

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 April 2024

DOCKET NUMBER: AR20230009518

APPLICANT REQUESTS, in effect, through counsel:

- his dishonorable characterization of service be upgraded
- his narrative reason for discharge be changed to "Secretarial Authority"
- his Reenlistment Code (RE) be changed to "RE-1"
- a personal appearance before the Board

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

- DD Form 149, Application for Correction of Military Record
- Legal Brief
- Letters of Support (3)

FACTS:

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

2. The applicant indicates that his request is related to a mental health condition. The applicant's counsel states, in effect, the appeal is based on three errors: (1) the underlying basis of his separation was procedurally defective at the time of the discharge; (2) the adverse action, to include the administrative discharge, was unfair at the time; and (3) the dishonorable characterization of service, is inequitable now and has served its purpose.

a. Counsel also cites numerous laws, statutes, and case decisions which demonstrate the Board's legal obligation to not only properly determine the nature of any error or injustice but also to take such corrective action as will appropriately and fully erase such error or compensate such injustice. Counsel also asks the Board to consider the applicant's request based on the Undersecretary of Defense for Personnel

and Readiness policy guidance which mandates liberal waivers of time limits, ensures timely consideration of petitions, and allows for increased involvement of medical personnel in Board determinations. (See the Legal Standard paragraph in the counsel's petition for specific references).

b. Counsel further states, in effect, the applicant's parents divorced when he was 3 years old. He had a troubled childhood. Initially, he wanted to join the military to get away from the small, rural community where he grew up. When he spoke with a recruiter, he was warned not to pick an infantry job, but he did not have a preference and took the first thing that was offered to him. He enlisted into the U.S. Army on 2 September 1980 and became an infantryman. He attended Basic Combat Training at Fort Jackson, South Carolina, for the first few weeks instead of completing all his training at Fort Benning, Georgia. His first permanent duty station was Fort Hood, Texas.

c. Initially, the applicant was tall, skinny, and humble, but in a post-Vietnam Army he started standing up for himself and became very vocal. No one could bully him, or he would just snap. When it was time to soldier, he would soldier. He took his military occupational specialty (MOS) very seriously.

d. In April of 1982, the applicant was transferred to Berlin with the 4th Battalion, 6th Infantry. He had become very anxious and angry on a constant basis. He felt like he had already turned into a hardened Soldier. The brigade he served in was very particular about their uniforms, everything had to be super clean and pressed. They were light infantry and walked everywhere they went. They would go out west for conventional warfare training as opposed to urban training, with all live ammunition. They would go out for 21 days at a time in 7500 acres of woods. Their "optempo" was essentially 24 hours a day 7 days a week. He began to have a substance abuse problem and was self-medicating.

e. There was a hijacking at a civilian airport and the applicant's unit responded. They were not in a combat zone, but they were participating in international events. This made him even more anxious.

f. At the end of his service contract, on 28 August 1983, he separated from the U.S. Army. About a month later, the same recruiter that got him to join the Army stopped by his house and asked him if he wanted to join a combat U.S. Army Reserve (USAR) unit as a 12B, a combat engineer. The applicant agreed to join and signed up with the USAR.

g. On the first day he spent with the Reserve unit, he realized it was the shabbiest and unprofessional unit he had ever seen. There were no jobs and nothing to do. He went back to the recruiter and told him he was done and that he wanted to re-enlist. The

recruiter finagled a "deletion" and got the applicant a break from the unit for 60 days, and he never went back.

h. In April of 1984, the applicant re-enlisted and went to Fort Polk, Louisiana. He made the sergeant/E-5 board and got orders to go to Bamberg, Germany. He still had a substance abuse problem, and two days before he was slated to leave, he received an Article 15, Record of Proceeding und Article 15, Uniform Code of Military Justice (UCMJ), when he tested positive on a drug test. He was reduced to private/E-1, and he had to forfeit half of his pay for two months. When he went before his commander, he was alone. His platoon leader and noncommissioned officer (NCO) were not present.

i. Upon reaching Bamberg, the applicant was clean for about six months, but was still fighting his anxiety. The applicant was promoted to specialist/E-4 within seven months and was right back before the sergeant/E-5 promotion board.

j. Meanwhile, the applicant's spouse had gotten into trouble for burning their child on the shoulder with a curling iron. The child also sustained third degree burns on his chest from hot soup cooking on the stove and a scratch from the kitten on the face while in his playpen. The applicant's chain of command told him to go to the Criminal Investigation Division (CID) as they were pressing charges against him for child neglect. He wanted to know how they could do that to him as he was at work all day on duty.

k. While the applicant was away in Germany, traveling with a Special Forces Group, his command called him in to notify him that he needed to return to base as his wife had sustained a heart attack. Upon his return, he learned she had faked it to get him to come home.

l. The applicant was then stabbed during a skirmish in the barracks, and it was ruled an accident instead of an assault. He sat down and told his commander about all these incidents and his commander told him he was going to try to help him.

m. All these events piled up on the applicant and he started smoking marijuana and drinking heavily on a daily basis in order to continue to cope with the situation. He could not take the pressure. One of these times, he was with two guys in a car, and they wanted to stop by the barracks to see a girl. He sat in the car while one of the guys went in and came out with two women. The guy had some of the drugs in his pocket. He gave some of the drugs to one of the girls. This went on like this for a month. Later, one of the girls contacted the applicant to ask for more. He gave some to her on two separate occasions, totaling 2.7 grams. It turned out the girl was an undercover CID investigator.

n. The friend the applicant sold a couple of grams of drugs to was eventually given a Special Court-Martial. The applicant felt like his friend knew the girl was undercover

and had participated in the sting operation to obtain a lesser sentence. Of course, CID had offered the applicant a “deal” and he agreed to help. So, he openly accused another Soldier, PB, of using drugs and told him he was going to “bust him,” and when they checked the Soldier, he only had about 0.5 grams of the drug in his pocket.

o. The CID commanding officer did come and testify on the applicant’s behalf during his Court-Martial and stated that the applicant had assisted in apprehending PB in the field.

p. On 8 September 1987, the applicant was administratively separated by court-martial with an Other Than Honorable Discharge. During his career in the U.S. Army, the applicant earned the Army Service Ribbon, Overseas Service Ribbon, NCO Professional Development Ribbon, Army Occupation Medal, and the Expert Marksmanship Qualification Badge, M-16.

q. After his involuntary discharge, the applicant became increasingly angry. Everyone that interacted with him walked on eggshells as they never knew how he was going to react. He worked at a fast food chain restaurant for a while and then at a gas station. He had kept using and using drugs and did not know what was going on with himself. After seven years, he asked himself if that were the best he could do.

r. Finally, in February of 1991, the applicant picked up the paper and noticed an advertisement for a job in Lexington (an hour and a half away) for the Union pipefitters and plumbers. He went for an interview and landed an apprenticeship, which would take five years of school and work. Meanwhile, he got worse and worse mentally and emotionally, but he never missed any work.

s. In January of 1998, he became a Christian. He stopped taking drugs and stopped drinking.

t. On 11 July of 2003, his brother was beaten to death by four men who came into his house while he was sleeping. The funeral was on a Monday and the applicant went back to work the day after. About a year and a half later, he broke down. He went to see a psychiatrist and started getting treatment for his mental health. He was put on heavy doses of Xanax and has been on it ever since.

u. Three years ago, his daughter died of cancer. More recently, about a year and a half ago, his mental health care provider started to decrease his dose. He is still on it, but he is on a more regular dose. He has learned better coping strategies and knows how to employ them. He has trouble in crowds and with loud noises, and has learned that when he gets frustrated, it is not other people, it is him.

v. The applicant leads a stable and productive life, and has without incident, since his separation from the U.S. Army. He is haunted by the character of his service. He served honorably on active duty. The characterization of his service no longer serves a purpose.

w. The applicant requests that this derogatory information be removed from his record. He asks that this appeal through the Board be given the utmost scrutiny. The success of the appeal and future actions by the U.S. Army and this Board will have a significant impact on his ability to receive proper benefits and recognition. He will continue to fight this derogatory information up through the Secretary of the Army.

3. The complete facts and circumstances of the applicant's discharge are not available. However, the record contains the following documents:

a. A DD Form 214 which shows the applicant served in the Regular Army (RA) from 2 September 1980 to 26 August 1983 and he held MOS 11B, infantryman. He completed 2 years, 11 months, and 25 days of net active service and his service was characterized as honorable. His rank/grade was recorded as specialist 4 (SP4)/E-4, and his date of rank as 1 September 1982.

b. Records show he again enlisted in the Regular Army 26 April 1984.

c. Service medical records which show that during March 1987 the applicant was treated for a self-inflicted stabbed wound to the chest. The medical notes indicate the applicant had numerous stressors at home and work at the time of the incident. He was evaluated and subsequently diagnosed with adjustment disorder and substance abuse.

d. A DD Form 214 which shows he completed service in the RA from 26 April 1984 to 4 May 1988. He held MOS 11B. This form further shows in:

- Item 7, Last Duty Assignment and Major Command, the entry "USA Correctional Activity, Fort Riley, Kansas-FORSCOM-FC"
- Items 4a (Rank...) and 4b (...Grade) show he held the rank/grade of private (PV1)/E-1
- Item 12c, Net Active Service This Period, he completed 3 years, 9 months, and 23 days of net active service
- Item 12h (Effective date of Pay grade) - 9 September 1987
- Item 23, Type of Separation – Discharge
- Item 24, Character of Service – Dishonorable
- Item 25, Separation Authority – AR 635-200, Ch 3, Sec IV
- Item 27, Reenlistment Code – RE-4
- Item 28, Narrative Reason for Separation – As a result of court-martial

- Item 29, Dates of Time Lost During the Period – 25 June 1987 to 8 September 1987

4. The applicant provides three letters of support. These individuals attest to the applicant's compassion, victim's advocacy, faith in GOD, character, and his skill as a mechanical contractor. The applicant had remorse around the circumstances of his discharge. He was a good man who deserved relief.

5. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

6. The applicant provided an argument or evidence the Board should consider in accordance with the published Department of Defense guidance regarding liberal consideration, equity, injustice, or clemency determinations.

MEDICAL REVIEW:

1. Background: The applicant is requesting his dishonorable characterization of service be upgraded, his narrative reason for discharge changed to "Secretarial Authority", and his Reenlistment Code (RE) changed to "RE-1". The applicant indicates his request is related to a mental health condition.

2. 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 enlisted in the RA on 2 September 1980 to 26 August 1983. He re-enlisted on 26 April 1984.
- The complete facts and circumstances of the applicant's discharge are not available.
- Applicant was discharged on 04 May 1988. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 3, Sec IV, as a result of court-martial. His service was characterized as Dishonorable and he was assigned Separation Program Designator JJD with Reenlistment Code 4.

3. 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, his ABCMR Record of Proceedings (ROP), two DD Form 214, legal brief, three character reference letters, 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.

4. The applicant states via counsel he had a troubled childhood. Initially, he wanted to join the military to get away from the small, rural community where he grew up. When he spoke with a recruiter, he was warned not to pick an infantry job, but he did not have a preference and took the first thing that was offered to him. He enlisted into the U.S. Army on 2 September 1980 and became an infantryman. In April of 1982, the applicant was transferred to Berlin with the 4th Battalion, 6th Infantry. He had become very anxious and angry on a constant basis. He felt like he had already turned into a hardened Soldier. The brigade he served in was very particular about their uniforms, everything had to be super clean and pressed. They were light infantry and walked everywhere they went. They would go out west for conventional warfare training as opposed to urban training, with all live ammunition. They would go out for 21 days at a time in 7500 acres of woods. Their "optempo" was essentially 24 hours a day 7 days a week. He began to have a substance abuse problem and was self-medicating. There was a hijacking at a civilian airport and the applicant's unit responded. They were not in a combat zone, but they were participating in international events. This made him even more anxious. In April of 1984, the applicant re-enlisted and went to Fort Polk, Louisiana. He made the sergeant/E-5 board and got orders to go to Bamberg, Germany. He still had a substance abuse problem, and two days before he was slated to leave, he received an Article 15, when he tested positive on a drug test. He was reduced to private/E-1 and had to forfeit half of his pay for two months. When he went before his commander, he was alone. His platoon leader and noncommissioned officer (NCO) were not present. Upon reaching Bamberg, the applicant was clean for about six months, but was still fighting his anxiety. The applicant was promoted to specialist/E-4 within seven months and was right back before the sergeant/E-5 promotion board. Meanwhile, the applicant's spouse had gotten into trouble for burning their child on the shoulder with a curling iron. The child also sustained third degree burns on his chest from hot soup cooking on the stove and a scratch from the kitten on the face while in his playpen. The applicant's chain of command told him to go to the Criminal Investigation Division (CID) as they were pressing charges against him for child neglect. He wanted to know how they could do that to him as he was at work all day on duty. The applicant was then stabbed during a skirmish in the barracks, and it was ruled an accident instead of an assault. He sat down and told his commander about all these incidents and his commander told him he was going to try to help him. All these events piled up on the applicant and he started smoking marijuana and drinking heavily on a daily basis in order to continue to cope with the situation. He could not take the pressure. One of

these times, he was with two guys in a car, and they wanted to stop by the barracks to see a girl. He sat in the car while one of the guys went in and came out with two women. The guy had some of the drugs in his pocket. He gave some of the drugs to one of the girls. This went on like this for a month. Later, one of the girls contacted the applicant to ask for more. He gave some to her on two separate occasions, totaling 2.7 grams. It turned out the girl was an undercover CID investigator. The friend the applicant sold a couple of grams of drugs to was eventually given a Special Court-Martial. The applicant felt like his friend knew the girl was undercover and had participated in the sting operation to obtain a lesser sentence. Of course, CID had offered the applicant a "deal" and he agreed to help. So, he openly accused another Soldier, PB, of using drugs and told him he was going to "bust him," and when they checked the Soldier, he only had about 0.5 grams of the drug in his pocket.

5. Due to the period of service, no active-duty electronic medical records were available for review. However, the applicant provides hardcopy documentation of an in-service hospitalization. The applicant was admitted on 13 March 1987 due to a self-inflicted wound, per medical documentation. This is contrary to the applicant's statement in his application where he states he was "stabbed during a skirmish in the barracks". The medical record indicates the applicant stated at the time of his hospital admission, "I stabbed myself, I'm really ashamed of what I did." His action appeared to be motivated by multiple acute stressors both at home and work. Upon his hospital admission, the applicant appeared intoxicated, and his behavior was belligerent and uncooperative. He later stated during his hospitalization that he had consumed 7 to 8 beers and "a lot of Southern Comfort" prior to the incident. A psychiatry consult indicates the applicant had a superficial wound and presented with acute alcohol intoxication and multiple situational stressors. In addition, he had a history of substance abuse. The initial impression was of the applicant having borderline personality disorder and substance abuse. The applicant was discharged on 16 March 1987 and his discharge diagnoses was adjustment disorder and Alcohol Abuse

6. No VA electronic medical records were available for review and the applicant is not service connected. The applicant has not provided any medical documentation indicating he was diagnosed with any other behavioral health condition or has engaged in any behavioral health care services.

7. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition/diagnosis. However, regardless of diagnosis, this advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge.

8. Kurta Questions:

a. Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The applicant asserts a mitigating condition.

b. Did the condition exist or experience occur during military service? Yes. The applicant self-asserts anxiety and the service record indicates he was briefly hospitalized due to a self-inflicted superficial wound. He was diagnosed with adjustment disorder and Alcohol Abuse upon discharge from this hospitalization.

c. Does the condition or experience actually excuse or mitigate the discharge? No. This advisor is unable to opine regarding medical mitigation without the specific facts and circumstances that led to his discharge. However, the record evidences the applicant's sole in service BH condition is an adjustment disorder and the VA has not service connected the applicant for any BH condition. An Adjustment Disorder is a transient reaction to stress and does not provide mitigation in the absence of another mitigating BH condition. However, regardless of diagnosis, the applicant indicates he was court-martialed due to a CID investigation where he was involved in the sale of drugs, this misconduct is unlikely to be mitigated by a BH condition.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant and his counsel 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.

3. The applicant indicates he was court-martialed due to a CID investigation where he was involved in the sale of drugs, and he would like the Board to apply clemency, by upgrading his dishonorable discharge to an under honorable condition (general) discharge, based on his only diagnosed behavioral health condition of adjustment disorder. However, the ARBA medical advisor notes, an adjustment disorder is a transient reaction to stress and does not provide mitigation in the absence of another mitigating BH condition.

4. The applicant was convicted by a court-martial because he sold drugs and he got caught; this type of behavior is not mitigated by his condition of adjustment disorder and the letters of support he provided we not sufficient to overcome the misconduct.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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. 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 Army Board for Correction of Military Records (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 (AR) 635-200, Personnel Separations-Enlisted Personnel, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provided 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 provided that 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 3 provided that an enlisted person would be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial, after completion of appellate review, and after such affirmed sentence has been ordered duly executed.

3. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

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

5. On 24 February 2016, the Acting Principal Deputy Under Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to waive the imposition of the statute of limitation for service members requesting discharge upgrades related to PTSD or TBI. Additionally, cases previously considered by either the DRBs, BCMRS, or BCNR without the benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

6. 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

7. The Under Secretary of Defense for Personnel and Readiness issued guidance to Service Discharge Review Boards and Service Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

8. Title 10, U.S. Code, section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to ABCMR applicants (and/or their counsel) prior to adjudication.

9. AR 15-185, ABCMR, prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//