

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230008733

APPLICANT REQUESTS: on behalf of her husband, a deceased former service member (FSM), an upgrade of his under other than honorable conditions (UOTHC) characterization of service, and correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) as follows:

- Item 11c (Reason and Authority) - change separation program number (SPN) from “246” to “21L”
- Item 30 (Remarks) - deletion of “193 days of lost time under 10 USC 972”

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

- DD Form 149 (Application for Correction of Military Record) with addendum
- Cover letter, [Name] LLP, 28 April 2023
- Legal Brief (18 pages), dated 28 April 2023
- Exhibit A, Affidavit of J.S., 30 October 2021
- Exhibit B, Affidavit of C.S., 16 October 2021
- Exhibit C, Affidavit of J.S., 17 October 2021
- Exhibit D, Psychological Assessment, 17 October 2021
- Exhibit E, Department of Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim), 20 June 2010
- Exhibit F, VA Form 21-4138, 20 September 2010
- Exhibit G, DD Form 214, for the period ending 28 November 1973
- Exhibit H, Excerpt of Army Disciplinary Records, 17 September 1971 to 12 November 1973
- Exhibit I, Statement in support of request for discharge, undated
- Exhibit J, Memorandum, Secretary of Defense (Hagel), 3 September 2014
- Exhibit K, Memorandum, Acting Under Secretary of Defense, (Carson), 24 February 2016
- Exhibit L, Memorandum, Acting Under Secretary of Defense for Personnel and Readiness (Kurta), 24 August 2017
- Exhibit M, Memorandum, Under Secretary of Defense (Wilkie), 25 July 2018
- Exhibit N, Marriage Certificate, City of Boston, 28 November 2008
- Exhibit O, Death Certificate, Commonwealth of Massachusetts, 23 June 2017

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect, her husband suffered from post-traumatic stress disorder (PTSD) and other mental health issues. His UOTHC discharge was unjust in light of the provisions regarding liberal consideration and present day discharge procedures requiring mental health screening.
3. Counsel states, in effect, the FSM was a capable Soldier, trained helicopter mechanic, sharpshooter, and committed servicemember who volunteered to fight in Vietnam at 17 years old. His mental health deteriorated shortly after his deployment to a heavy-combat region of Vietnam. Without proper support, he began self-medicating with heroin to help himself sleep. He suffered from symptoms now readily understood as indicative of severe PTSD and Depression. His trauma, coping mechanism, and then undiagnosed PTSD were misunderstood by the military as willful misconduct. His conditions arose from, and existed during, his service in Vietnam, which clearly excuse or mitigate the conduct leading to his discharge. His discharge plainly constitutes an injustice and meets criteria for liberal consideration.
4. A DD Form 373 (Consent, Declaration of Parent or Legal Guardian) shows that prior to enlistment, the applicant was given consent to enlist in the U.S. Army at 17 years of age.
5. The FSM enlisted in the Regular Army on 5 February 1971 for a 3-year period. Upon the completion of initial entry training, he was awarded the military occupational specialty 67N (UH-1 Helicopter Repairman). The highest rank he attained was specialist/E-4.
6. The FSM accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on two occasions:
 - a. On 17 September 1971, for discharging a .45 caliber pistol in the 3rd Platoon Bay, through carelessness, on or about 16 August 1971. His punishment consisted of reduction to private first class/E-3, 14 days of extra duty, and 14 days of restriction.
 - b. On 7 April 1972, for failure to go at the time prescribed to his appointed place of duty, on or about 1 April 1972. His punishment consisted of reduction to E-3, forfeiture of \$50.00 pay, and extra duty for 21 days.

7. The FSM served in the Republic of Vietnam (RVN) from 16 July 1972 to 11 January 1973.

8. The FSM accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice on four additional occasions:

a. On 2 November 1972, at Bien Hoa Army Installation, RVN, for failure to go at the time prescribed to his appointed place of duty and for failure to obey a lawful order from his superior noncommissioned officer (NCO), on or about 31 October 1972. His punishment consisted of reduction to E-3 and forfeiture of \$100.00 pay per month for two months.

b. On 23 November 1972, at Bien Hoa Army Installation, RVN, for failure to go at the time prescribed to his appointed place of duty, on or about 21 November 1972, and for leaving his post before being properly relieved, on or about 22 November 1972. His punishment consisted of reduction to private/E-2 and forfeiture of \$50.00 pay per month for two months.

c. On 12 February 1973, at Fort Devens, MA, for being absent from his unit without leave (AWOL), from on or about 2 February 1973 until on or about 6 February 1973. His punishment consisted of forfeiture of \$70.00 pay and seven days of extra duty.

d. On 21 February 1973, at Fort Devens, MA, for three occasions of failing to go at the time prescribed to his appointed place of duty, on or about 16 February, 17 February, and 18 February 1973. His punishment consisted of 14 days of extra duty.

9. A DA Form 3836 (Notice of Return of U.S. Army member from Unauthorized Absence), shows the FSM was reported AWOL on 19 March 1973 and was subsequently dropped from the rolls on 18 April 1973. He was apprehended by civil authorities and returned to military control at Fort Devens, MA, on 24 September 1973.

10. Court-martial charges were preferred against the FSM on 26 September 1973 for violations of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 19 March 1973 until on or about 24 September 1973.

11. The FSM consulted with legal counsel on 4 October 1973.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, for the good of the service, under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged making the request free of coercion. He further acknowledged understanding that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration (VA), and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. In an attached statement, the FSM stated, in effect, he enlisted at 17 years of age. After arriving in Vietnam, he was confused and resented the Army. He could not adjust to the loneliness or cope with the mental stress and became completely reliant on drugs. He volunteered for the Crossroads Program in Saigon but left after two days. He tested positive on a urinalysis and was sent to a drug treatment center in Saigon. He returned to drugs after being released. He tested positive again and was evacuated to Fort Devens, MA. He was released to a unit following treatment. Within two months, he received two Article 15s and was dependent on drugs. He went AWOL to straighten out his mind and kick drugs. There were no resources available to him, and he committed 25 burglaries in a five month period to afford drugs. He was arrested and returned to the military. He enlisted at an early age and was not mature enough to handle it. He did not blame the Army for his mistakes.

12. The FSM's immediate commander recommended approval of the request for discharge for the good of the service and the issuance of an Undesirable Discharge Certificate. The commander further stated the FSM had undergone a medical examination and was qualified for separation. The intermediate commander concurred with the recommendation on 7 November 1973.

13. On 12 November 1973, the separation authority approved the FSM's request for discharge and further directed the FSM be reduced to the lowest enlisted grade and the issuance of a DD Form 258A (Undesirable Discharge Certificate).

14. Accordingly, the FSM was discharged on 28 November 1973, under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. His DD Form 214 confirms his service was characterized as UOTHC, with separation program number (SPN) 246 and reenlistment code RE-4. He was credited with 2 years, 3 months, and 16 days of net active service, with 193 days of lost time under the provisions of Title 10, USC 972. He was awarded or authorized the following:

- National Defense Service Medal
- Vietnam Service Medal
- Vietnam Campaign Medal
- Overseas Service Bar

- Expert Marksmanship Qualification Badge with Pistol bar (.45)
- Sharpshooter Marksmanship Qualification Badge with Rifle bar (M16)

15. The applicant provides the following:

a. A cover letter and 18 page legal brief dated 28 April 2023, from Morgan, Lewis, Bockius, LLP.

b. In an affidavit, dated 31 October 2021, the applicant states, in effect, her and her husband were married for 42 years and had seven children. She was scared when he enlisted, but he wanted to be part of something bigger than himself. They married shortly after he returned home. He had trouble adjusting to civilian life. He started using heroin in Vietnam to help him sleep and told her it was quite common. He was sober for 17 years after coming home but struggled to stay clean later in life. She could tell he felt guilty about what happened in Vietnam, but he didn't talk to her about it. In his later years, he had trouble sleeping and rarely left his room. At one point, he stated he wanted to kill himself. He passed away on 23 June 2017, from natural causes. She has been denied VA benefits due to the nature of her husband's discharge.

c. In an affidavit, dated 16 October 2021, C.S. states, in effect, she is the daughter of the applicant and the FSM. Her dad loved them, but he could be difficult to live with. He had a quick temper and struggled with addiction. He spoke with his children about Vietnam: seeing people killed, fear of being ambushed, handing out candy to children and wondering if they survived the next day. She could tell these memories bothered him. She believes he felt guilty. He had trouble sleeping, experienced nightmares, and would cry or whimper in his sleep. He spoke with his kids about the dangers of drugs. It was difficult to watch her dad fight a losing battle with addiction.

d. In an affidavit, dated 17 October 2021, J.S. states, in effect, she is the daughter of the applicant and the FSM. She lived with her parents until the age of 12, at which time she went to live in foster care. Everything seemed like it was about Vietnam for her dad. He talked about the war constantly. He told stories and drew pictures of Army airplanes and forts, pointing out trap doors, escape routes, and how he would kill the enemy. He watched war movies and would say "I have witnessed that" when something violent happened. He talked about seeing children killed. These stories weighed on him. He behaved strangely, dressing up and hiding out like he was in combat. He was never violent but had a real temper. He struggled with addiction which took a toll on their family. Later in life he shut himself away and became very antisocial.

e. A psychological assessment report, dated 17 October 2021, shows Dr. S.A.D. conducted a telephonic interview with the applicant in an effort to assess the FSM's mental state during his time in service and determine if his condition was a mitigating factor for the misconduct which led to his discharge. Dr. S.A.D. stated, in her

professional opinion, the conduct that led to the FSM's discharge was directly related to his trauma and the manifestation of PTSD and Major Depressive Disorder.

f. Two VA Forms 21-4138, dated 20 June 2010 and 20 September 2010, show the FSM applied for VA benefits. He described his experiences in Vietnam which led to drug use and heroin addiction. He believed his time in Vietnam caused him to have PTSD.

g. Twenty-three pages of Army disciplinary records dated 17 September 1971 to 12 November 1973, and a copy of the FSM's statement requesting a discharge are summarized above.

h. The Hagel, Carson, Kurta, and Wilkie Memoranda provide clarifying guidance to Military Discharge Review Boards (DRBs) and Boards for the Correction of Military/Naval Records (BCM/NR) on liberal consideration, statute of limitations, and requests by Veterans for modification of their discharge due to mental health conditions, sexual assault/harassment, PTSD, and traumatic brain injury.

i. A marriage certificate from the Registry Division, City of Boston, shows the applicant and the FSM were married on 26 July 1975.

j. A death certificate from Commonwealth of Massachusetts, Registry of Vital Records and Statistics, shows the FSM died on 23 June 2017.

16. Discharges 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. A UOTHC characterization of service is normally considered appropriate. The appropriate SPN and narrative reason, in effect at the time, were SPN 246 and narrative reason "discharge for the good of the service."

17. The DD Form 214 is a summary of a Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

18. The Board should consider the FSM's overall record in accordance with the published equity, injustice, or clemency determination guidance.

19. MEDICAL REVIEW:

a. The applicant, the wife of a deceased former service member (FSM), is requesting an upgrade of the FSM's under other than honorable conditions (UOTHC) characterization of service, and corrections to his DD Form 214. The applicant contends

the FSM experienced military mental health conditions including PTSD, which mitigates his misconduct.

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 FSM enlisted into the Regular Army on 5 February 1971 at 17 years old; 2) The FSM served in the Republic of Vietnam (RVN) for six months from 16 July 1972 -11 January 1973 before he was removed to attend a substance abuse program at Fort Devens; 3) The FSM accepted nonjudicial punishment (NJP) while deployed to RVN twice for failure to be at his place of duty on time, once for leaving his post before relieved, and once for failure to obey a lawful order; 4) The FSM received NJP on 12 February 1973, at Fort Devens, MA, for being AWOL from 2-6 February 1973. On 21 February 1973, at Fort Devens, MA, the FSM received NJP on three occasions for failing to go at the time prescribed to his appointed place of duty; 5) Court-martial charges were preferred against the FSM on 26 September 1973 for being AWOL from on 19 March-24 September 1973; 6) The FSM was discharged on 28 November 1973, Chapter 10, for the good of the service. His service was characterized as UOTHC.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV), written statements from the applicant and other family members, documents by the FSM to the VA, and a psychological assessment dated 17 October 2021 were also examined.

d. The applicant asserts the FSM was impacted by mental health conditions including PTSD while on active service, which mitigates his misconduct. There is insufficient evidence in the FSM's military records that he reported symptoms of a mental health condition including PTSD while on active service. The applicant provided a psychological assessment of the FSM completed in 2021 after the FSM had passed away. The assessing psychologist used military records of the FSM's misconduct and reports from the FSM's family members including the applicant to assess the FSM's mental health condition at the time of his active service and after his discharge. The assessing psychologist determined from these sources of information that the FSM met criteria for PTSD and Major Depression and Opioid Use Disorder.

e. There was evidence directly from the FSM that he was reported experiencing difficulty from heroin or opioid abuse. In his June and September 2010 Statement in Support of VA Claim or VA Benefits application, the FSM believed he experienced PTSD from his time in RVN. However, the FSM reported using heroin almost immediately after arriving to RVN. He is quoted to saying, "within 2-3 weeks I was a full-blown heroin addict, and 6 months later was medevac'd back to the States." The FSM went on to describe going AWOL from the substance abuse program at Ft. Devens and going on a "6-month crime spree covering 4 states and over 200 breaking and entering

and was eventually arrested.” A review of JLV is void of any medical documentation for the FSM, and he received no service-connected disability.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is evidence to support the FSM was experiencing a condition or had an experience 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 contends the FSM was impacted by PTSD and a mental health condition, which contributed to his misconduct. The FSM also reported in VA documentation he believed he experienced PTSD and an opioid addiction due to his experiences in RVN. The applicant provided a psychological evaluation completed after the FSM passed away based on reports of his behavior and his misconduct in the active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends the FSM was impacted by PTSD and a mental health condition, which contributed to his misconduct. The FSM also reported in VA documentation he believed he experienced PTSD and an opioid addiction due to his experiences in RVN. The applicant provided a psychological evaluation completed after the FSM passed away based on reports of his behavior and his misconduct in the active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially, there is evidence the FSM was deployed to RVN, and he may have been exposed to potentially traumatic combat experiences. However, the FSM reported using heroin almost immediately after arriving to RVN and shortly becoming addicted. He was engaged in misconduct that was likely due to his drug addiction, and he was evacuated to address the issue. After arriving to the substance abuse program, he again within a few weeks engaged in misconduct to include going AWOL and not showing up to his place of duty.

g. The FSM reported prior to his death that he believed he experienced PTSD, and the applicant provided a psychological assessment completed after the FSM's death that the assessing psychologist believed the FSM met criteria for PTSD and Major Depression. Avoidant behavior such as going AWOL, not following orders, not reporting to duty, leaving your place of duty early, and using drugs can be a natural sequelae to PTSD and Major Depression. However, the FSM reported using heroin within days of arriving in RVN, and this type of his conduct is also associated with drug use/abuse. Lastly, the FSM also reported engaging in multiple breaking and entering to maintain his illegal drug habit while he was AWOL. There is no nexus between Depression and

PTSD and this type of misconduct given that: 1) this type of misconduct is not part of the natural history or sequelae of Depression and PTSD; 2) Depression and PTSD do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends the FSM's mental health conditions resulted in his misconduct, and per the Liberal Consideration Policy, her contention is sufficient for consideration.

BOARD DISCUSSION:

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. The evidence shows the former service member (FSM) was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in the character service. The Board also reviewed and agreed with the medical reviewer's finding evidence to support the FSM was experiencing a condition or had an experience that partially mitigated his misconduct. Given his extensive NJP/misconduct and lengthy AWOL, the Board determined the applicant's service clearly did not rise to the level required for an honorable discharge; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further unanimously determined no change to the reason for separation and/or associated Separation/RE codes is warranted as the underlying reason for separation remains the same.

b. The evidence shows the FSM requested a voluntary discharge and was discharged under the provisions of chapter 10 of AR 635-200. Such discharge has a corresponding Separation Program Number (now called Separation Code) 246 which is correctly shown on his DD Form 214.

c. The FSM went AWOL from 19 March 1973 - 24 September 1973. Even if he made this lost time up or the lost time was somehow made good, which the evidence shows the FSM failed to do, and even though lost time is not creditable service for pay, retirement, or veteran's benefits, the Army preserves a record (even after time is made up) to explain which service between date of entry on active duty and separation date is

creditable service and ensure it is not counted in computation of total creditable service for benefits.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for 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 28 November 1973 to show:

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

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to changing the separation program number or deletion of 193 days of lost time under 10 USC 972.

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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 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. 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.
3. Army Regulation 635-5 (Separation Documents), in effect at the time, established policies and procedures for completion and distribution of the DD Form 214. The regulation states:
 - a. The DD Form 214 is a vital record for interested Government Agencies which assist the Veteran in obtaining the rights and benefits to which he is entitled. It is important that information entered thereon is complete and accurate.
 - b. The "Remarks" section, Item 30, includes an entry for the number of days absent without leave.
 - c. SPN 21L was the appropriate SPN to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 5, with narrative reason "separation for other good and sufficient reason as determined by secretarial authority."
 - d. SPN 246 was the appropriate SPN to assign Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, with narrative reason "discharge for the good of the service."
 - e. This regulation requires a mandatory entry for lost time during the period covered by the DD Form 214 in item 29. Time lost is verified and must be subtracted from Net Active Service This Period (block 12c) if the lost time was not "made good." If the ETS (expiration term of service date) was adjusted as a result of lost time and the Soldier

served until ETS, the lost time was "made good." Lost time under 10 USC 972 is not creditable service for pay, retirement, or veteran's benefits. However, the Army preserves a record (even after time is made up) to explain which service between date of entry on active duty (block 12a) and separation date (block 12b) is creditable service. Time lost after ETS is non-chargeable time under 10 USC 972, but it must also be reported to ensure it is not counted in computation of total creditable service for benefits. For enlisted Soldiers, show inclusive periods of time lost to be made good under 10 USC 972, and periods of non-chargeable time after ETS.

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

6. On 25 August 2017, the Office of the Under Secretary 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 post-traumatic

stress disorder; 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, 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//