

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20230008184

APPLICANT REQUESTS:

- his under other than honorable conditions (UOTHC) discharge be upgraded to an honorable discharge
- his narrative reason for separation be changed to Secretarial Authority
- removal of his periods of lost time from his DD Form 214 (Certificate of Release or Discharge from Active Duty)
- change his separation authority to Army Regulation 635-200, Chapter 5,
- change his separation code to JFF
- change his reentry code to RE- 2
- reissue the DD Form 214 for his second period of service with the above corrections

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's affidavit
- Counsel Brief with 70 exhibits
 - 1 - Applicant's affidavit
 - 2 - Letter from Bxxxx Gxxxx, LCSW
 - 3 -DD Form 1966 - National Guard service
 - 4 - DD Form 214
 - 5, 6, 11, 13, 14, 15, 17, - Counseling Forms
 - 7, 8, 9, 10, 16- Army Relief documents
 - 12 - extension of leave memo
 - 18 - DD Form 4187
 - 19 - DA Form 4384 Commander's Report
 - 20, 21, 22, 23, 24 - AWOL related forms
 - 25 - Clothing and Issue Inventory
 - 26 - applicant's mental state and arrest forms on 16 April 2002
 - 27 - Psychiatric Evaluation

- 28 - Treatment from Darnell Hospital Psychiatry Unit
- 29 - Rights of Pretrial Confinement Memo
- 30 - DD Form 458 - Charge Sheet
- 31 - Checklist for Pre-Trial Confinement
- 32 -Administration Record (1 - 31 May 2002)
- 33 - DD Form 629 (escorted to a psychiatric appointment)
- 34 - Commander's referral for MSE
- 35 - DD Form 2708: Receipt for Inmate or Detained Person and Request for Discharge in Lieu of Trial by Court-Martial
- 36 - DA Form 1954 (house fire)
- 37 - Separation authority approval Chapter 10
- 38 - Special Court-Martial (12 August 2002)
- 39 - Letter of support - Txxxx Fxxxx
- 40 - Affidavit Dxxxx Lxxxx counselor
- 41-45 - third party Letters of support
- 46- 53 -Certificates Documenting Rehabilitation
- 55 - Article "Army Sergeants at Fort Hood Fear for the Safety of Their Soldiers
- 56 - Excerpts from "Report Of The Fort Hood Independent Review Committee (November 6, 2020)
- 57 - Affidavit of Ret. Sgt. Jxxxx Fxxxx (22 November 2022)
- 58 - A Journal of Collegiate Anthropolog, "Going AWOL: Alternative Responses to PTSD Stigma in the US. Military", Katinka Hooyer (2012)
- 59 - Howard Waitzkin, MD, PhD et al., *Military Personnel Who Seek Health and Mental Health Services Outside the Military*, Military MEDICINE (2018)
- 60 - Military Benefits.Com, Joe Wallace, *PTSD and Veteran's Symptoms* (22 March 2021)
- 61- 63 - Drug listing with side effects
- 64 - Secretary of Defense, Chuck Hagel 2014 Memo
- 65 - Principal Deputy Under Secretary of Defense, Brad Carson 2017 Memo
- 66 - Under Secretary of Defense, A.M. Kurta 2017 Memo
- 67 - Under Secretary of Defense, Robert L. Wilkie 2018 Memo
- 68 - Excerpt from Army Regulation 630-10, Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court
- 69 - Excerpt from Army Pamphlet 600-8, Military Human Resources Management Administrative Procedures, Section 3-10
- 70 - Excerpt from Manual For Courts-Martial (2019), Rule 305(i)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. Due to a family history of military service, he joined the Reserve Officer Training Corps in high school and enlisted in the Arkansas Army National Guard (ARNG) on 9 February 1999.

b. He was Honorably Discharged from the ARNG to transferred to active duty. He served on active duty at Fort Hood, Texas, beginning in August 2000. Fort Hood culture differed drastically from what he experienced in the ARNG. The ARNG was like a family, in the sense that they cared and if someone had a problem, they would help them get through. Fort Hood was run more like a business, where if you had a problem, they would just discharge you to get rid of the problem and not help you work through it.

c. When I was stationed at Fort Hood, he was married with two school-aged stepchildren and one biological child who was three at the time of my separation from the Army. He lived off-base and their lives were every chaotic and stressful because he worked a lot, was out doing maneuvers, was not home to help his wife with the kids. The had no family or support system in the area, which left his wife feeling very isolated (especially since she was estranged from her own family at that time).

d. Around the end of 2000, his wife developed a gambling addiction and spent most of their money that as supposed to go toward supporting our family. This caused a lot of stress for me because he was the primary provider for the family. Then, in early 2001, she underwent surgery and was prescribed pain medication. She became addicted to that medication and became very depressed. His wife attempted suicide later that year and he believes this triggered his PTSD as it brought up trauma from his past.

e. He requested and received 30 days of leave to deal with the family issues and at the end of this period he requested an extension that was denied. His family situation continued to deteriorate. He suffered a black out period and was arrested on post and sent for a psychiatric evaluation and then to the Bell County jail where he remained until he was discharged.

f. Post service, he has struggled with mental health issues, battled addiction, and resorted to drug use to cope. My drug use eventually led to me being arrested in 2019,

and charged on drug charge and aggravated assault. He received four years of probation for those charges.

g. On 26 September 2020, he was arrested on multiple drug charges. He maintained his innocence following the arrest but served the time, regardless, until being bonded out. He plead no contest because he shouldn't have been in a place where other people were using drugs and knew he wasn't supposed to be around drugs. He owned up to that, but the drugs weren't his and he didn't use them so he wasn't pleading guilty.

h. Following the 2020 arrest he got help and had slowly gotten better being clean and sober for over 800 days. He is now the Operation Manager for the Union Rescue Mission. He is changing job soon to work for Pulaski County Sheriff Higgins as a Peer Support Specialist/Liaison.

3. Counsel states:

a. The applicant had a mental health condition that existed during his service at Fort Hood, including at the time of his discharge. His mental health condition mitigates and outweighs his UOTHC discharge. As a matter of fundamental fairness and clemency, the applicant merits an upgrade of his discharge characterization to be Honorable as evidenced by his character and rehabilitation demonstrates that he warrants relief as a matter of clemency.

b. The applicant's acceptance of responsibility, resilience, and contributions to his community further support a discharge upgrade. The applicant was unjustly accused of being absent without leave (AWOL) and desertion. Unable to receive proper care for his mental health, the applicant struggled with substance abuse post-discharge, which resulted in involvement in the criminal justice system. However, he has worked hard to turn his life around.

c. The applicant has been sober for more than two years and has dedicated his life to serving others who have faced similar struggles to his own.

d. The applicant has been diagnosed with PTSD, stemming from childhood abuse and aggravated by his military experiences. When he was very young, his father abused him physically and mentally, including setting him on fire and trying to drown him on two separate occasions before totally abandoning him and his family.

e. While stationed at Fort Hood he faced serious financial, psychological, and marital struggles receiving extremely limited support from the military and no familial support. His military records show that his "financial distress" and "severe family distress" continued into August and September of 2001. Additionally, his wife struggled

with depression and attempted suicide in the spring of 2001 with Child Protective Services became involved because. The applicant feared that his family would be torn apart and his wife's suicide attempt brought up issues of abandonment from his childhood and triggered his PTSD.

4. On the applicant's DD Form 149, he indicates post-traumatic stress disorder (PTSD) and other mental health issues as contributing and mitigating factors in the circumstances that resulted in his separation.

5. The applicant enlisted in the Arkansas Army National Guard (ARNG) on 9 February 1999, completed training with award of the military occupational specialty 71L (Administrative Specialist). He was released from active duty and enlisted in the Regular Army on 23 August 2000. The highest grade he held was E-4.

6. While stationed at Fort Hood, the applicant encountered both family medical and financial difficulties, including his wife developing a gambling problem, depression, drug addiction, and a suicide attempt.

7. The applicant received adverse counseling on 11 occasions between 6 December 2000 and 17 December 2001, for primarily related to being absent from his place of duty and periods of AWOL.

8. The record indicates the applicant accepted nonjudicial punishment (NJP) on 18 September 2001, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for being absent without leave (AWOL) from his place of duty on three occasions and for being AWOL from 20 to 27 August 2001. His punishment included reduction to E-3, forfeiture of \$ 264.00 for one month (suspended) 14 day restriction and 14 days extra duty.

9. On 24 April 2004, it was reported that the applicant communicated a threat against a commissioned officer. The record does not show what if any actions were taken based on the report.

10. Court-martial charges were preferred against the applicant on 25 April 2002 for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 6 December 2001 until on or about 17 December 2001 and being AWOL in desertion from on or about 26 December 2001 until on or about 16 April 2002.

11. The applicant was declared a flight risk and placed in pretrial confinement on 25 April 2002.

12. The applicant received a psychiatric evaluation from the METROPLEX Hospital on 16 April 2002. It was opined that the applicant was unable to function outside of acute care setting and he was afforded the diagnoses of:

- Adjustment Disorder With mixed disturbance of emotion and conduct
- Rule Out Bipolar Disorder, Not Otherwise Specified, Mixed.
- History of seizure at age 17 and recurrent 1-1/2 months ago
- primary support system problems, occupational problems, and financial problem

13. On 5 June 2002, the applicant's unit commander referred the applicant for a psychiatric evaluation due to him expressing suicidal thoughts. The applicant was advised of his rights and appears to have received in patient treatment by a psychiatrist through 24 May 2002.

14. The available service medical records show he received a shaving profile in May 1999; treatment for a right wrist injury in July 1999. There are no treatment records of his depression and suicide evaluations other than the unit commander's referral for a mental status evaluation.

15. The applicant consulted with legal counsel on 5 June 2002 and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an under other than honorable conditions discharge; and the procedures and rights that were available to him.

a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service – in lieu of trial by court-martial. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA), and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

b. He was advised he could submit any statements he desired in his own behalf; however, the applicant waived this right.

16. The separation authority approved the applicant's request for discharge on 17 June 2002, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial, directed that the applicant be reduced to the lowest enlisted grade and receive a UOTHC.

17. On 12 August 2002 Special Court-Martial Order Number 11 withdrew the court-martial charges.

18. The applicant was discharged on 29 July 2002 in the grade of E-1. His DD Form 214 shows:

- he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of court martial
- his service was characterized as UOTHC
- he was credited with 1 year, 3 months, and 21 days of net active service this period
- 3 months and 10 days of prior active duty service
- 1 year, 2 months, and 26 days of inactive service
- his awards are listed as the National Defense Service Medal and the Army Service Medal
- a Separation Authority as "AR 635-200, Chapter 10"
- a Separation Code of KFS (discharge in lieu of trial by court-martial)
- a Reentry Code of 4
- five periods of lost time, 20010820-20020826; 20011206-20011216; 2001126-20020124; 20020125-2002415; and 20020424-20020729

19. The applicant and counsel provided:

- Letter from Bxxxx Gxxxx, LCSW, dated 3 November 2022, showing his treatment of the applicant for 21 April 2002 for PTSD due to childhood trauma continuing into the applicant's adult life and military service.
- a DD Form 214 for the period ending 14 August 1999 in the ARNG
- Seven negative Counseling Forms
- Six documents relating to the applicant's financial problems and assistance through the Army Relief fund
- Request for an extension of leave memo
- DD Form 4187
- DA Form 4384 Commander's Report
- six AWOL related forms
- charge sheet (incomplete)
- Clothing and Issue Inventory form
- applicant's mental state and arrest forms on 16 April 2002
- Psychiatric Evaluation
- Treatment from Darnell Hospital Psychiatry Unit
- Rights of Pretrial Confinement Memo
- DD Form 458 - Charge Sheet
- Checklist for Pre-Trial Confinement documents

- Administration Record (1 - 31 May 2002)
- DD Form 629 (escorted to a psychiatric appointment)
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- eight third party Letters of support
- seven Certificates Documenting Rehabilitation and training
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- Three drug information listing side effects
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20. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

21. In determining whether to grant relief the Boards for Correction of Military/Navy Records (BCM/NR) can consider the applicant's petition, arguments and assertions,

and service record in accordance with the published equity, injustice, or clemency guidance.

MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant had several requests to include a discharge upgrade from 'Under Other Than Honorable Conditions' to 'Honorable' and change in reason for separation to 'Secretarial Authority' and separation code to 'JFF'. He stated his discharge was unjust due to an undiagnosed mental health condition and indicated that PTSD and Other Mental Health were related to his request(s).

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant was in the Army National Guard 09Feb1999 to 22Aug2000 with a period of active service from 27Apr1999 to 14Aug1999. He immediately enlisted in the Regular Army and served from 23Aug 2000 until his discharge on 29Jul2002. His MOS was 71L Administrative Specialist. His DD Form 214s did not show foreign service. He was discharged under provisions of AR 635-200 chapter 10 in lieu of trial by court-martial. The charge sheet indicated that he was charged with being AWOL from 06Dec2001 until 17Dec2001 and then from 26Dec2001 until apprehended 16Apr2002.

3. While at Fort Hood, the applicant's wife at the time developed a gambling and drug addiction. In the spring of 2001, she attempted suicide. Since a young child was at the home at the time of the attempt, child protective services became involved. He was given a 30 day leave in mid July 2001 during which he and his wife attended marital counseling and individual counseling. From the time his convalescence leave expired on 15Aug2001, the applicant continued to experience emotional turmoil from the stresses at home as well as occupational stress due to consequences of multiple instances of AWOL, failure to report and failure to repair charges culminating in an impending court-martial in 2002.

4. On 16Apr2002, while considered absent in desertion, the applicant was apprehended, and due to homicidal threat to the commander he was urgently taken to Darnell ACH emergency room for psychiatric admission. During the admission, he underwent Psychiatric Evaluation (Metroplex Hospital) for a reported 6-month history of mood swings (accompanied by violent behavior) and current homicidal ideation. He remained inpatient until 24Apr2002. Of note, diagnoses considered included Bipolar Disorder, Not Otherwise Specified due to report of high mood swings lasting 8 hours to a day, euphoria, insomnia, racing thoughts etc. The mental status exam was within

normal limits when discharged. The discharge diagnosis was Adjustment Disorder with Disturbance of Emotion and Conduct. During this admission the applicant reported prior treatment for either Attention Deficit Disorder or Bipolar Disorder. He also reported having been sent for anger management in 2002 (January/February time frame). He was restarted on his prehospitalization medications to include Prozac, Zyprexa, and Neurontin. He had attended some individual and group therapy while inpatient. He was to follow up with his treating psychiatrist. In addition, he was to follow up at Darnell Mental Health Center and a follow up group appointment under psychiatry was scheduled for 24May2002.

5. After his release from the hospital, the applicant was immediately ordered pre-trial confinement due to being deemed a flight risk by command. While confined, on 05Jun2002, he was command referred for psychiatric evaluation for suicide ideation. The applicant's request for discharge in lieu of trial by court-martial was also dated 05Jun2002. It is not clear if the command directed psychiatric evaluation took place; if so, the evaluation was not available for this review. Also, while confined, the applicant's house burned down (11Jun2002). The request for discharge was approved 17Jun2002.

6. In addition to the BH diagnoses, service treatment records showed evidence of treatment for the following medical conditions:

a. Seizure Disorder. While psychiatrically hospitalized in April 2002, the applicant reported a history of seizures at age 17 which started after a car accident with loss of consciousness for one hour. He had experienced recurrence of (petit mall) seizures 1-1.5 months prior. The condition was well controlled on Neurontin, since starting the medication, he had not experienced any seizures.

b. Epididymitis. He was treated with antibiotic and placed on a 10-day light duty, no PT profile on 14Jun2000.

c. Right Wrist Injury. There was treatment by occupational therapy with improvement noted in July 1999 for an injury sustained in the 4th week of AIT. The x-ray was negative for fracture.

d. Pseudo-folliculitis Barbae (probable diagnosis, although not documented). He was treated on 29May1999 and given a shaving profile while in BCT.

7. After service, the applicant reported that his struggles with mental health symptoms continued and in response, he self-treated with substances which ultimately led to encounters with law enforcement for drug charges and aggravated assault. A note from a licensed clinical social worker (dated 03Nov2022) stated that that applicant had been under their care since 21Apr2022. They indicated the applicant was diagnosed with PTSD stemming from childhood abuse and that his military experiences contributed to

the condition. In his personal statement, the applicant endorsed that his wife's suicide attempt in spring of 2001 brought up issues of abandonment from his childhood and triggered PTSD symptoms which were further aggravated by experiences while in the military. He also shared that at age 7, his father set him on fire and that he had survived severe beatings and a drowning attempt by his father.

8. A Report of Mental Status Evaluation was not found. While in service, he was diagnosed with an adjustment disorder. After discharge, the applicant was diagnosed with PTSD due to childhood trauma with exacerbation during military service by life stressors and occupational stressors. Under Liberal Consideration, the preexisting PTSD condition which was exacerbated by stressors while in military service; is mitigating for the AWOL charges which prompted the applicant to request military discharge in lieu of trial by court-martial. Medical evidence was insufficient to support that any of the medical conditions noted in para 6 above, significantly contributed to the applicant's discharge.

9. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant was diagnosed with preexisting PTSD due to childhood trauma aggravated due to multiple stressors while in military service.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant was diagnosed with preexisting PTSD due to childhood trauma aggravated by multiple life stressors and occupational stressors while in military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Negative thoughts about self and the world, avoidant behavior, and distrust of authority are typical PTSD symptoms that might influence a service member to absent himself without proper authority (AWOL offences). In addition, the substance abuse reported after discharge from service is a common sequela of PTSD. In the ARBA Medical Reviewer's opinion, the preexisting PTSD condition aggravated while in military service is mitigating for the AWOL offences and warrants consideration of discharge upgrade from Under Other Than Honorable Conditions, a change in narrative reason for separation and discharge code, etc.

BOARD DISCUSSION:

1. 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 request, supporting documents, evidence in the records, and published Department of Defense 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. The applicant was charged with offenses, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board majority reviewed and concurred with the medical advisor's review finding credible evidence to support the applicant was diagnosed with adjustment disorder while in service and post-traumatic stress disorder after service. Based on the applicant's contention and the medical review, the Board majority granted partial relief to upgrade the applicant's characterization of service to honorable and amend his narrative reason for separation with corresponding codes to Secretarial Authority. The Board minority found no error or injustice in the applicant's separation proceedings or designated characterization of service upon discharge and denied relief.

2. The Board considered the applicant's request for removal of his periods of lost time from his DD Form 214 (Certificate of Release or Discharge from Active Duty); however, the Board concluded there was no error in the remark and that portion of the applicant's request.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3
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:	:	:	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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 29 July 2002 to show in:

- item 24 (Character of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200

- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority

2. The Board further determined that 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 removing the lost time from his DD Form 214.



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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, USC, section 1556 provides the Secretary of the Army shall ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Title 10, U.S.C., section 972, lists situations where an enlisted member may be required to make up lost time. Included on the list are desertion, absence without authority for more than 1 day, confinement for more than 1 day, awaiting trial or serving sentence (if the conviction and/or sentence becomes final), and inability for more than 1 day to perform duties because of alcohol, drugs, or disease or injury resulting from misconduct. A member with lost time is liable to serve an additional period equal to the time lost before he is considered to have completed his obligated term of service.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at that time provided that:

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

b. 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 the Soldier's separation specifically allows such characterization.

c. Paragraph 5-3 (Secretarial plenary authority) provides that a separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if

approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

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

5. Army Regulation 635-5-1 (Separation Program Designator) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. The Separation Code and RE Codes are directly linked to the narrative reason for separation and the Separation Authority. It provides that the separation code "KFS" is an appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, for the Good of the Service, in lieu of trial by court-martial with an RE code of 4.

6. Army Regulation 635-5 governs the preparation of the DD Form 214. It states, in pertinent part, that item 12a (Date Entered AD this Period) will be completed to show the beginning date of the continuous period of AD for issuance of the present DD Form 214, for which a DD Form 214 was not previously issued. Item 12c will be completed to show the amount of service, computed by subtracting item 12a from 12b (Separation Date This Period). Item 12d will be completed to show the amount of prior active military service, less lost time, if any, and item 12e will be completed to show the amount of total prior inactive service, plus the amount of inactive service from previously issued DD Forms 214, less lost time, if any.

7. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRBs) and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give a 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.

8. The Under Secretary of Defense for Personnel and Readiness issued guidance to DRBs and BCM/NR on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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, Boards 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//