

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20230010049

APPLICANT REQUESTS: a medical retirement in lieu of a bad conduct discharge.

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

- DD Form 149 (Application for Correction of Military Record)(online)
- Brief in Support of Application for Correction of Records
- NGB Form 22 (Report of Separation and Record of Service)
- Two Honorable Discharge Certificates
- General Court Martial Transcript
- Headquarters, U.S. Army Garrison, Fort Sill Memorandum: Subject: Statement of Service, 19 May 2016
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Screenshot
- VA Medical Center Letter, 31 May 2023
- VA Letter, 27 July 2022

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, through counsel, states:

a. The applicant should have received a medical retirement. The applicant was never informed of the extent of his post-traumatic stress disorder (PTSD) and other medical diagnoses prior to leaving the service.

b. He was deployed four times. In 2004, while on duty, the applicant was subjected to a blast that left him with symptoms of traumatic brain injury (TBI) and PTSD that still follow him to the present day. He has a combined rating of 100% from the VA. The applicant plead guilty to possession and use of a controlled substance, namely anabolic steroids. As a result, he was separated from the Army with a bad conduct discharge on

11 July 2018. However, the VA determined the applicant had service-connected disability-rated medical conditions.

c. Prior to his misconduct, the applicant served honorably during his combat tours in Iraq and Afghanistan, earning numerous awards for his actions in the line of duty. However, he also endured significant trauma resulting in debilitating physical and mental conditions that he continues to suffer from because of his combat service.

d. In this case, prior to his discharge, the applicant had less than twenty years of service, but his disability was rated well above the thirty percent requirement, to receive a medical retirement. Of course, his pending court-martial was a contributing factor as to why he did not receive a medical retirement. And here, the applicant has the burden of proving the presence of a material injustice. However, the evidence submitted herein, including his VA ratings, his medical records, and his personal statement provide the evidence required to justify relief. This is apparent when his medical diagnoses and disabilities are compared with the overall seriousness of his misconduct.

e. The applicant sought treatment for his PTSD symptoms and numerous physical ailments following the trauma he endured in the military. His treatment for these conditions is still ongoing. This reveals another factor meriting relief. The requested relief is necessary for the applicant to obtain more comprehensive treatment and resources for his various service-connected conditions:

- left lower extremity radiculopathy of the sciatic nerve
- right lower extremity radiculopathy of the sciatic nerve
- right knee instability
- posttraumatic stress disorder
- left shoulder strain
- left foot hallux valgus and hallux rigidus
- right foot hallux valgus and hallux rigidus
- tinnitus
- right shoulder strain
- right small lateral meniscal tear with medial meniscal tear with para meniscal cysts,
- mild distal patellar tendinosis with a fragmented tibial tubercle, suggesting prior Osgood Schlatter syndrome
- bilateral pes plan us with plantar fasciitis
- lumbosacral strain with intervertebral disc syndrome
- low testosterone (no rating)

f. The applicant should have been medically discharged prior to his involuntary separation from service. Based on the Kurta memo, the new evidence demonstrates his mental health was a factor that contributed to his misconduct. Unfortunately, the military

and the court failed to properly take into account the role his conditions played in the misconduct at issue. A correction of the applicant's discharge will properly implement both the Hagel and Kurta memoranda. This correction will properly treat his mental health conditions as a mitigating factor in the misconduct.

3. The applicant provides:

a. General Court Martial Transcript, on 12 April 2016 shows the applicant was charged under the Uniform Code of Military Justice (UCMJ) between on or about 1 February 2015 and 19 May 2016 with wrongful possession of a controlled substance, wrongful use of a controlled substance, aggravated assault, assault consummated by a battery, of child endangerment. It provides the testimony of the entire proceedings, available in its entirety for the Board's review.

b. Headquarters, U.S. Army Garrison, Fort Sill Memorandum, Subject, Statement of Service, 19 May 2016 shows the applicant's honorable service and time lost of 26 days.

c. A VA letter, 27 July 2022 shows the applicant has service-connected disability with a combined service-connected evaluation of 100%.

d. The applicant's medical documents, which will be reviewed and discussed by the medical staff at the Army Review Boards Agency (ARBA).

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

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) reflects he enlisted in the Iowa Army National Guard (IAARNG) on 30 September 2002.

b. He entered active duty for training on 24 June 2004. His DD Form 214 shows he was released from active-duty training on 13 August 2004 and transferred to the ARNG. His service was uncharacterized. He completed 1 month and 20 days of active service. He was awarded military occupational specialty 88M (Motor Transport Operator).

c. He entered active duty on 25 August 2004. His DD Form 214 shows he was honorably released from active duty on 5 November 2005 and transferred to the ARNG. He completed 1 year, 2 months, and 11 days of active service.

d. NGB Form 22 shows the applicant was honorably discharged from the ARNG on 27 March 2006.

e. ARNG Retirement Points History Statement, 6 September 2006 shows the applicant completed 3 years, 5 months, and 28 days of creditable service for retired pay.

f. DD Form 4 reflects he enlisted in the Regular Army on 28 March 2006.

g. He reenlisted on 22 April 2009, 19 October 2011, and 20 November 2014.

h. DA Form 4187 (Personnel Action), 13 April 2016, show the applicant was confined by military authorities and present for duty on 21 October 2016. He was released from confinement.

i. On 12 April 2016, the applicant was convicted by General Court Martial 17, Headquarters, 21st Theater Sustainment Command of two specifications of wrongful possession of a controlled substance, one specification of wrongful use of a controlled substance and three specifications of assault consummated by a battery.

j. On 13 April 2016, the sentence was adjudged of confinement for 8 months and to be discharged from the service with a bad conduct discharge.

k. General Court Martial Order Number 119, 15 June 2018, Headquarters, U.S. Army Fires Center of Excellence, Fort Sill, OK shows the sentence of confinement for 8 months and a bad conduct discharge, adjudged on 13 April 2016, has finally been affirmed. The automatic reduction to private/E-1 was required. That portion of the sentence extending to confinement has been served. Article 71(c) having been complied with; the bad conduct discharge will be executed.

l. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) Chapter 3, for court martial (other) on 11 July 2018. His separation code is JJD and reentry code 4. His service was characterized as bad conduct. He completed 11 years, 9 months, and 6 days of active service. He had lost time from 13 April 2016 to 20 October 2016.

m. The applicant's available record is void of any documentation to show he received a Medical Evaluation Board, or Physical Evaluation Board, Disability Evaluation System (DES) processing.

6. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

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

8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR)(AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 11 July 2018 bad conduct discharge and, in essence, a referral to the Disability Evaluation System. His counsel concludes with:

"In particular, the Applicant requests that, in light of the facts and circumstances provided herein, his discharge be corrected to reflect the fact that he should have been medically discharged prior to his involuntary separation from service.

Based on the Kurta memo, the new evidence demonstrates his mental health was a factor that contributed to his misconduct. Unfortunately, the military and the court failed to properly take into account the role his conditions played in the misconduct at issue.

A correction of the Applicant's discharge will properly implement both the Hagel and Kurta Memos. This correction will properly treat his mental health conditions as a mitigating factor in the misconduct."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of service under consideration shows he entered the regular Army on 28 March 2006 and was discharged from the Personnel Control Facility at Ft. Sill, OK, on 11 July 2018 under the separation authority provided chapter 3 of AR 635-200, Active Duty Enlisted Administrative Separations (19 December 2016): Court-Martial (Other). It shows one period of lost time under 10 USC § 972 from 13 April 2016 thru 20 October 2016 (This was likely not 2016 but 2018, the year he was incarcerated). There are 2 periods of service in Iraq, one in Afghanistan, and one in Azerbaijan.

d. General court martial proceedings list the charges against the applicant:

The general nature of the charges in this case are two specifications of wrongful possession of a controlled substance, in violation of Article 112a; one specification of wrongful use of a controlled substance, in violation of Article 112a, UCMJ; two specifications of aggravated assault, in violation of Article 128, UCMJ; one specification of assault consummated by a battery, in violation of Article 128, UCMJ; two specifications of child endangerment, in violation of Article 134, UCMJ; and one specification of obstruction of justice, in violation of Article 134, UCMJ.

e. He was found guilty of two specifications of wrongful possession of a controlled substance (anabolic steroids), one specification of wrongful use of a controlled substance, and three specifications of assault consummated by a battery.

f. He was sentenced to confinement for 8 months and a bad conduct discharge. He was also reduced in rank to private (E-1).

g. The applicant underwent evaluation for a possible substance abuse disorder for steroids on 11 June 2015. No such disorder was found:

“Provider went over the results of the assessment for SM [service member] with chain of command. Command was informed that SM has no real substance abuse or dependence diagnosis. Provider and Command talked about the fact that SM in spite of his use of steroids, is not addicted to a substance nor is he on the road to addiction. Therefore, he would likely not benefit from treatment.”

h. A 24 June 2015 AHLTA encounter states “Case was presented to the CRC today for allegations of spouse physical and emotional abuse and treatment plan discussed and approved. Case met criteria for spouse physical and emotional abuse for SM/H [husband] as the offender. The applicant continued to be seen and counseled with his diagnoses being “Marital Problem” or “Psychosocial and environmental Problems.”

i. His 24 July 2015 psychology encounter states:

“SM also reported that he is no longer restricted to post. He expressed that his quality of life has been significantly improved. He stated that he still does not believe behavioral health services will be helpful to his situation, but agreed to continue checking in with the undersigned provider until his FAP [Family Assistance Program] requirements are met.”

j. The applicant underwent an evaluation for mild traumatic brain injury on 15 August 2015 after which no significant residuals of TBI were identified:

“Impression: Findings from this assessment DO NOT indicate that this individual has experienced an alteration in the performance areas of occupation as a result of the referral diagnosis. This patient presents with inefficiencies in: STM [short term memory] and attention. This patient does not find it difficult to engage in a full spectrum of work and home tasks because of the reported symptoms.

k. The applicant was diagnosed with post-concussive headaches after a second evaluation on 26 November 2015.

l. On 17 November 2015, the applicant was diagnosed with “Abuse of steroids or hormones” after testing positive on urinalysis.

m. After his conviction, the applicant was seen by behavioral health (BH) on 30 April 2016 stating “I want to make sure my PTSD is in my records.” The provider wrote:

“Pt [patient] stated he was being seen for PTSD however there are no notes in his records to indicate he was ever seen by BH. He was seen three times, two times for sniper school which he insisted “they don't test for PTSD.”

n. There was no mental health disorder identified and the provider diagnosed him with “Imprisonment and incarceration.”

o. The applicant underwent another behavioral health evaluation on 22 May 2016. Again, there was no mental health disorder identified and the provider diagnosed him with “Imprisonment and incarceration.” This was his final in-service mental health encounter.

p. The applicant’s medical problem list shows he was not diagnosed with a mental health disorder while in the Army and was diagnosed with PTSD in February 2020.

q. In addition to no evidence of a duty-limiting medical condition, the applicant’s misconduct made him ineligible for referral to a physical evaluation board without the approval of this General Court Martial Convening Authority. Paragraph 4-3c of AR 635–40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017):

Action under the Uniform Code of Military Justice. When Soldiers are under investigation or are charged with an offense under the UCMJ that could result in a punitive discharge (dismissal, dishonorable discharge, or bad conduct discharge), they remain eligible to be referred to and complete the MEB [medical evaluation board] phase of the DES.

Eligibility for the PEB [physical evaluation board] occurs when one of the actions listed below occurs. (The PEB or USAPDA [United States Army Physical Disability

Agency], as applicable, will suspend adjudication or disposition when UCMJ action is initiated during the PEB or USAPDA review phases. These cases remain suspended until final UCMJ action is taken or one of the following events occurs.)

- (1) The investigation ends without charges.
- (2) The officer exercising proper court-martial jurisdiction dismisses the charges.
- (3) An officer submits a resignation for the good of the Service under the provisions of AR 600–8–24 (this includes when the resignation is in lieu of referral to a General Court-Martial).
- (4) The officer exercising proper court-martial jurisdiction refers the charge for trial by summary court-martial.
- (5) Court-martial conviction does not include confinement and discharge or Soldier completes confinement without discharge.

r. The applicant's conviction included confinement followed by a bad conduct discharge.

s. There is insufficient probative evidence the applicant had a duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System. Furthermore, there is no evidence that any medical condition prevented the applicant from being able to reasonably perform the duties of his office, grade, rank, or rating prior to his discharge.

t. JLV shows he has been awarded multiple VA service-connected disability ratings, all of which are 30% or less. This includes a 30% rating for PTSD and a 0% rating for migraine headaches. There is no rating for TBI per se. However, the DES only compensates an individual for permanent service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

u. It is the opinion of the ARBA medical advisor that neither a discharge upgrade nor a referral of his case to the DES is warranted.

v. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? PTSD

(2) Did the condition exist or experience occur during military service? The applicant's PTSD has been service connected by the VA.

(3) Does the condition or experience actually excuse or mitigate the discharge? No: PTSD does not adversely affect one's ability to differentiate right from wrong. It therefore cannot mitigate the numerous UCMJ violations which resulted in his confinement and subsequent bad conduct discharge.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the violent nature of the misconduct and the lack of mitigation found within the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or narrative reason for separation.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Section 1556 of Title 10, USC, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. Title 38 USC, section 1110 (General-Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this

subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

4. Title 38 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Chapter 3-4 states Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one, which renders the Soldier

unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

6. Title 10, USC, Chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by a Military Occupational Specialty Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

7. Title 38, USC, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the

basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

8. Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. A formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.

b. Paragraph 1-7a states the worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty was considered an aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not In the Line of Duty, which can only be determined with a formal LOD investigation.

c. Paragraph 2-6 states an injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

9. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel provides:

a. An honorable discharge is a separation with honor. 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. 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. 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 had been ordered duly executed.

10. 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.

11. Army Regulation 635-8 (Separation Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

12. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The separation code JJD (is to be used for Soldiers discharged for bad conduct).

13. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code as "JJD" for bad conduct.

14. 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-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

15. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

16. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

17. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

18. 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.

19. 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.

20. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 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.

//NOTHING FOLLOWS//