

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20230009449

APPLICANT REQUESTS: in effect:

- an upgrade of his characterization of service from under honorable conditions (general) to honorable
- the authority for his separation be changed from Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) Chapter 10 (Discharge In Lieu of Trial by Court-Martial) to Chapter 4 (Separation for Expiration of Service Obligation)
- the narrative reason for his separation and corresponding Separation Program Designator (SPD) code be amended to reflect "Expiration Term of Service (ETS)"
- his Reentry Eligibility (RE) code be changed from "4" to "1"
- in effect, amendment of the U.S. Criminal Investigation Command (CID) Report of Investigation (ROI) (Final), and all associated documents in the Defense Central Investigations Index (DCII), CID databases, and other records by removing his name from the title and subject blocks
- a personal appearance before the Board

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement (4 pages)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 17 May 1998
- DD Form 457 (Investigating Officer's Report)
- U.S. Army Trial Defense Service, Region VIII, Katterbach Branch Office memorandum, Subject: Memorandum Accompanying Request for Discharge in Lieu of Trial by Court-Martial [the applicant], dated 31 March 2003
- Headquarters, 1st Infantry Division, Office of the Staff Judge Advocate (SJA) memorandum, Subject: Request for Discharge in Lieu of Trial by Court-Martial [the applicant], dated 3 November 2003
- Headquarters, 1st Infantry Division, Office of the Commanding General (CG) memorandum, Subject: Request for Discharge in Lieu of Trial by Court-Martial [the applicant], dated 4 November 2003

- DD Form 214 for the period ending 19 November 2003
- Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 (Discharge in Lieu of Trial by Court-Martial), dated 28 June 2021
- U.S. Army Criminal Investigation Command (USACIDC), Fort Belvoir, VA letter, dated 2 June 2005
- Redacted USACIDC Report of Investigation (ROI) extract (pages 3 and 4)
- Article entitled "New Rules for the Removal of Titling PII [Personally Identifiable Information], dated 26 October 2022
- Resume'
- California State Polytechnic University, Pomona, CA certificate
- Pasadena City College, Pasadena, CA Official Transcript
- University of Florida Transcript
- Performance Plan and Appraisal for Non-Supervisors

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 part, as he was about to complete his term of service and receive his second honorable discharge, he was wrongfully accused of violating Articles 134 (Adultery) and 120 (Rape) of the Uniform Code of Military Justice (UCMJ). He was told by the military defense counsel that it could take months before the investigations were completed. At that time, he was in the process of transitioning from active service so he could pursue a Bachelor of Science degree in Biotechnology. Prior to the accusations, he consulted with the education advisor and representatives of the Ready Reserve and the National Guard and decided that transitioning from active service was the right step for his development and preparation for the future.

a. His emotional state of mind at the time of the allegation was decimated. He was very devastated and emotionally distressed when he rendered a request for discharge in lieu of trial by court-martial under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 and handed it over to his military defense counsel. He did it mainly because his separation had already been delayed due to the investigation and he was eager to begin his transition. Secondly, because his schedule of registration for classes was approaching. Knowing that he was innocent of the charges, and his conduct and character of service had been outstanding otherwise, he entrusted his leadership with the authority to make a fair and impartial judgement by approving his request for separation. However, the Chapter 10 request was not granted, because he suspects, it was not submitted. He never received any

status of his request, and it was never mentioned until after the conclusion of the Investigation Officer's (IO) report.

b. Nevertheless, the formal Article 32 hearing confirmed that no reasonable grounds existed to believe that he committed the alleged offense of rape. He was grateful for the discovery of the facts and for being exonerated; but he was not vindicated by his command, despite his outstanding service prior to the accusation. His lead counsel, Mr. DC, was not aware of the Chapter 10 request and had no evidence of the request being submitted. So, he instructed the military counsel, who was part of his defense team and to whom the applicant submitted this request, to submit a withdrawal on his behalf.

c. The IO's recommendations that the charge of rape be dropped, and the charge of adultery be resolved at the company level were not even considered by his command. His command requesting that he be granted the Chapter 10 discharge (neither in his best interest, nor in the interest of justice) after realizing that he did not commit a serious crime that warranted such detrimental separation, is not acceptable in accordance with Army Regulation 635-200, Chapter 10-4a. Without considering his record of service, evaluating the testimonies of the witnesses, consulting his noncommissioned officers and fellow Soldiers who were witnesses of his character and his sense of comradery, or even allowing him to face a nonjudicial hearing, he was issued a Chapter 10 discharge with the characterization of General, under honorable conditions, with RE code 4.

d. The conclusion was, according to the SJA, it would not hurt to approve the Chapter 10 request because he was way past his Expiration Term of Service (ETS). But it did hurt, and the pain is enduring. The decision to refuse his request to withdraw the Chapter 10 and have the case resolved at the company level was very unjust. Although it was at the discretion of the command whether to honor the results of the findings and recommendation, justice was not afforded to him. He could have been disciplined under the provisions of Article 15, of the UCMJ, as stipulated in the IO's report, instead of being discharged.

e. Furthermore, while his discharge orders stipulated that all charges were to be dropped, it has not been reflected in the title report at the Army Crimes Record Center (CRC). His request to include the disposition of the case, stating that all charges were dropped, according to his discharge orders went unanswered. The title indexed at the DCII continued to state that the charge of Article 120 was punitively resolved at the company's level, even after he submitted the report and his discharge and separation orders. Nevertheless, he is qualified under the new requirements to have the title removed from his record because the charges were dropped. He would like this board to take the necessary action to remove his name from the title box PII. Furthermore, he is requesting that the disposition stating that the charges were dropped be included in the ROI.

3. The applicant served a period of honorable service in the U.S. Marine Corps from 18 May 1994 to 17 May 1998.
4. On 21 January 1999, the applicant enlisted in the Regular Army for a period of 4 years in the rank/pay grade of specialist (SPC)/E-4. Upon completion of training, he was assigned to a unit at Fort Bliss, TX.
5. On 22 August 2000, the applicant extended his enlistment for a period of 4 months in order to meet the service remaining requirement for assignment to Europe. The extension established his new ETS date as 20 May 2003. He was subsequently reassigned to a unit in Germany.
6. The complete facts and circumstances surrounding the applicant's separation to include a DD Form 458 (Charge Sheet) and the associated Article 32 investigation are not present in the available record. Therefore, this case is being considered based upon the available documents of record and those provided by the applicant.
7. On or about 20 August 2003, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him.
 - a. By submitting this request, he acknowledged the elements of the offenses and that he was guilty of at least one of the charges against him or at least one of the lesser included offenses therein contained which also authorized the imposition of a bad conduct or dishonorable discharge. He understood that, if his request for discharge was accepted, he could be discharged under conditions other than honorable.
 - b. He further understood that, once his request for discharge was submitted, it could be withdrawn only with consent of the commander exercising general court-martial convening authority, or without that commander's consent, in the event trial results in an acquittal or the sentence did not include a punitive discharge even though one could have been adjudged by the court.
8. The applicant provides a DD Form 457, dated 20 October 2003, which shows an investigation was conducted and a hearing was held under the provisions of Article 32, of the UCMJ regarding charges that were preferred upon the applicant on 13 August 2003. The applicant's lead Trial Defense Counsel was a civilian, Mr. DC, and his Assistant Trial Defense Counsel was Army Captain JC. Nine witnesses testified during the proceedings. The applicant was present throughout the proceedings but provided no testimony or statement of any kind. After listening to all testimony, the IO recommended that the first charge of violation of Article 120 with a specification of rape, be dropped.

Secondly, he believed the defendant gave testimony that was inaccurate or false in at least three aspects. In respect to the second charge, adultery, the IO found reasonable cause to believe the applicant did have sex with the defendant, and there was sufficient evidence on hand to show the applicant was married, and not to the defendant. The IO recommended this matter be considered for action under the UCMJ at the unit level, under Article 15 proceedings.

9. Headquarters, 1st Infantry Division, Office of the SJA memorandum, Subject: Request for Discharge in Lieu of Trial by Court-Martial [the applicant], dated 3 November 2003, shows the applicant's Assistant Trial Defense Counsel informed the CG the applicant had on or about 20 August 2003, submitted a request for discharge in lieu of trial by court-martial under Army Regulation 635-200, Chapter 10. He submitted the Chapter 10 prior to his Article 32 hearing and requested that the Chapter 10 not be processed until the IO had finalized his report.

a. On 27 October 2003, Counsel received a copy of the IO's report in which he recommends that the case be disposed of by nonjudicial punishment under Article 15 proceedings. Consequently, Counsel respectfully requested that the CG adopt the recommendation of the IO and not act on the previously submitted Chapter 10. Counsel also noted the defendant lacked credibility and that the only remaining charge that might be viable was the adultery charge. Counsel opined that to court-martial a Soldier for engaging in adultery was overkill at best and a waste of military judicial resources. Counsel stated if the CG believed that the applicant had in fact engaged in adultery, a more appropriate forum to address such misconduct was an Article 15, not a court-martial.

b. At the conclusion of the Article 15 proceedings the applicant could then ETS because he was currently being involuntarily extended beyond his ETS date pending the resolution of these charges. Finally, to give a Soldier a General, Under Honorable Conditions discharge for adultery was also inappropriate. While not admirable behavior it certainly did not rise to the level of necessitating a under other than honorable conditions discharge. Counsel asked the CG to dismiss the court-martial charges against the applicant and allow the unit to dispose of the incident at an Article 15.

10. Headquarters, 1st Infantry Division, Office of the CG memorandum, Subject: Request for Discharge in Lieu of Trial by Court-Martial [the applicant], dated 4 November 2003, shows the CG approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as General, Under Honorable Conditions. The CG dismissed the charges and their specifications without prejudice. He further directed that the applicant would not be transferred to the Individual Ready Reserve.

11. Orders and the applicant's DD Form 214 show he was discharged on 19 November 2003, in the rank/grade of SPC/E-4, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial by Court-Martial" with SPD code "KFS" and RE code "4." He was credited with completing 4 years, 9 months, and 29 days of net active service this period. He had completed his first full term of service.

12. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

13. The applicant petitioned the Army Discharge Review Board (ADRB) for relief. On 19 June 2020, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his petition.

14. The applicant provides the following documents that are available in their entirety for the Board's consideration.

a. Chapter 10 of Army Regulation 635-200, 28 June 2021, which explains the purpose, criteria, and procedures for processing a Soldier for separation under this chapter.

b. USACIDC, Fort Belvoir, VA letter, dated 2 June 2005, which shows the applicant was informed that he is listed as the subject of a USACIDC ROI for rape and that he was administratively discharged from the Army in lieu of court-martial. Therefore, retention of this criminal history data in the NCIC does conform to Department of Defense policy and his name would remain in the NCIC. The applicant was provided a redacted copy of the ROI and the criteria for requesting amendment.

c. An extract (pages 3 and 4) from the pertinent USACIDC ROI wherein the applicant is titled for rape.

d. An article entitled "New Rules for the Removal of Titling PII (Personally Identifiable Information), dated 26 October 2022, which explains how the 2021 National Defense Authorization Act (NDAA) includes changes to the process for removal of PII and other identifying information from investigative reports, the Department of DCII, and other records and databases. The NDAA provides a way for Soldiers to challenge a titling. By sending in the appropriate documents and evidence, a Soldier can request a correction, expungement, or removal of PII from a law enforcement or criminal investigative report, an index item or entry, or any other record maintained in connection with a report or index as described above. The 2021 NDAA specifically now allows certain information that was not previously considered to be taken into account during

such a request. When a Soldier wants to challenge a titling, they will send a request, along with supporting documents, to the Army CRC. The CRC maintains the crime records for the entire Army and is the unit responsible for approving such a request. The CRC will grant a correction, expungement, or removal under three different circumstances. First, if there is insufficient evidence to prove that the crime ever occurred. Second, if they know the crime occurred, but there is insufficient evidence to prove that the Soldier in question was the actor responsible for the crime. Third, any other circumstance or basis as the Secretary of Defense may specify.

e. His resume detailing his education and work experience.

f. A California State Polytechnic University, Pomona, CA, certificate shows the applicant was conferred a Bachelor of Science degree in Biotechnology on 9 December 2011.

g. A Pasadena City College, Pasadena, CA, Official Transcript which depicts the courses he enrolled for and the grades he received for them.

h. A University of Florida transcript.

i. His U.S. Department of Agriculture Performance Plan and Appraisal for Non-Supervisors rendered for the period from 1 October 2021 to 30 September 2022.

15. By law and regulation, titling only requires credible information that an offense may have been committed. It further indicates that regardless of the characterization of the offense as founded, unfounded, or insufficient evidence, the only way to administratively remove a titling action from the DCII is to show either mistaken identity or a complete lack of credible evidence to dispute the initial titling determination. Individuals who desire to resolve any inconsistencies they believe exists between the offense(s) they committed and what is listed on their Federal Bureau of Investigation (FBI) report should submit a request for amendment along with relevant information to the Director, U.S. Army Crime Records Center, Attention: Freedom of Information/Privacy Act Division, 6010 6th Street, Fort Belvoir, VA 22060-5585, which is the agency responsible for information on the DCII which is the basis for the NCIC and FBI report.

16. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board.

17. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) characterization of service to honorable. The applicant did not indicate any behavioral health condition as related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant served a period of honorable service in the U.S. Marine Corps from 18 May 1994 to 17 May 1998. He enlisted in the RA on 21 January 1999 and extended his enlistment on 22 August 2000.
- The complete facts and circumstances surrounding the applicant's separation to include a DD Form 458 (Charge Sheet) and the associated Article 32 investigation, are not present in the available record. Therefore, this case is being considered based upon the available documents of record and those provided by the applicant.
- Applicant provides a DD Form 457, dated 20 October 2003, which shows an investigation was conducted and a hearing was held under the provisions of Article 32, pf the UCMJ regarding charges that were preferred upon the applicant on 13 August 2003. The applicant was present throughout the proceedings but provided no testimony or statement of any kind. After listening to all testimony, the IO recommended that the first charge of violation of Article 120 with a specification of rape, be dropped. In respect to the second charge, adultery, the IO found reasonable cause to believe the applicant did have sex with the defendant, and there was sufficient evidence on hand to show the applicant was married, and not to the defendant.
- Applicant's DD Form 214 show he was discharged on 19 November 2003, in the rank/grade of SPC/E-4, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial by Court-Martial" with SPD code "KFS" and RE code "4."
- Applicant petitioned the Army Discharge Review Board (ADRB) for relief. On 19 June 2020, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his petition.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, ABCMR Record of Proceedings (ROP), DD Form 214, educational accomplishments, and documents from his service record and separation packet. The VA electronic

medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states, in part, as he was about to complete his term of service and receive his second honorable discharge, he was wrongfully accused of violating Articles 134 (Adultery) and 120 (Rape) of the Uniform Code of Military Justice (UCMJ). He was told by the military defense counsel that it could take months before the investigations were completed. At that time, he was in the process of transitioning from active service so he could pursue a Bachelor of Science degree in Biotechnology. Prior to the accusations, he consulted with the education advisor and representatives of the Ready Reserve and the National Guard and decided that transitioning from active service was the right step for his development and preparation for the future. His emotional state of mind at the time of the allegation was decimated. He was very devastated and emotionally distressed when he rendered a request for discharge in lieu of trial by court-martial under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10 and handed it over to his military defense counsel. He did it mainly because his separation had already been delayed due to the investigation and he was eager to begin his transition. Secondly, because his schedule of registration for classes was approaching. Knowing that he was innocent of the charges, and his conduct and character of service had been outstanding otherwise, he entrusted his leadership with the authority to make a fair and impartial judgement by approving his request for separation. However, the Chapter 10 request was not granted, because he suspects, it was not submitted. He never received any status of his request, and it was never mentioned until after the conclusion of the Investigation Officer's (IO) report.

e. Due to the time of service no active-duty electronic medical records are available for review. VA electronic medical records available for review indicate the applicant is not service connected and he has not participated in any mental health services via the VA. The applicant has been treated by the VA since April 2005 for medically related issues. No medical documentation of any mental health condition/diagnosis was evidenced in the record and the applicant did not submit any hardcopy medical documentation indicating a BH condition or diagnosis.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is no evidence the applicant had a BH condition during military service. Regardless, even if there were evidence of a BH condition, it is unlikely it would mitigate the reason for his discharge.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? No. The applicant did not indicate any behavioral health condition or experience as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation of any BH condition, and the applicant did not identify any condition existed or experience occurred during military service other than the charges preferred against him.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharge from military service due to one specification of rape and adultery. There is no nexus between any BH conditions and rape and adultery. In addition, there is no evidence the applicant had any BH condition that would impair his ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that partial 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 determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding no evidence the applicant had a behavioral health (BH) condition during military service. The opine noted there is no nexus between any behavioral health conditions and the alleged misconduct.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct and his ability to distinguish right from wrong and act in accordance with the right. The Board recognized the applicant's honorable years of service prior to the incident and post service achievements of obtaining his bachelor's degree. The Board noted the applicant was discharged and provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. The Board determined changes to the applicant's narrative reason for separation are not warranted. Furthermore, the Board determined there was insufficient evidence of an error or injustice which would warrant an amendment to the separation program designator code or changing the applicant's reentry eligibility code to 1.

3. However, the Board found relief was warranted in the form of removing the applicant's name from U.S. Criminal Investigation Command (CID) Report of Investigation (ROI) (Final), and all associated documents in the Defense Central Investigations Index (DCII), CID databases, and other records. The Board considered regulatory guidance including Department of Defense Instruction 5505.07. The Board determined a preponderance of the evidence shows an error or injustice occurred when the applicant remained titled because probable cause does not exist to support the titling.
4. The Board noted the Investigating Officer (IO) who conducted an Article 32 hearing found reasonable cause did not exist to believe the applicant committed the offense of rape. The IO did find reasonable cause to believe the applicant was married and had sex with a woman who was not his spouse but recommended the matter be considered for action at the unit level under Article 15 proceedings.
5. The Board considered the applicant's account of the circumstances and found it plausible. The Board further determined all charges were dismissed without prejudice and no further judicial actions were taken against the applicant on the serious charge of rape or the lesser charge of adultery. Based on the preponderance of evidence available for review, the Board determined even if probable cause once existed to believe the applicant committed the offenses and should be titled, it no longer exists now. The evidence warrants the removal of the applicant's name from the title and subject blocks of the CID ROI and associated documents..
6. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by removing the applicant's name from the U.S. Criminal Investigation Command (CID) Report of Investigation (ROI) (Final), and all associated documents in the Defense Central Investigations Index (DCII), CID databases, and other records related to title and subject blocks.

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

- upgrading his characterization of service
- amending the authority for his separation be changed from Army Regulation 635-200; and
- amending the narrative reason for his separation and corresponding Separation Program Designator (SPD) code

[REDACTED]

[REDACTED]

[REDACTED]

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. 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.

3. Department of Defense (DOD) Instruction 5505.07 (Titling and Indexing by DOD Law Enforcement Activities), 8 August 2023, establishes policy, assigns responsibilities, and prescribes uniform standard procedures for titling persons, corporations, and other legal entities in DOD law enforcement activity (LEA) reports and indexing them in the Defense Central Index of Investigations (DCII).

a. Pursuant to Public Law 106-398, section 552, and Public Law 116-283, section 545, codified as a note in Title 10, U.S. Code, section 1552, establishes procedures for DOD personnel through which:

(1) covered persons titled in DOD LEA reports or indexed in the DCII may request a review of the titling or indexing decision; and

(2) covered persons titled in DOD LEA reports or indexed in the DCII may request their information be corrected in, expunged, or otherwise removed from DOD LEA reports, DCII, and related records systems, databases, or repositories maintained by, or on behalf of, DOD LEAs.

b. DOD LEAs will title subjects of criminal investigations in DOD LEA reports and index them in the DCII as soon as there is credible information that they committed a criminal offense. When there is an investigative operations security concern, indexing the subject in the DCII may be delayed until the conclusion of the investigation.

c. Titling and indexing are administrative procedures and will not imply any degree of guilt or innocence. Judicial or adverse administrative actions will not be taken based solely on the existence of a DOD LEA titling or indexing record.

d. Once the subject of a criminal investigation is indexed in the DCII, the information will remain in the DCII, even if they are found not guilty, unless the DOD LEA head or designated expungement official grants expungement in accordance with section 3.

e. Basis for Correction or Expungement. A covered person who was titled in a DOD LEA report or indexed in the DCII may submit a written request to the responsible DOD LEA head or designated expungement officials to review the inclusion of their

information in the DOD LEA report; DCII; and other related records systems, databases, or repositories in accordance with Public Law 116-283, section 545.

f. Considerations.

(1) When reviewing a covered person's titling and indexing review request, the expungement official will consider the investigation information and direct that the covered person's information be corrected, expunged, or otherwise removed from the DOD LEA report, DCII, and any other record maintained in connection with the DOD LEA report when:

(a) probable cause did not or does not exist to believe that the offense for which the covered person was titled and indexed occurred, or insufficient evidence existed or exists to determine whether such offense occurred;

(b) probable cause did not or does not exist to believe that the covered person committed the offense for which they were titled and indexed, or insufficient evidence existed or exists to determine whether they committed such offense; and

(c) such other circumstances as the DOD LEA head or expungement official determines would be in the interest of justice, which may not be inconsistent with the circumstances and basis in paragraphs 3.2.a.(1) and (2).

(2) In accordance with Public Law 116-283, section 545, when determining whether such circumstances or basis applies to a covered person when correcting, expunging, or removing the information, the DOD LEA head or designated expungement official will also consider:

(a) the extent or lack of corroborating evidence against the covered person with respect to the offense;

(b) whether adverse administrative, disciplinary, judicial, or other such action was initiated against the covered person for the offense; and

(c) the type, nature, and outcome of any adverse administrative, disciplinary, judicial, or other such action taken against the covered person for the offense.

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 4 stated a Soldier would be separated upon expiration or fulfillment of service obligation. The periods of military service required of all Army Soldiers would be

in accordance with applicable laws. A Soldier enlisted or ordered to active duty would be discharged or released from active duty on the date he/she completed the period for which enlisted or ordered to active duty.

b. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

c. 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.

d. 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. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

6. Army Regulation 635-5-1 (SPD Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD KFS is the appropriate code to assign to an enlisted Soldier who is voluntarily separated under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. Additionally, the SPD/RE Code Cross Reference Table established RE code "4" as the proper reentry code to assign to Soldiers separated under this authority and for this reason.

7. 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 post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged 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.

8. 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.

9. 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//