

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 April 2024

DOCKET NUMBER: AR20230009415

APPLICANT REQUESTS:

- upgrade of her under honorable conditions (general) discharge
- changing her narrative reason for separation and Separation Program Designator (SPD) code to show she was separated for either "Secretarial Authority" or "Miscellaneous/General Reasons"

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Letter from counsel
- Counsel's Memorandum in Support of Claim and 13 Exhibits

FACTS:

1. The applicant did not file within the three-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 that after continued inappropriate sexual advances, she was sexually assaulted by Staff Sergeant (SSG) P, who was both her superior and her Platoon Sergeant. As a result of this military sexual trauma (MST), she began to suffer from depression and anxiety and was subjected to punitive treatment and ridicule from SSG P. Her request for discharge upgrade relief should be granted in consideration of the collective mitigating circumstances surrounding her discharge, and the realization that the misconduct of which she was accused was largely fabricated by SSG P in retaliation for her rejection of his inappropriate sexual advances. Even assuming that the alleged misconduct was not fabricated by SSG P, that misconduct would have been an aberration in the context of her pre-MST and post-service conduct. For years, she was ashamed and afraid to address the MST she experienced prior to her discharge from the Army. She became aware of the error or injustice in her discharge after applying to the National Veterans Legal Service Program in 2018.

3. On behalf of the applicant, counsel provides a letter, Memorandum in Support of Claim, and 13 Exhibits that are available in their entirety for the Board's consideration. Counsel states that since the applicant separated from the Army, the military's views concerning rehabilitation and second chances have changed significantly. As set forth below, these changes along with the applicant's compelling post-discharge record-warrant an upgrade in her characterization of service and authority for separation. They respectfully request that the ABCMR grant discharge upgrade relief on account of (1) the collective mitigating circumstances surrounding the applicant's discharge, including the application of liberal consideration under Title 10, USC, Section 1552(h) and supplemental guidance issued by the Department of Defense (DOD); and (2) the realization that the misconduct of which the applicant was accused was fabricated by SSG P in retaliation for the applicant's rejection of his inappropriate sexual advances. Even assuming that the applicant committed the misconduct alleged by her platoon sergeant, that misconduct would have been an aberration in the context of the applicant's pre-MST and post service conduct. The ABCMR should therefore find that the applicant qualifies for discharge upgrade relief in the form of a revised character of service of "Honorable" and a revised narrative reason for her separation of "Secretarial Authority" or "Miscellaneous/General Reasons."

a. Counsel provides a synopsis of the applicant's service during Basic Combat Training and Advanced Individual Training. Counsel explains that almost immediately after her arrival at Fort Bragg, NC, SSG P took an interest in her. He personally drove her around the installation to give her a tour. During the drive he played music with lewd lyrics and made sexual suggestions to her. While the applicant felt uncomfortable with his comments and demeanor, she wanted to avoid creating any conflict with her superior. After this event, SSG P continued to make inappropriate sexual comments that made the applicant uncomfortable; but new to the service, the applicant did not feel comfortable confronting her superior and she feared retaliation. Despite the applicant's efforts to perform her duties without conflict, SSG P's interest in her began to escalate. He made multiple advances towards the applicant, which she rejected. Soon after the applicant rejected his advances, SSG P's demeanor towards her changed. Despite the applicant's strong performance, SSG P started writing her up for a range of issues. In the span of only 44 days, SSG P wrote her up for at least 11 instances of alleged misconduct.

b. In the midst of SSG P's frequent inappropriate remarks and harassment, his behavior escalated even further. On or about August 2001, SSG P called the applicant into his office and accused her of reporting false information on her enlistment application. According to SSG P, the applicant falsely reported that she had a child in order to receive additional compensation in the amount of approximately \$8,000 per year. SSG P told the applicant she would need to repay the money or face serious consequences. The applicant had never falsely claimed to have an additional dependent when filling out her enlistment paperwork and she was shocked by SSG P's

accusations. Nonetheless, the applicant intended to repay the amount that SSG P claimed she owed, and she asked SSG P if there was an option for a payment plan. During their initial meeting, SSG P told the applicant he would consider how she could make the repayments and avoid any disciplinary actions.

c. A week later, SSG P again called the applicant into his office. This time, he told her that he had the ability to make the issue disappear but, to do that, he first required that she expose her breasts. At first, the applicant thought SSG P was telling an inappropriate joke, which would have been consistent with his prior inappropriate behavior. However, when SSG P continued to press her, she realized that he was being serious. The applicant felt sick to her stomach and did not want to acquiesce to SSG P's suggestion, but SSG P made it seem as though she did not have a choice. SSG P indicated that if she was not willing to expose her breasts to him, she would suffer serious consequences for the alleged error in her compensation. The applicant reluctantly agreed to SSG P's demands. He ordered her to skip Physical Training the next day and wait for him in her room.

d. The next day, SSG P arrived at the applicant's room. He showed her a new set of paperwork, which indicated that she had no outstanding balance. In exchange, SSG P demanded that the applicant remove her top. The applicant complied with SSG P's demands, taking off her shirt. SSG P then demanded that she take off her bra, which she did. At that point, the applicant thought SSG P would leave her room. Instead, he demanded that the applicant come closer to him. She stood in front of him, with her eyes shut, as he grabbed her breast. With her eyes still closed, the applicant asked SSG P if they were done. When he continued to make physical advances on the applicant, she yelled at SSG P to get out of her room. SSG P showed no indication of leaving, so the applicant pushed him towards the door. Eventually, SSG P laughed and left her room. The applicant spent the rest of the day in her room, crying herself to sleep over the incident. Ultimately, the applicant does not know whether SSG P had fabricated the alleged errors in her enlistment application and her salary. He had showed her two sets of paperwork: one set indicating that she owed \$8,000 and the other set indicating that she had no outstanding balance. This indicated to the applicant that SSG P had the ability to alter the paperwork and he might have done so with the sinister intent to threaten disciplinary action against the applicant if she did not comply with his demands for sexual favors.

e. In the days following the assault, the applicant found it increasingly difficult to cope with her emotions, interact with her peers, and resume her military duties. She wrestled with depression, anxiety, and shame as she tried to process the incident on her own, without any support from others. She felt as though she let herself down and compromised her values in response to SSG P's threat. Because she felt so ashamed, the applicant did not want to tell others about the incident, including her fellow soldiers, family, and friends. She tried to continue her job, but SSG P's writeups became more

frequent and the punishments were becoming increasingly more severe, suggesting to the applicant that he was retaliating against her for rejecting his further advances. For example, SSG P several times recommended the applicant for punishment under the Uniform Code of Military Justice (UCMJ) and separation from the Army due to a pattern of misconduct. The applicant received extra duty, restrictions, and she was demoted from private/E-2 to private/E-1.

f. The frequency of the disciplinary actions against the applicant eventually caught the attention of her neighbors in the barracks. A female neighbor asked the applicant why she was receiving so many writeups. When the applicant told her the truth about the incident with SSG P, her neighbor encouraged her to report the incident. The applicant reported the incident to her neighbor's Sergeant, who then elevated it to the applicant's First Sergeant and Lieutenant. When the applicant's First Sergeant and Lieutenant called her into the office, she explained the incident and provided a written statement. Instead of addressing SSG P's sexual harassment and assault, the applicant's superiors penalized her. They informed her that her term in the military was over, she would be barred from service in the future, and she would no longer be eligible for certain military benefits. While she was told that SSG P would also be demoted, she does not know whether that occurred, and SSG P was not discharged from service. There is no indication that he was formally disciplined. The applicant's superiors forced her to swear, under oath, that she would never mention the incident to anyone again and that, if she did tell anyone of the incident, she would face military and even criminal prosecution. The applicant was not only embarrassed that she told her superiors about the incident, but she now also feared the potential repercussions of telling her story to anyone else. The applicant was subsequently administratively discharged on 19 October 2001.

g. For years, the applicant did not tell anyone about the incident with SSG P, still fearful that she could be penalized for doing so. To this day, she is saddened that she never had a full and fair opportunity to pursue a career in the military. Although the applicant's military service ended in 2001, her feelings of shame and fear continued. She struggled to cope with the MST and the circumstances surrounding her discharge. It would be many years before she told anyone what happened. In 2013, the applicant sought help from a counselor regarding her MST. The counselor suggested that the applicant write a statement reflecting the MST she endured from SSG P. Through the support of her family and her own growth over the past 22 years, the applicant has realized that she was the victim of MST from a superior officer who took advantage of his position of authority as a means to coerce her into doing sexual favors for him.

h. Despite numerous hardships, the applicant is now a valued member of her community, and she has built a productive life for herself. She continued her education in the medical field and was employed at a hospital for a while prior to becoming a successful real estate agent.

i. In the interests of equity, fairness, and justice, the applicant's discharge should be upgraded based upon the factors considered in the Hagel, Carson, Kurta, and Wilkie memoranda (provided as Exhibits 2, 3, 4, and 13, respectively). The Kurta Memorandum gives guidance to the Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) the ability to consider discharge upgrades and narrative reason changes based on equity. Here, the Boards will look to a multitude of factors under overarching concepts of quality of service and ability to serve. Along with these, the Kurta Memorandum gives guidance to the DRBs and BCM/NRs for approaching discharge upgrades and narrative reason changes when sexual assault or sexual harassment are suffered by a veteran while in service. Lastly, the Wilkie Memorandum can give some guidance to this type of discharge upgrade as well. This memo mentions that requests for relief based on sexual assault or harassment should be considered for relief on equitable, injustice, or clemency grounds whenever there is insufficient evidence to warrant relief for an error or impropriety. When, at the time of discharge, there was an error of fact associated with the discharge at the time of issue, and the rights of the applicant were prejudiced by the error, a discharge upgrade should be awarded to fix the error.

j. Counsel provides the following exhibits in support of the petition:

- Exhibit 1 - DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Exhibit 2 - Secretary of Defense, Washington DC memorandum, Subject: Supplemental Guidance to BCM/NRs Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder (PTSD), dated 3 September 2014 (Hagel Memorandum)
- Exhibit 3 - Principal Deputy Under Secretary of Defense, Washington, DC memorandum, Subject: Supplemental Guidance to Military BCM/NRs Considering Discharge Upgrades for Veterans Claiming PTSD or Traumatic Brain Injury (TBI), dated 24 February 2016 (Carson Memorandum)
- Exhibit 4 - Office of the Under Secretary of Defense, Washington, DC memorandum, Subject: Clarifying Guidance to Military Discharge Review Boards (DRBs) and BCM/NRs Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment, dated 25 August 2017. (Kurta Memorandum)
- Exhibit 5 - DA Form 2-1 (Personnel Qualification Record-Part II)
- Exhibit 6 - Statement from the applicant, previously summarized above
- Exhibit 7 - Counseling statements received by the applicant, which will be summarized later in this record of proceedings
- Exhibit 8 - Memorandum wherein the applicant's immediate commander recommended her administrative separation, which will be summarized later in this record of proceedings

- Exhibit 9 - Letter from the applicant's sister wherein she briefly describes their upbringing and the applicant's achievements despite facing numerous challenges
 - Exhibit 10 - Letter from a friend of the applicant's parents wherein she expresses favorable comments about the applicant's kindness, caring, and work ethic
 - Exhibit 11 - Letter from the minister who officiated the applicant's wedding wherein she expresses favorable comments about the applicant's moral character, work ethic, and sense of responsibility
 - Exhibit 12 - The applicant's driving record which shows no history of events
 - Exhibit 13 - Under Secretary of Defense, Washington, DC memorandum, Subject: Guidance to Military DRBs and BCM/NRs Considering requests for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment, dated 25 August 2012 (Wilkie Memorandum)
4. The applicant enlisted in the Regular Army on 21 September 2000, for a period of 4 years. Upon completion of training, she was assigned to a unit at Fort Bragg, NC. She was advanced to the graded of E-2 on 21 March 2001.
5. The applicant was counseled by her platoon sergeant, SSG P, on nine occasions between 8 May and 15 May 2001, for the following reasons:
- disobeying a lawful order from a noncommissioned officer (NCO) (3 times)
 - misusing her permissive temporary duty for house hunting entitlement for something other than its intended purpose
 - bearing false witness to an NCO
 - failing to go to her appointed place of duty at the time prescribed (4 times)
 - violation of quarters profile
6. On 22 May 2001, the applicant accepted company grade nonjudicial punishment (NJP) under the provisions of Article 15 of the UCMJ for, failing to go to her appointed place of duty at the time prescribed on two occasions; and willfully disobeying a lawful order from a superior NCO on three occasions. Her punishment included reduction to private/E-1; extra duty for 14 days; and restriction for 14 days.
7. The applicant was counseled by her platoon sergeant, SSG P, for failing to go to her appointed place of duty at the time prescribed on 29 May 2001 and 1 June 2001.
8. The applicant was counseled by sergeant (SGT) W, on 5 June 2001 for the reasons shown:
- failing to obey a lawful order given to her by a senior NCO
 - bearing false witness to an NCO

- failing to go to her appointed place of duty at the time prescribed

9. On 18 July 2001, the applicant acknowledged she had been given the opportunity to confer with counsel and was advised of the basis for the contemplated action to separate her from the Army for misconduct under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12b, of the rights available to her and the effect of any action taken by her in waiving any of these rights. She indicated she would not submit statements in her own behalf.

10. On 19 July 2001, the applicant accepted company grade NJP under the provisions of Article 15 of the UCMJ for, failing to go to her appointed place of duty at the time prescribed on three occasions. Her punishment included extra duty for 14 days and restriction for 14 days.

11. On 4 September 2001, the applicant's immediate commander notified the applicant of his intent to initiate actions to separate her under the provisions of Army Regulation 635-200, paragraph 14-12b, for a pattern of misconduct. The specific reason cited was the applicant's inability to meet the responsibilities of her position in the Army. The applicant was advised that she was being recommended for a General, under honorable conditions discharge. The applicant acknowledged receipt of the notification the same date.

12. On 4 September 2001, the applicant's immediate commander formally recommended her separation prior to the expiration of her term of service under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12b by reason of a pattern of misconduct.

13. On 7 September 2001, the applicant's battalion commander recommended approval of her separation with an under honorable conditions (general) discharge.

14. On 26 September 2001, the separation authority approved the recommendation for separation and directed the applicant's service be characterized as under honorable conditions (General).

15. Orders and the applicant's DD Form 214 show she was discharged on 19 October 2001, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of pattern of misconduct with separation code "JKA" and Reentry code 3. She was credited with completion of 1 year and 29 days of net active service this period. Her service was characterized as under honorable conditions (General). She did not complete her first full term of service.

16. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

17. MEDICAL REVIEW:

a. The applicant requests an upgrade of her Under Honorable Conditions, General discharge to Honorable. She contends her misconduct was related to MST.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 21 September 2000; 2) As outlined in the ROP the applicant was counseled on nine occasions between 8 May and 15 May 2001 for reasons to include disobeying a lawful order, misuse of PTDY, bearing false witness, multiple FTRs, and violating quarters profile; 3) She accepted NJP under provisions of Article 15 of the UCMJ on 22 May and 19 July 2001 for failing to go to and failing to go to her appointed place of duty; 4) On 4 September 2001 the applicant's immediate commander formally recommended her separation prior to the expiration of her term of service under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12b by reason of a pattern of misconduct; 5) On 26 September 2001, the separation authority approved the recommendation for separation and directed the applicant's service be characterized as Under Honorable Conditions (General). She was discharged accordingly on 19 October 2001.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not use during the applicant's time in service. No military BH-related records were provided for review. Included in the applicant's casefile was a memorandum from Army CID, dated 23 October 2023, that shows a review of the Army Criminal File Indexes revealed no sexual assault records pertaining to the applicant. A review of JVL was shows the applicant contacted the Veteran's Crisis Line, telephonically, on 26 May 2023 and 1 June 2023 seeking services for stressors related to MST, recent divorce, lack of employment, and familial stressors. She reportedly shared her history of MST and her belief that she was "strong armed out of the military". She noted currently working with a VSO on benefits claims. No diagnosis was rendered, and no appointments were scheduled. JLV was void of any additional treatment documentation and the applicant does not have a SC disability. No civilian BH-related records were provided for review.

d. The applicant is requesting an upgrade of her Under Honorable Conditions, General and contends her misconduct was related to MST. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service. A review of JLV does show the applicant contacted the Veteran's Crisis Line on two occasions (26 May and 1 June 2023) to inquire about information for services to address MST, however, these calls are regarded as further self-assertion and is not a

medical provider supporting that assertion. Additionally, a memorandum from Army CID, dated 23 October 2023, shows a review of the Army Criminal File Indexes revealed no sexual assault records pertaining to the applicant. In absence of sufficient documentation supporting the applicant's assertion of MST, there is insufficient evidence to substantiate that her misconduct was related to or mitigated by MST. Conversely, if the applicant's assertion is taken as fact, most of her misconduct would be mitigated given the SSG's alleged initial behavior (e.g., being overly friendly, driving the applicant/trainee around in his POV, making sexual advances) produced an environment inconsistent with good order and discipline, potentially leading to expected leniency on the part of the applicant when violating rules (e.g., buying a car without NCO review, misuse of PTDY). Misconduct subsequent the asserted MST (i.e., FTR, willful disobeying a lawful order, and violating quarters) would also be mitigated given the nexus between MST and avoidance. However, misconduct characterized by bearing false witness would not be mitigated, as the MST would have not rendered the applicant unable to differentiate between right and wrong and adhere to the right.

e. Based on the available information, it is the opinion of the Agency BH Advisor that it is unclear if the applicant had an experience or condition during her time in service that mitigated her misconduct. However, she contends her misconduct was related to MST and per liberal guidance her assertion is sufficient to warrant the Board's consideration.

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 her misconduct was related to MST.

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

(3) Does the condition or experience actually excuse or mitigate the discharge? Unclear. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service. A review of JLV does show the applicant contacted the Veteran's Crisis Line on two occasions (26 May and 1 June 2023) to inquire about information for services to address MST, however, these calls are regarded as further self-assertion and is not a medical provider supporting that assertion. Additionally, a memorandum from Army CID, dated 23 October 2023, shows a review of the Army Criminal File Indexes revealed no sexual assault records pertaining to the applicant. In absence of sufficient documentation supporting the applicant's assertion of MST, there is insufficient evidence to substantiate that her misconduct was related to or mitigated by MST.

Conversely, if the applicant's assertion is taken as fact, most of her misconduct would be mitigated given the SSG's alleged initial behavior (e.g., being overly friendly, driving the applicant/trainee around in his POV, making sexual advances) produced an environment inconsistent with good order and discipline, potentially leading to expected leniency on the part of the applicant when violating rules (e.g., buying a car without NCO review, misuse of PTDY). Misconduct subsequent the asserted MST (i.e., FTR, willful disobeying a lawful order, and violating quarters) would also be mitigated given the nexus between MST and avoidance. However, misconduct characterized by bearing false witness would not be mitigated, as the MST would have not rendered the applicant unable to differentiate between right and wrong and adhere to the right.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive and standard review based on law, policy, and regulation, and published Department of Defense guidance for liberal and clemency determination requests for upgrade of her characterization of service. Upon review of the applicant's petition, available military records, and medical review, the Board considered the advising official's opinion that a discharge upgrade based on a mental health condition could be warranted. The Board noted the applicant's MST assertion and determined her statement was sufficient to warrant a recommendation for relief.

BOARD VOTE:

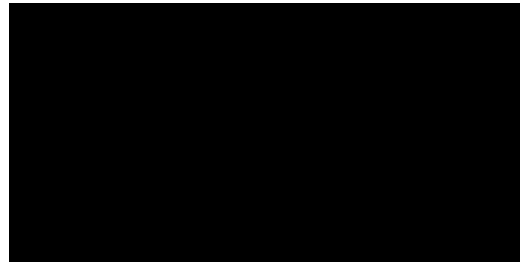
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■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's DD Form 214 to show:

- item 24 (Character of Service): Honorable
- item 25 (Separation Authority): AR 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority



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 three 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 three-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 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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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. Paragraph 3-7b states 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.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable

or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

5. Army Regulation 635-5-1 (Separation Program Designator Codes) 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. It states that the separation code "JKA" is an appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14, by reason of misconduct.

6. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions (UOTHC) and who have been diagnosed with 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.

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 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 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. 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//