

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 September 2024

DOCKET NUMBER: AR20230010129

APPLICANT REQUESTS, in effect:

- reconsideration of his previous request to upgrade the characterization of his service to honorable
- a medical evaluation of his facial injury and his spinal cord injury sustained while on active duty and in the line of duty
- retirement due to disability
- back pay and allowances
- all awards to which is entitled/authorized
- promotion to sergeant major (SGM)/E-9
- to sign his DD Form 214-Certificate of Release or Discharge from Active Duty and DD Form 215-Correction to DD 214
- to have his military education reflected in the Verification of Military Experience and Training (VMET) database
- a personal appearance before the Board via video/telephone

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

- DD Form 149, Application for Correction of Military Record with applicant's statements (Exhibits A and B)
- U.S. Air Force (USAF) Court of Criminal Appeals Docket, 22 April 1997
- DD Forms 214, 25 February 2003 (2)
- DD Form 215, 21 August 2015 (2)
- Character Reference, undated
- Medical Records, 2019-2020
- Authorization for Release of Medical Information, 17 May 2023
- Cover Letter for Authorization to release medical records, 23 May 2023
- Joint Service Review Activity (JSRA), Amended Inquiry and Complaint and Petition for Review of a Request for upgrade of Discharge or Dismissal and Correction of Military Records, 6 December 2023
- Congressional Request for Assistance, 13 February 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20160006021 on 27 March 2018; and AR20190001587 on 5 March 2020. The applicant provides new argument and new evidence which warrant review by the board.

2. The applicant states his request is related to post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health issues. He further states, in effect:

a. He was a Prisoner of War (POW) and was declared Missing in Action (MIA). He has been wrongfully incarcerated for almost 20 years in different county, state, and Federal prisons. His children have been displaced and stranded abroad for 21 years. The Department of Veterans Affairs (VA) had denied him veteran's benefits since 2005 due to his unresolved "military status." He contends that he is entitled to active duty pay, benefits, full retirement, and legal/financial relief in accordance with the Servicemember Civil Relief Act.

b. In addition, his DD Form 214 was not prepared properly. Block 21, Signature of Member Being Separated, indicates that he was not available for signature and Block 22, Official Authorized to Sign, contains the signature of a person that was not in the military; therefore, not authorized to sign the DD Form 214. These errors make the DD Form 214 void.

3. The Board does not update information in the databases of outside agencies and the applicant failed to identify which military education was missing. Therefore, that portion of his request will not be considered by the Board and not addressed in this Record of Proceedings.

4. Prior to enlisting in the Regular Army the applicant completed a physical examination on 18 March 2002 which found he was qualified for service. This form does not list any defects or diagnoses.

5. The applicant enlisted in the Regular Army on 2 April 2002.

6. His record contains numerous negative counseling statements for committing the following offenses between 6 September 2002 and 12 November 2002:

- disorderly conduct
- disrespect to a noncommissioned officer (NCO), 2 separate offenses
- communicating a threat
- missing formation

- not cleaning his room in a timely manner
- leaving his room unsecured, 2 separate offenses
- leaving his room unsecured and in disarray
- refusal to follow instructions
- communicating a threat by nonverbal means
- noncompliance with written instructions (sick call) from medical personnel
- late for first formation
- receiving a summarized Article 15 of the Uniform Code of Military Justice (UCMJ)
- oversleeping and missing the bus

7. On 27 November 2002, he was command referred for a mental health evaluation for the purpose of administrative separation. The results of this examination were reported on 3 December 2002. The Chief, Department of Psychiatry, Heidelberg, Germany found there was no evidence of significant treatable psychiatric illness or life-threatening ideation. The applicant was responsible for his actions. He had the mental capacity to understand and participate in the proceedings. He met the medical retention standards in accordance with Army Regulation (AR) 40-501, Medical Services-Standards of Medical Fitness. The applicant was psychiatrically cleared for any administrative action deemed appropriate by the commander.

8. On 3 January 2003, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the UCMJ for -

- being AWOL from his unit from on or about 14 November 2002 to on or about 15 November 2002
- being AWOL from his unit from on or about 19 November 2002 to on or about 25 November 2002
- disobeying a lawful order from a noncommissioned officer, four offenses
- using disrespectful language toward a noncommissioned officer

9. His punishment included reduction to private/E-1, forfeiture of pay, extra duty and restriction.

10. On an unknown date, the company commander informed the applicant that he was initiating action to separate him service with a recommendation for an under honorable conditions, general characterization of service under the provisions of AR 635-200, Personnel Separations-Enlisted Personnel, paragraph 14-12b, patterns of misconduct. The reasons cited were his acceptance of NJP, being late to formation numerous times, substandard appearance, and failure to follow lawful orders. His actions demonstrated that further attempts to rehabilitate him would be unsuccessful.

11. The applicant acknowledged receipt of notification of the basis for the contemplated action to separate him and of the rights available to him, including his right to consult with counsel prior to submitting his election of rights. The applicant elected:

- consideration of his case by an administrative separation board (applicant had less than 6 years of service and was not entitled to a separation Board)
- a personal appearance before an administrative separation board (not entitled because he was recommended for a general characterization)
- to have a minority group member sit on the administrative separation board
- representation by military counsel
- not to submit statements in his own behalf

12. The commander formally recommended the applicant for separation with an under honorable conditions, general characterization of service.

13. On 18 February 2003, the separation authority directed that the applicant be separated under the provisions of AR 635-200, paragraph 14-12b, patterns of misconduct, and that he be furnished a general under honorable conditions discharge certificate.

14. On 25 February 2003, he was discharged in accordance with the separation authority's decision. His DD Form 214 shows:

- he held the rank and pay grade of private/E-1 at the time of discharge
- he completed 10 months, and 24 days of net active service
- he was awarded or authorized the National Defense Service Medal and the Army Service Ribbon
- the applicant was not available for signature (Item 21)
- a civilian in grade "GS-7" signed in Item 22
- his narrative reason for separation was "MISCONDUCT"
- his service was characterized as under honorable conditions (general)

15. On 21 August 2015, the applicant's DD Form 214 was corrected to add the Global War on Terrorism Medal. He was issued a DD Form 215 which list this award.

16. The applicant did not provide supporting documentation of legal or personal debt based on his contentions.

17. The applicant did not provide nor do his records contain:

- a limiting level 3 permanent (P-3) physical profile requiring him to undergo a Medical Evaluation Board (MEB)

- documentations to shows he underwent an MEB or a Physical Evaluation Board (PEB)
- documentation or evidence showing he is entitled to back pay and allowances
- documentation to show he was eligible for promotion to SGM/E-9

18. The Army Discharge Review Board (ADRB) denied the applicant's petition to upgrade his discharge in Docket Number AR20150004595, on 9 September 2015.

19. The record contains a partial VA Statement of the Case, given in support of a disability claim, 6 August 2018. This document shows:

a. A VA examiner had diagnosed the applicant with antisocial personality disorder and unspecified anxiety disorder on 25 July 2018. The examiner concluded it was less likely than not any psychiatric disorder began during service, was caused by service, or was permanently aggravated by his military service. The examiner indicated his personality disorder had likely been present since childhood and accounted for his significant behavioral and legal problems, including those noted during service.

b. In regard to the anxiety disorder, the examiner stated, in effect, the Bureau of Prisons psychology notes indicate that the applicant was not experiencing any symptoms of a significant mood disturbance or serious mental illness upon intake into the prison system and noted no mental health concerns until he made reference to increased psychosocial stressors in 2014. Due to the documented absence of psychological symptomatology until more recent years it was less likely than not the unspecified anxiety disorder was aggravated beyond it's natural progression by military service. It was less likely than not that any current psychiatric condition was caused by or the result of an in-service injury, illness, or event. The majority of the problems he experienced in the military appear to be due to his personality functioning.

c. The VA denied service connection for the applicant's claim of acquired psychiatric disorder, to include antisocial personality disorder and unspecified anxiety disorder. The evidence failed to show a psychiatric disorder began during his period of military service was caused by a corroborated in-service injury, illness, or event or was permanently aggravated beyond normal progression by a corroborated in-service injury, illness, or event.

19. As a part of a group application, the ADRB, reviewed the applicant's characterization of service to determine if he was eligible for an upgrade to honorable. The applicant contended that his preexisting mental illness was aggravated while serving in the military, and after being released without receiving treatment, the disability progressed until it led to legal issues and convictions. Based on a records review, the ADRB denied the applicant's request on 11 May 2023.

19. The applicant provides:

a. A letter of support from a noncommissioned officer. These individual states that he served with the applicant in Germany. He further states, in effect, that the applicant participated in numerous sporting events, and he was a skilled boxer. The unit would often praise his name; however, as the unit began training in preparation for support of Operation Iraqi Freedom, the boxing got pushed to the side and he lost a way to relieve his anger. This author of the letter commended the applicant for volunteering during wartime to serve as an armored crewmember. This was a difficult and dangerous job. Unfortunately, the applicant got moved from leader to leader because no one wanted to deal with a troubled Soldier. The applicant went from being the cream of the crop to not being able to do anything right. The author of the letter contends that the applicant was a good man how wanted to do good. He should be given the resources to become as productive as possible.

b. An airman's petition for extraordinary relief in the form of a writ of habeas corpus which was denied by the USAF Court of Criminal Appeals on 22 April 1997. In this petition the basic airman had allegedly stolen from a fellow basic airman and deserted the USAF. The master sergeant purportedly discharged him and reported his discharge under other than honorable conditions. When the basic airman was apprehended by civilian authorities, the commander personally escorted him off base, due to his alleged discharge. However, the base legal office decided he had not really been discharged. The basic airman was again apprehended and placed into pretrial confinement awaiting trial by general court-martial. The basic airman filed a petition for a writ of habeas corpus alleging that he was no longer in the USAF, and hence was not subject to court-martial jurisdiction. The court held that the basic airman had been validly on active-duty in federal status when he allegedly left military control without authority, and that he was then subject to court-martial jurisdiction for any crimes committed while in that status. The court further held that he had remained on active federal status during the duration of his allegedly unauthorized absence, and that he remained so when he was apprehended.

c. A JSRA amended "inquiry and complaint" and petition for review of a request for upgrade of discharge or dismissal and correction of military records wherein the applicant contends, in effect, that he had not been discharged because he did not receive a valid discharge document, final pay, or execute proper clearance procedures according to military regulation. The applicant stated that he was left stranded abroad while his unit was deployed to Iraq and while his discharge status was unresolved. He further requested that his characterization of service be upgrade, he received approximately \$2,000,000 in back pay and allowances, he be promoted to E-9, he be medically retired, and he be reimbursed his attorney fees. The JSRA's recommendation was not provided.

d. Medical Records for the period 2019-2020. These records show the applicant was a pedestrian when he was hit by a vehicle. His problem list includes blunt chest trauma, arthralgia of hip, disorders of the soft tissue, pain of right lower extremities, intracranial injury with loss of consciousness, and post-traumatic stress disorder.

e. His request for congressional assistance wherein the applicant makes the contention that his discharge was not proper, and his discharge documents should be voided because they were signed by a civilian. He asked for assistance to correct numerous problems surrounding his discharge.

20. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

21. Regulatory guidance regarding completing the DD Form 214 permits for the entry "SOLDIER NOT AVAILABLE TO SIGN" when the individual is discharged in absentia. Further, it permits for a civilian official in grade "GS-07" and higher to sign in Item 22 of the DD Form 214.

22. By regulation, the applicant does not meet the eligibility criteria for promotion to SGM/E-9.

23. Title 10, U.S. Code, section 1552, the law which provides for the Board, states that The Secretary may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due to the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps or Coast Guard, as the case may be.

24. 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.

25. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his character of service to honorable. He contends he experienced mental health conditions including PTSD and a traumatic brain injury that mitigates his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in the Regular Army on 2 April 2002; 2) The applicant received numerous and various negative counseling statements between 6 September-12 November 2002; 3) On 3 January 2003, the applicant accepted nonjudicial punishment

for two incidents of being AWOL in November 2002 and also not following orders and being disrespectful; 4) The applicant was discharged on 25 February 2003, Chapter 14-12b, patterns of misconduct with an under honorable conditions (general) characterization of service. He completed 10 months and 24 days of active service.

c. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's military service and available medical records. The VA electronic medical record (JLV) was also examined.

d. The applicant asserts he was experiencing mental health conditions including PTSD and a TBI while on active service, which mitigates his misconduct. There is insufficient evidence the applicant was exposed to a TBI while on active service, and there was insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. On 27 November 2002, the applicant was seen for a mental health evaluation as part of his administrative separation. There was no evidence of significant treatable psychiatric illness. The applicant was determined to be responsible for his actions and had the mental capacity to understand and participate in the proceedings. He met the medical retention standards and was psychiatrically cleared for any administrative action deemed appropriate by the commander.

e. A review of JLV provided evidence the applicant has been assisted by the VA for homelessness since 2005. The applicant has a repeated history of incarceration for various offences. He underwent a Compensation and Pension evaluation for Mental Health Conditions in 2018 while incarcerated. The applicant was diagnosed with Anti-social Personality Disorder, and more recently due to his experiences in prison, he was diagnosed with an Unspecified Anxiety Disorder. His mental health conditions were not attributed to his active service. In addition, he was not found to be experiencing a service connected TBI. He has not been awarded any service-connected disability at this time.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had condition or experience that partially mitigates his misconduct.

#### Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he was experiencing mental health conditions including PTSD and TBI while on active service. He has been diagnosed with Unspecified Anxiety Disorder related to his post discharge experiences in prison.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing mental health conditions including PTSD and TBI while on active service.



(3) Does the condition experience actually excuse or mitigate the discharge? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD while on active service. He has, after his discharge, been diagnosed with currently experiencing an Anxiety Disorder related to his reported experiences during his incarcerations. The applicant was exposed to childhood trauma. However, there is insufficient evidence the applicant was experiencing PTSD at the time of his active service or currently. Also, there was insufficient evidence the applicant has been diagnosed with TBI. He was engaged multiple and varied forms of misconduct. However, the presence of misconduct and self-report of experiencing a mental health condition while on active service is not sufficient evidence of experiencing a mitigatable mental health condition while on active service. Yet, the applicant contends mental health conditions including PTSD and a TBI resulted in his misconduct, and per the Liberal Consideration Policy, his contention is sufficient for consideration.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered counsel's statement, 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 insufficient evidence to support the applicant had condition or experience that partially mitigates his misconduct. The opine noted, there was insufficient evidence the applicant has been diagnosed with TBI. He was engaged multiple and varied forms of misconduct. The Board found insufficient evidence to support to support the applicant's contentions for a change to his record showing he should be retired due to a disability or entitled to any back pay and allowances.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant was discharged for misconduct and was 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 agreed the applicant's record is absent evidence that shows he was promoted to SGM/E-9 prior to his discharge. This Board is not an investigative body. The Board agreed that the burden of proof rest with the applicant; however, he did not provide any supporting documentation and his service record has insufficient evidence to support what awards the applicant may be entitled or authorized. Furthermore, it is outside the ABCMR purview to have the applicant's

military education reflected in the Verification of Military Experience and Training (VMET) database.

3. The Army has an interest in maintaining the integrity of its records for historical purposes. The information in those records must reflect the conditions and circumstances that existed at the time the records were created. In the absence of evidence that shows a material error or injustice, there is a reluctance to recommend that those records be changed.

4. 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:

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 to amend the decision of the ABCMR set forth in Docket Number AR20160006021 on 27 March 2018; and AR20190001587 on 5 March 2020.



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. Army Regulation 635-200, Personnel Separations-Enlisted Personnel, sets forth the basic authority for the separation of enlisted personnel.

a. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate for a Soldier discharged under this chapter.

b. 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.

2. AR 635-5, Separation Documents, prescribes policies and procedures regarding the preparation and distribution of separation documents to include the DD Form 214 and DD Form 215. The instructions for completing:

a. Item 21, SIGNATURE OF SOLDIER BEING SEPARATED, state to enter the statement "SOLDIER NOT AVAILABLE TO SIGN" when the Soldier is not available, is discharged in absentia, or physically unable to sign.

b. Item 22, OFFICIAL AUTHORIZED TO SIGN. This signature indicates the information in the certificate is as correct as the records permit; that a quality control check has been made; and that the separation is valid and authorized by the approval authority. Only a commissioned or warrant officer may authenticate DD Form 214; however, when the chief or acting chief of the Transition Center is a staff sergeant (SSG/E-6), GS-07, or higher, or authorized contractor employee, that individual may sign. Signature authority may NOT be delegated.

c. Once a DD Form 214 has been issued, it will not be reissued unless it is determined that the original DD Form 214 cannot be properly corrected by issuance of a DD Form 215 or if the correction would require issuance of more than two DD Forms 215. If required information is incorrect or missing from the DD Form 214, a DD Form 215 will be issued when the missing information becomes available.

3. AR 635-40, Physical Evaluation for Retention, Retirement, or Separation, 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.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501, 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 physical evaluation board. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his or her ability to return to full duty based on the job specialty designation of the branch of service. A physical evaluation board 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. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based

upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of 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.

d. Paragraph 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.

e. Paragraph 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.

4. Title 10, U.S. Code, section 1201, provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent.

5. Title 10, U.S. Code, section 1203, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

6. Title 38, U.S. Code, section 1110, General - Basic Entitlement: 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.

7. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: 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.

8. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and 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.

9. AR 600-8-19, Enlisted Promotions and Reductions, provides the eligibility criteria for promotion to sergeant first class, master sergeant, and sergeant major. There are several criteria for promotion to sergeant major including having at least ten years of total active Federal service, be serving on active duty in an enlisted status on the convening date of the selection board, and not be ineligible to reenlist due to court-martial.

10. Department of Defense Instructions (DODI) 1332.28, Discharge Review Board (DRB) Procedures and Standards, issues uniform procedures and standards for the review of discharges and provides for public inspection, searching, and downloading of DRB decisional documents through the DoD Boards' Electronic Reading Room.

a. Enclosure 5, Complaints Concerning Decisional Documents, of this DODI establishes the procedures for ensuring that decisional documents issued by the DRBs comply with the decisional document's principles and this Instruction.

b. When a complaint concerns a specific issue in the applicant's own discharge review, the complaint review process shall involve a review of all the evidence that was before the DRB or SRA, including the testimony and written submissions of the applicant, to determine whether the issue was submitted, and if so, whether it was addressed adequately. With respect to all other complaints about specific issues, the complaint review process may be based solely on the decisional document.

c. Determinations of the JSRA shall be reported to the Deputy Under Secretary of Defense (Program Integration) (DUSD(PI)) as JSRA recommendations. The DUSD (PI) shall review all recommendations of the JSRA. The DUSD (PI) is the final authority with respect to actions to complaints. If the DUSD(PI) determines that no further action by the Military Department is warranted, the complainant and the Military Department shall be so informed. If the DUSD(PI) determines that further action by the Military Department is required, the Military Department shall be directed to ensure that appropriate corrective action is taken by its DRB and the complainant shall be provided an appropriate interim response.

11. Section 1556 of Title 10, United States Code, 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.

12. Title 10, U.S. Code, section 1552, the law which provides for the Board, states that The Secretary may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or the repayment of a fine or forfeiture, if, as a result of correcting a record under this section,

the amount is found to be due to the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps or Coast Guard, as the case may be.

13. Verification of Military Experience and Training (VMET). The VMET document helps individual prepare resumes and job applications quickly when they separate from Service. The VMET document: gathers all reported demographic, training, and experience records in one place and describes your Service occupations in civilian terms. Automated systems at each Branch of Service report occupation information to the VMET database. These systems vary, so it is recommended to use VMET along with evaluation reports, training certificates, awards, transcripts, and similar documents to assemble a complete account of how an individual might qualify for civilian occupations, certificates, licenses, or programs of study. Because all VMET data is provided by the military Services, corrections must also come through the Services. There is no simple process for making changes to a VMET document. The changes must pass through official channels. This may take months. Many times the Services do not make changes when a correction would not result in any new descriptive data on the form. Many Services are not able to correct errors after a member's separation or retirement.

14. 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//