

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 February 2024

DOCKET NUMBER: AR20230008811

APPLICANT REQUESTS: reconsideration of his previous requests to upgrade his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's Résumé
- Five Letters of Support

FACTS:

1. Incorporated herein by reference are military records as were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers:

- AR20160000654, on 11 May 2017
- AR20180010788, on 5 August 2019
- AR20190014731, on 1 October 2020

2. Through counsel, the applicant states, in evaluating his request, he asks the Board to consider recent studies and publicly made statements regarding racial disparities in the U.S. military justice system. The applicant believes those disparities played a significant role in his command's decision to prefer court-martial charges and, ultimately, discharge him under other than honorable conditions.

a. Executive Summary.

(1) While a Soldier stationed at a field artillery battery in Germany, the applicant found himself in an untenable situation; his very young wife decided she could no longer tolerate military life and chose not to return with him to Germany following the death of her sister. When they were about to return to Germany, the applicant's wife told him she and their two children would remain in Oklahoma until the applicant's reassignment to the continental United States (CONUS). However, once the applicant rejoined his unit, his wife filed for divorce, sending the applicant into a tailspin.

(2) By his own admission, the applicant admits he panicked and feared he would lose touch with his wife and children; he overdrew their joint bank account by \$1,300; additionally, he owed a vehicle repair shop \$1,873 as a result of an auto accident. The applicant had been a good Soldier, and he had advanced, taking on more responsibility within the unit. Despite knowing of the applicant's marital problems and recognizing that the applicant's wife had been a sole parent for up to 6 months of the year due to the applicant's participation in field training exercises, the unit nonetheless preferred special court-martial charges against him for theft and the failure to pay a debt.

(3) In today's Army, young Soldiers facing the applicant's circumstance would receive counseling from their commanders or first sergeants and would be referred to Army Emergency Relief for financial counseling and no-interest loans. Additionally, a myriad of services, to include Army OneSource and Family Readiness Groups, are now available as resources; however, in 1992, Soldiers did not have the benefit of such services and, in that era, when a young African American Soldier misstepped, the Army came down hard, branding them for life with an adverse discharge.

(4) Counsel rhetorically asks why the applicant's command came down so harshly on the applicant when he possessed so much potential; "It is impossible to think that the unit would have court-martialed every young Soldier who overdrew his bank account or owed a debt. Did the fact that [applicant] was an African American impact the decision by the 3rd Infantry Division?" Counsel argues that a Government Accounting (sic) Office (GAO) report clearly articulates that significant racial disparities have existed within the services' military justice systems. The applicant was a victim of racial disparity, and the reason charges were preferred so quickly was because the applicant is black.

(5) The applicant's leadership allowed him to consult with counsel following the referral of court-martial charges, and military counsel urged him to submit a request for discharge, under chapter 10 (Discharge for the Good of the Service), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). The applicant hoped that, given his circumstances and the quality of his duty performance, the command would grant him a general discharge under honorable conditions; instead, the applicant received a character of service normally reserved for those who have committed the most serious acts of misconduct.

b. Facts.

(1) In 1989, the applicant entered the "family business" by enlisting into the U.S. Army Reserve (USAR); both his father and his grandfather had served honorably, and the applicant was prepared to continue his family's commitment to military service.

(2) The applicant completed basic combat training (BCT), in or around July 1989, and, in 1990, graduated as the honor graduate from advanced individual training (AIT). Three months later, his USAR leadership promoted him to corporal, and, in September 1990, the Army approved him for enlistment into the Regular Army. Shortly after entering active duty, the Army assigned him to Germany and he moved there with his then-wife and 3 year old son; in January 1991, the applicant and his wife welcomed their second child, a daughter.

(3) As part of his relocation to Germany, the applicant had brought his car, but the vehicle failed to pass the German vehicle inspection; as a result, the applicant had to walk to work or ride along with colleagues. By mid-1992, the unit's battle rhythm required the applicant to participate in field training exercises six months out of the year; this took a significant toll on the applicant's wife, as she was left alone with two small children and with no support structure. Seeking connection with her family, the applicant's wife ran up large phone bills, and when the applicant was unable to pay, the phone was disconnected.

(4) In July 1992, the applicant's car was in an accident, and the repair shop charged the equivalent of \$1,783 for repairs. In response to the applicant's constant absence and finding herself unable to cope with life in a foreign country, the applicant's spouse left their two children in the care of others for days and even weeks at a time. Despite having transportation, financial, and marital struggles, the applicant excelled as a Soldier; he was never late for formation, and he was a quick study who dreamed of one day going to officer candidate school (OCS).

(5) In 1992, the applicant's sister-in-law died unexpectedly, and the applicant took his family home for the funeral. While there, the applicant and his wife agreed that she and the children would remain there, but as soon as the applicant returned to his unit, his wife filed for divorce. Distraught over the break-up of his marriage, the applicant made poor financial decisions to support his family at home; he overdrew \$1,300 from his bank account, due to his misunderstanding of how checks cleared and his own naivete. The command's response was to prefer court-martial charges. After the command approved the applicant's separation request, and prior to leaving Germany, the applicant repaid all monies owed to the bank and the repair shop.

c. The Impact of Racial Disparity on the Applicant.

(1) The GAO report "clearly articulates that there are significant racial disparities within the . services military justice system. Specifically, 'Black, Hispanic, and male service members were more likely than White or female members to be the subjects of investigations recorded in databases used by the military criminal investigative organizations, and to be tried in a general and special court-martial in all of the military services.'"

(2) "In addition, a Protect Our Defenders study found that 'in Army adjudications from 2006-2015, black servicemembers were 61% more likely to face court-martial compared to their white counterparts....The Judge Advocates General from each service has testified in front of Congress admitting that racial disparity in the military justice system exists but has thus far failed to provide concrete solutions. The Army Judge Advocate General, Major General C__ P__ in 2020 stated "[The GAO] report raises difficult questions – questions that demand answers. Sitting here today, we do not have those answers. So, our task is to ask the right questions and find the answers."

(3) Counsel argues the applicant is a casualty of the above-cited racial disparity; he was an excellent black Soldier who thrived in the military environment but was "experiencing marital and financial problems, the Commander, 3rd Infantry Division chose to court-martial [applicant]."

(a) "The Army knowingly employs these young Soldiers that are developmentally immature with the intent of turning them into career Soldiers. Men and women, like [applicant], are relocated far from family thus further exacerbating marital problems and financial troubles. Yet, the Army does not court-martial every Soldier who bounces a check or fails to timely pay a bill."

(b) "Why did the Army react so harshly to [applicant's] debt, especially considering the circumstances? It is doubtful that the 3rd Infantry Division treated all Soldiers equally, especially considering recent studies that confirm that black Soldiers, like [applicant], are two times more likely to be court-martialed than similarly situated White Soldiers....(furthermore), [applicant's] race played a significant role throughout the process even after court-martial charges were preferred."

(c) Despite the command's knowledge of the applicant's compassionate circumstances, it nonetheless issued him a character of service that, according to the current version of AR 635-200 (Active Duty Enlisted Administrative Separations), is normally reserved for individuals who, for example, "cause serious bodily injury or death, abuse a special position of trust, disregard the superior-subordinate relationship, for acts or omissions that endanger the security of the United States, or the health and welfare of Service members or others, drug abuse, or drug trafficking." Counsel contends the applicant's misconduct did not rise to the level described in the foregoing examples; he owed a debt that totaled to \$3,183, and he paid off that debt before leaving Germany.

(d) "The Commander, 3rd Infantry Division wanted to send a clear signal to [applicant] and others that black Soldiers who commit very minor misconduct will be punished harshly. As the 3rd Infantry Commander understood, the Army's other-than honorable discharge would harshly label [applicant] for the rest of his life."

d. The applicant's family could have been saved with today's family support services.

(1) The applicant bears and accepts full responsibility for his actions; they were an aberration of his character. However, had it been available, the current family support system would have made a significant difference. The applicant's wife was very young and in love with her husband when she arrived in Germany, and, when she married the applicant, she had never left her hometown. By her own admission, she developed undiagnosed severe depression and anxiety while in Germany and, given her mental health, the lack of family support, and having to care for two small children while her husband who was gone for what equated to half of the year, it becomes understandable that she had trouble coping with her situation.

(2) "In the intervening years, Congress and the Department of Defense (DOD) finally recognized that families are a core support structure for service members, and adjusted military pay, benefits, and entitlements to meet those needs, e.g., training for families to cope with distance and separation. Had these services been available in 1992-1993, [applicant] would have had the means to cover his expenses, and provide emotional, mental, and family support to his family."

e. Counsel quotes Dr. Martin Luther King: "We must accept finite disappointment but never lose infinite hope." Counsel points out that receiving an adverse discharge devastated the applicant, but he remained determined to excel and provide for his family; the applicant overcame the racial disparity he faced in the military, and he is now an extraordinary member of society and his community.

(1) The applicant struggled both emotionally and financially; for eight months, he unsuccessfully sought full time employment; in the interim, he did odd jobs to earn money to support his family. Finally, after many interviews, the applicant found employment and worked at two full time jobs; over time, he became a manager, went back to school, and started to climb the corporate ladder.

(2) Today, as a Senior Underwriter for a mortgage company, he is responsible for 41 employees and oversees between \$200 and 300 million in mortgages per year. Additionally, he is a deacon in his church and has raised three successful children, one of whom has served in the Army.

f. Conclusion. The applicant joined the Army out of a sense of duty and is deeply embarrassed by his character of service. In support of his request, he provides letters of support and his resume, which he believes will demonstrate the degree of success he has achieved; he asks the Board to consider the totality of the circumstances he faced and take into account the recent studies in racial disparity.

3. The applicant provides his résumé, which reflects the scope of his professional experience, and five letters of support.

a. Mrs. T__ W__, the applicant's current spouse, states she has known the applicant for over 11 years and they have been married for 5 years; during that time, the applicant has consistently shown himself to be a committed, faithful, and highly motivated man of exemplary character. He is a dedicated family man, the lead deacon in their church, and a regular volunteer within their community. The applicant made misguided choices while in the military, but he did so for his family's sake, and those choices cost him dearly. He is someone who loves his country, and he lost the opportunity to serve as a Soldier, which, at his core, is who he is. She strongly recommends that the Board approve the applicant's request to upgrade his character of service so that he can restore his good name.

b. Ms. F__ D. E__, the applicant's former spouse.

(1) Ms. E__ affirms that, while they were stationed in Germany, she and the applicant had marital and family issues due to the following:

- Lack of family services support
- Financial issues resulting from a lack of money management skills
- Lack of consistent and dependable transportation
- An inability to communicate regularly with family in CONUS
- No unit support or guidance
- Being housed in a rural community away from the base

(2) Ms. E__ states the applicant frequently left her alone with two small children for periods of 30 to 45 days. During this period, she was dealing with undiagnosed severe depression and anxiety, and this caused behaviors that negatively affected the applicant's military career.

(3) Over the last 30 years, Ms. E__ has received counseling and now better understands her past behaviors; she learned that she suffered from post-traumatic stress disorder and severe anxiety due to childhood sexual abuse, abandonment, mother/father wounds, and neglect.

(4) The applicant aspired to be a career Soldier, but, because of Ms. E__'s negative behaviors and some of his own misconduct, he lost his opportunity to accomplish that goal. Since his discharge, the applicant has built a long and prosperous career as a mortgage professional, and Ms. E__ is now a successful human resources leader for a major corporation. They have both grown from their past mistakes, and the applicant deserves the opportunity to reap the benefits of military service. "Lastly, in

spite of our past mistakes, we both have a great love for our military and all that it stands for."

c. Mr. TC A__ states he and the applicant have been friends for 38 years, and he knows the applicant to be an ambitious, loyal, and dedicated person. They met while still in high school, and they have "literally grown up together as men and have been there for each other through every life event that we have experienced." Mr. A__ considers the applicant as his brother, and his children call him "Uncle." He has seen the applicant grow professionally and notes that the applicant is viewed as "top talent" by his organization, leaving a lasting impression on employees, colleagues, and supervisors alike.

d. Mr. L__ B__ states he and the applicant met in 2021 when they were both volunteer leaders at their church. The applicant "continues to exercise humility with continuous changes in operationalizing senior leadership's priorities and patience providing direction to the team of volunteers he leads." "Separate from his military career, [applicant's] role as a civilian has created a time of personal and professional growth. I consider [applicant] a pillar in our community and role model to many young men. He is married with a beautiful family, completed college coursework/received a degree, and started a progressive career."

e. Mr. F__ M__ states he served on active duty in Germany with the applicant; the applicant was an exemplary Soldier who was focused on the mission and on doing those things he needed to do to excel.

(1) On Mr. M__'s arrival at the unit, the applicant "showed me the ropes and helped me get familiar with the culture and rhythm of the (field artillery) battery." He showed himself to be a Soldier who did things the right way without taking shortcuts. When Mr. M__ PCS'd (permanently changed stations) in late 1992, the applicant was on his way to becoming a career Soldier with aspirations of attending OCS.

(2) They stayed in touch, and he later learned the applicant had received an adverse discharge. After the discharge, Mr. M__ observed the applicant fight and rebound, demonstrating tenacity, commitment, and the intelligence necessary to overcome his circumstances. The applicant is a man of character, fortitude, loyalty, and commitment, as demonstrated by the fact that he completed his bachelor's degree and has risen to senior leadership in corporate America.

4. A review of the applicant's service record reveals the following:

a. On 22 May 1989, the applicant enlisted into the USAR. On or about 23 May 1989, the applicant entered Phase I of initial active duty for training and attended BCT at Fort Dix, NJ; on 17 August 1989, his BCT battalion commander awarded the

applicant a letter of commendation for his "outstanding performance as a squad leader." (The applicant's available service record is void of either a DD Form 220 (Active Duty Report) or DD Form 214 (Certificate of Release or Discharge from Active Duty) reflecting his Phase I training).

b. On 16 January 1990, the applicant entered active duty to complete Phase II (AIT). On 1 March 1990, upon completion of AIT and the award of military occupational specialty (MOS) 13B (Cannon Crewmember), orders released the applicant from active duty and returned him to his USAR Troop Program Unit with an uncharacterized character of service.

c. On 1 March 1990, the applicant requested to enlist into the Regular Army. On 26 August 1990, the applicant's USAR battalion commander awarded him a Certificate of Achievement for "outstanding achievement during Annual Training (1990) while attached to the S-4 (logistics) section. Although not performing in his primary MOS, Corporal [applicant] executed all his assigned duties in a timely, accurate, and professional manner."

d. On 18 September 1990, the applicant enlisted into the Regular Army for 4 years. On 27 September 1990, orders assigned the applicant to a field artillery battalion in Germany, and he arrived at his new unit, on 1 October 1990.

e. On 4 January 1991, the applicant's battalion commander awarded him a Battalion Certificate of Achievement for "outstanding performance during the upload, transport, and download of the 2nd Battalion, 41st Artillery Class V (Ammunition) UBL (Unit Basic Load)...in support of Operation Desert Shield...."

f. On 16 March 1992, the applicant's battery commander initiated a bar to reenlistment against the applicant, based on indebtedness; on 16 March 1992, the battalion commander approved the bar.

g. On 25 June 1992, the applicant's battalion commander awarded the applicant a Battalion Certificate of Achievement as a result of the applicant's "willingness to assume responsibilities, professional knowledge, and sound judgment, combined with your ability to work without supervision, (which) contributed immeasurably to your section being named 'Best Battalion Ammunition Section' in the battalion. It is a great pleasure to have a Soldier of your caliber as a member of the 'Raider Thunder' battalion."

h. On 28 October 1992, the applicant underwent a mental status evaluation due to a pending separation action for unsatisfactory performance. The evaluation found the applicant to be within normal limits for all evaluated areas.

i. On 4 January 1993, the applicant's command preferred court-martial charges against him for Uniform Code of Military Justice (UCMJ) violations. The command charged the applicant with the following:

(1) Nine specifications of violating Article 121 (Larceny of Property Valued at more than \$100) for stealing a bank's U.S. legal currency; the charges showed that, at various times on 8 and 9 December 1992, the applicant had gone to five different Army installations and, eight times, procured \$145, and, on one occasion, received \$150.

(2) One specification of violation Article 134 (General Article – Dishonorably Failing to Pay a Debt), in that, from 15 to 29 December 1992, the applicant dishonorably failed to pay a German bodyworks company \$1,873.85 for repairs made to his car.

j. On 11 January 1993, after consulting with counsel, the applicant voluntarily requested separation under the provisions of chapter 10, AR 635-200. In his request, he affirmed no one had subjected him to coercion, and counsel had advised him of the implications of his request. The applicant further acknowledged he was guilty of at least one of the charges against him, and he elected to submit the following statement in his own behalf.

(1) The applicant acknowledged that what he had done was wrong; he had never been in any kind of trouble before this, and, while he realized he had made a serious mistake, he pointed out that he had repaid his debts to both the bank and the bodyworks business.

(2) The applicant believed he had learned and matured from his time and experience in the Army; he was 24 years old, married, and with two children. "I can't express the shame and guilt I feel as a man, father, and Soldier. I came on active duty with intense enthusiasm. I wanted to be a Soldier and serve my country. I had high expectations for myself in the military. I had no intent for my career to end this way."

k. Between 20 and 22 January 1993, the applicant's chain of command all recommended approval of the applicant's separation request and further recommended that he receive an under other than honorable conditions character of service. On 25 January 1993, the separation authority approved the applicant's separation request and directed his under other than honorable conditions discharge; in addition, the separation authority ordered the applicant's reduction to the lowest enlisted grade.

l. On 1 February 1993, orders discharged the applicant accordingly. His DD Form 214 shows he completed 2 years, 4 months, and 14 days of his 4-year enlistment contract. The report additionally listed the following:

- Item 4a (Grade, Rate, or Rank) and 4b (Pay Grade) – Private (PV1)/E-1

- Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – National Defense Service Medal, Army Service Ribbon, Overseas Service Ribbon
- Item 25 (Separation Authority) – AR 635-200, Chapter 10
- Item 26 (Separation Code) – "KFS"
- Item 27 (Reentry Code) – "3" (waivable disqualification)
- Item 28 (Narrative Reason for Separation) – For the Good of the Service – In Lieu of Court-Martial

m. On 7 November 2015, the applicant petitioned the ABCMR, requesting an upgraded character of service.

(1) The applicant described his background and the circumstances surrounding his separation.

(a) He was the son of a career Soldier, and saw his father retire from an Army he loved and honored. He wanted to follow his father's example, so he joined the Junior Reserve Officers' Training Corps (JROTC) and earned numerous awards, to include Cadet of the Year. He received a scholarship to attend a military institute, but ended up going to another college, where he enrolled in the ROTC. While in the ROTC, he joined the Ranger battalion and made the National Dean's List.

(b) During this period, he met his now ex-wife and shortly after they married, he joined the USAR. During BCT, he was selected to be a squad leader, and he participated in the Soldier/Trainee of the Cycle competition. After completion of training, he enter active duty. On his arrival in Germany, the unit assigned him to the unit supply room, and they sent him to school to qualify as a PLL (Prescribed Load List)/T AMMS (The Army Maintenance Management System) Specialist; he graduated as the top student.

(c) While he was away participating in REFORGER (Return of Forces to Germany), his phone bill "got out of control," and the phone company turned off his phone. (REFORGER was an annual exercise conducted during the Cold War era; units from the U.S. practiced rapid deployments to Germany). His wife started writing checks that were returned and was staying out for weeks at a time. On one occasion, the command called him in from the field because their babysitter had complained to the battery commander, saying the applicant's wife had been gone for days after dropping off the children.

(d) The unit barred the applicant from reenlistment due to his wife's bad checks and her misconduct as a sponsored dependent, and they advised him to send her and his children back to CONUS; shortly after that, his wife's sister died, and they returned home on emergency leave. His wife remained in the U.S., and, when the applicant

returned to the unit, he learned his wife had filed for divorce. He panicked, and, uncharacteristically, withdrew all of the money from their bank account and sent the money to his wife, but what he did not realize was the bank had not registered his withdrawals. As a result, he became \$1,300 overdrawn.

(e) In support of his request, the applicant provided four letters of support.

(2) On 11 May 2017, the Board considered the applicant's arguments and decided to deny relief.

n. On 27 June 2018, the applicant requested reconsideration of his upgrade request. On 5 August 2019, the Board denied the applicant's request, noting the applicant had failed to provide character witness statements or evidence of post-service achievements.

o. On 25 November 2019, the applicant again requested reconsideration of his upgrade request.

(1) Counsel argued:

(a) The Board previous reconsideration had erroneously stated the applicant had failed to provide character witness statements or evidence of post-service achievements. In fact, such evidence was part of the applicant's first request and should have been considered by the Board.

(b) "This statement makes it appears as though the panel convened in 2019 to hear [applicant's] petition, failed to review the 2016 application alongside [applicant's] 2018 petition – in effect taking an incomplete de novo review of [applicant's] request. The 2016 and 2018 applications should have been considered together as one complete record in order to render an appropriate decision. The failure to do so is a material error."

(2) On 1 October 2020, the majority of the Board voted to deny relief.

(a) "A majority of the Board found insufficient evidence of in-service mitigating factors and found the provided letters of support insufficient in support of a favorable clemency determination in light of the multiple serious charges that led the applicant to request discharge in lieu of trial by court-martial. Based on a preponderance of evidence, the majority determined that the character of service the applicant received upon separation was not in error or unjust."

(b) "The member in the minority found the applicant's statement, along with the provided letters of support, to be compelling in support of a favorable clemency

determination. In light of the Department of Defense guidance on clemency, the member in the minority determined the applicant's character of service should be upgraded to under honorable conditions (general)."

5. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief 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. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

6. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

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 pattern of misconduct in the record, much of which was of a criminal nature to the harm of other servicemembers, 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.

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

a. Paragraph 3-7a (Honorable Discharge) stated an honorable character of service represented a separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when a Soldier's subsequent honest and faithful service, over a greater period, outweighed any disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 3-7b (General Discharge). A general discharge was a separation under honorable conditions and applied to those Soldiers whose military record was satisfactory, but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 applied to Soldiers who had committed an offense or offenses for which the punishment under the UCMJ included a punitive (i.e. bad conduct or dishonorable) discharge. Soldiers could voluntarily request discharge once charges had been preferred; commanders were responsible for ensuring such requests were personal decisions, made without coercion, and following being granted access to counsel. The Soldier was to be given a reasonable amount of time to consult with counsel prior to making his/her decision. The Soldier was required to make his/her request in writing, which certified he/she had been counseled, understood his/her rights, could receive an under other than honorable conditions character of service, and recognized the adverse nature of such a character of service.

2. The Manual for Courts-Martial in effect at the time showed violations of Article 121 (Larceny of Property Valued at more than \$100) and Article 134 (General Article – Dishonorably Failing to Pay a Debt) included punitive discharges among its maximum punishments.

3. 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//