal Board.

g. Paragraph 4-19 (Actions by CG, MILPERCEN for Secretary of the Army). MILPERCEN can direct:

- Permanent disability retirement
- Temporary disability retirement
- Separation with severance pay
- Separation without severance pay because the condition was neither incurred nor aggravated during military service
- Separation without severance pay based on the disability being incurred as a result of intentional misconduct, willful neglect, or during an unauthorized absence

h. Chapter 5 (Expeditious Discharge) provides an expeditious discharge to enlisted personnel who are not qualified for retention on active duty due to physical disability but the disability was neither incurred nor aggravated by military service.

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

11. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) when considering requests by Veterans for modification of their discharges

due in whole or in part to: mental health conditions, including Post Traumatic Stress Disorder (PTSD); Traumatic Brain Injury (TBI); sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

12. 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//