

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2024

DOCKET NUMBER: AR20230010353

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge to honorable due to his claim of post-traumatic stress disorder (PTSD).

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

- DD Form 293 (Application for the Review of Discharge form the Armed Forces of the United States)
- Self-Authored Letter
- 7 Letters of Support
- Department of Veterans Affairs (VA) Medical Records

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 on his application that he served in Operation Iraqi Freedom and suffers from PTSD. He states in his self-authored letter:

a. He requests an upgrade of his under honorable conditions (general) discharge to honorable. He served in the Army for 12 years with three combat tours in Iraq. He always performed his duties and provided outstanding leadership as a noncommissioned officer (NCO) in the spirit of excellence.

b. During the time of his discharge, he was in the middle of a legal civil criminal case in which he was the subject of serious accusations, which impacted his life in a very negative way. Not being able to spend time with his children was hard for him and made it difficult to focus on tasks at work. The NCOs and commissioned officers in his unit, at the time, did not show any concern about his situation and did not care that he was under a lot of mental stress because of the possibility of him doing years in jail due to the accusations.

c. After he was discharged from the Army, he ended up homeless. It was hard to get a job to sustain a living. Three months after he was discharged, the civil court case was dismissed in the applicant's favor after four years of going back and forth to court. He enrolled in the homeless veteran's program known as Buffalo Valley. It was a two-year program in which he had two years of rehabilitation, while living in a Veteran's shelter home, in which he had to follow program requirements, which was attending alcoholics anonymous meetings weekly, even though alcohol or drugs was not the case for him, and gain employment.

d. During his time in the rehabilitation phase, he successfully attained an Associate Degree in Human Resource Management. He was able to spend time with his children, obtained gainful employment, and he also became an active member of the church and became a licensed minister. After completing the two-year program, he was able to live his life as a civilian and stand on his own two feet. Now, he is an Ordained Elder of the church. He has a Bachelor Degree in Business Management, is a recipient of a Mayor's Proclamation of Clarksville, Tennessee, is married with six children, and he is a published author of his first book entitled *Selfless Work* and co-author of two collaborations books *50 Magnificent Men* and *It Cost Me Everything*.

i. He is making this request due to an unfair characterization and judgment about his performance, while he was on active duty. The Army should honor his request due to a biased judgment without knowing the outcome of the [criminal] case.

3. The applicant provides the following documents:

a. Letters of Support, all letters are available for the Board's consideration. They state in pertinent part:

(1) From Sergeant First Class (SFC) N- R. H- who has known the applicant for 20 years to include during and after his time in the military. The applicant has excellent character and strong work ethic. During the time of his discharge, he was dealing with family issues that were being addressed, at that time. The SFC met the applicant when the applicant enlisted in to the Illinois Army National Guard (ARNG). The SFC was the applicant's squad leader and platoon sergeant. He never had to discipline the applicant for any type of misconduct. The applicant's time as a civilian has created a time of personal and professional growth. He has remarried, started a family, achieved two college degrees, became a published author, and is currently employed. He is also active within his church and participates in activities that include volunteering at homeless shelters, field trips, and church decorations.

(2) From Sergeant Major (SGM) P- B-I. H-, dated 5 January 2023, it was great honor for the SGM to speak on behalf of the applicant. Having known the applicant through the hardest of the SGM's four combat deployments, the SGM wholeheartedly

vouched for the applicant's excellent character and strong work ethic. The applicant was the one person in the battalion S-1 shop who always assisted every Soldier no matter how much he had on his plate. The SGM and applicant served together, during the height of the insurgency in Southwest Baghdad in 2005-2006 in an area known as the "Triangle of Death". The applicant did not have to go to the outposts but he wanted to go to take care of the SGM's Soldiers' administrative and pay issues. The applicant put his life on the line to take care of Soldiers on the front line. Many times the applicant would go on missions serving as an Infantryman. The SGM's men and the SGM trusted the applicant. They knew the applicant would fight right by their side. While not an Infantryman, they knew the applicant would put his life on the line for them. The SGM thinks the applicant's service to his country, prior to his misconduct and the years following, serving as a good citizen for his community, is enough to upgrade his discharge. The SGM asks the Board to please upgrade his discharge. The applicant served with honor and the country owes it to him.

(3) From Command Sergeant Major (CSM) (Retired (R)) W- S-, dated 21 February 2023, the CSM (R) thanks the Board for the opportunity to speak on the applicant's behalf to describe his outstanding character and to request an upgrade of the applicant's current discharge status to honorable. The CSM (R) first met the applicant in 2005 before deploying to Iraq. He and the applicant had many interactions in preparation for the deployment. The applicant stood out from his peers in his appearance, professionalism, knowledge of his job, and attention to detail. In the CSM (R)'s opinion the applicant thrived in Iraq in the Triangle of Death. The applicant excelled, while serving in combat. The applicant understood the irregular work hours and demands of Soldiers, while downrange, and did his best to accommodate their schedules. He would go to the Soldiers if they could not get to him. He was an integral part of the process of ensuring all Soldiers had the correct paperwork and were present before taking off for Environment Leave, a huge motivation for all Soldiers. He pulled security at the entrance of their Forward Operating Base. Regardless of the task, he attacked each responsibility with the same high level of effort and his performance was noticed by the CSM (R)'s Soldiers who were in the guard tower next to the entrance the applicant guarded. The CSM (R) strongly recommends upgrading the applicant's discharge to honorable. Overall, his performance was outstanding and consistent.

(4) From Lieutenant Colonel (LTC) M-J. T-, dated 24 February 2023, who was the officer in charge, when the applicant was assigned to the battalion S-1. The applicant was a new and young Soldier who was developing his knowledge and skills in the Army human resources support arena. The applicant made up for the lack of experience with enthusiasm and willingness to learn, always riding shotgun with his NCOs to develop his skill set and never hesitated to utilize the available resources and personnel to improve personally and professionally. While deployed, the applicant supported over 800 assigned and attached personnel. Despite the battalion experiencing a noteworthy high number of casualties and consistent emotional pressure

on the S-1 shop to conduct human resource support to casualty operations, the applicant always displayed a mature, professional and emotionally intact attitude, despite knowing the casualties included his peers and unfortunate friends he had made in the battalion. The LTC never observed or heard of any actions, conduct, or behavior that would bring into question the applicant's character.

(5) From LTC (R) F- W-, dated 24 February 2023, who wholeheartedly without reservation recommends to the Board to upgrade the applicant's discharge from under honorable conditions (general) to honorable. The LTC (R) and applicant served together from 2004 through 2006 including a full year deployment. The applicant was one of the several talented and rugged Soldiers who they called upon routinely to perform combat duties, against a determined enemy. While the applicant's primary duty was serving in the Personnel Action Center, he and other Soldiers served on guard posts on the perimeter and secured patrols in their Area of Operation. The applicant was a junior Soldier, and the LTC (R) remembers him always as ready to act on behalf of his fellow Soldiers in the office and on the battlefield, and to act in a manner that was beyond reproach. As the Battalion Executive Officer, the LTC (R) realized early that their battalion's success and sometimes their survival was in the hand of men like the applicant. The LTC (R) was grateful the applicant was in his unit serving their Soldiers. It is the LTC (R)'s opinion the applicant is more deserving of an honorable discharge and he would ask for the Board's thoughtful consideration in the matter.

(6) From CSM (R) W-D. W-, who without reservation vouches for the applicant's character and work ethic. The CSM (R) first met the applicant in the S-1 shop where he was a regular go-to person for any assistance needed. They served together during a particularly challenging deployment. The applicant took the initiative to frequently go out to the more austere outposts ensuring Soldiers had their administrative and pay issues resolved. He was a trusted member of the unit and served his country with honor. At the time of his separation, the applicant was dealing with some family issues that resulted in legal matters of the courts and affected his normally professional demeanor. He had a hard time maintaining his good character, while dealing with that and fighting against poor leadership. Given that this was not the applicant's normal behavior, the CSM (R) requests the Board please consider the sum of his strong work ethic prior to and the efforts he has made in being a good citizen, since leaving the military to upgrade his discharge.

(7) From LTC (R) S- M. U-, dated 7 April 2023, who offers his strongest endorsement for the applicant's request for a discharge upgrade and he recommended that the Board amend the applicant's discharge to honorable. The LTC (R) served with the applicant from 2004 through 2007. For much of that time, the LTC (R) had the honor to serve as the applicant's company commander, which resulted in daily interactions with the applicant. The LTC (R) always found the applicant to be a Soldier of high character who lived the Army values both in and out of uniform. The LTC (R) departed

the area and returned to Fort Campbell in 2015 and was pleased to find the applicant continued to serve the community in the ministry. The applicant upheld the oath he took to our Nation and continues to serve as a steward of the military profession. The LTC (R)'s sincere hope is that the Board considers this along with his endorsement of the applicant's request to upgrade his discharge to honorable.

b. VA medical records, which show the applicant's problem list and diagnostic impressions. The applicant suffered from anxiety, depression, gastro-esophageal reflux disease, homelessness, irritable bowel syndrome, migraines, PTSD, pain in both knees, sensorineural hearing loss, tinnitus, vitamin D deficiency, dyssomnia, and pain in joint involving shoulder region. He was diagnosed with PTSD, chronic, secondary to military combat; insomnia secondary to known physiologic condition; narcolepsy; and psychotic disorder. The medical documents are available for the Board's consideration.

4. The applicant's service record contains the following documents:

a. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant had honorable active duty service, as an enlisted ARNG Soldier, from 27 February 2002 through 10 July 2002. He was ordered to active duty to complete active duty training.

b. DD Form 214 shows the applicant had honorable active duty service, as an enlisted ARNG Soldier, from 23 January 2003 through 20 August 2003. He was ordered to active duty in support of Operation Enduring Freedom.

c. NGB Form 22 (Report of Separation and Record of Service) shows the applicant served honorably as an enlisted Soldier in the ARNG from 24 May 2001 through 29 June 2004. He was discharged for enlistment in any component of the Armed Forces.

d. DD Forms 4 (Enlistment/Reenlistment Document Armed Forces of the United States), show the applicant enlisted in the Regular Army on 30 June 2004 and reenlisted in the Regular Army on 19 December 2005 and on 14 March 2008.

e. DA Forms 2166-8 (NCO Evaluation Report) show the applicant was rated as:

(1) From 1 September 2007 through 31 August 2008, excellence in competence and success in physical fitness and military bearing, leadership, training, and responsibility and accountability. His rater stated he was fully capable, and his senior rater stated continue to groom for positions of increased responsibility and send to the staff sergeant (SSG) promotion board after successful completion of the Warrior Leaders Course.

(2) From 1 September 2008 through 31 August 2009, success in competence, physical fitness and military bearing, leadership, training, and responsibility and accountability. His rater stated he was fully capable, and his senior rater stated promote with peers when overall duty performance has improved.

(3) From 1 September 2009 through 1 February 2010, success in competence, physical fitness and military bearing, leadership, training, and responsibility and accountability. His rater stated he was fully capable, and his senior rater stated promote with peers and potential to excel at the next level with proper mentorship.

(4) From 2 February 2010 through 1 February 2011 needs some improvement in competence, leadership, training, and responsibility and accountability and success in physical fitness and military bearing. His rater stated he was marginal, and his senior rater stated does not possess the qualities necessary to advance to the next level and allowed the pressure of family issues to affect his performance.

(5) From 2 February 2011 through 1 February 2012 success in competence, leadership, training, and responsibility and accountability and excellence in physical fitness and military bearing. His rater stated he was fully capable, and his senior rater stated promote to SSG with peers and can be a great asset to any unit.

(6) From 2 February 2012 through 1 February 2013 needs some improvement in competence, leadership, training, and responsibility and accountability and excellence in physical fitness and military bearing. His rater stated he was marginal, and his senior rater stated do not promote and lacks the potential to be placed in positions of increased responsibility.

f. DA Forms 4856 (Developmental Counseling Form) show the applicant was counseled on:

(1) 30 September 2011, to inform the applicant of his responsibility to manage his financial affairs and the potential consequences of poorly managing his finances. The applicant agreed with the counseling and signed the form.

(2) 21 October 2011, regarding managing his finances. The applicant agreed with the counseling and signed the form.

(3) 8 November 2011, the applicant was a sergeant and was doing things of a brand new private and they would no longer be tolerated. The applicant did not sign the form.

(4) 29 March 2012, for failing to report, unsatisfactory/substandard performance, and disrespect to an NCO. The applicant did not make a selection regarding agreement with the counseling but signed the form.

(5) 26 July 2012, debt avoidance counseling. The applicant agreed with the counseling and signed the form.

(6) 18 September 2012, to discuss the applicant's recent actions that continued to affect the overall effectiveness of the office and the applicant's performance as an NCO. The applicant agreed with the counseling and signed the form.

(7) 17 October 2012, to discuss the applicant's lack of responsibility for taking care of his finances. The applicant agreed to the counseling and stated he agreed to pay \$162.93 until the balance was paid in full. The applicant signed the form.

(8) 8 November 2012, for failing to report an incident, making a false statement, for walking and talking on his cell phone while in uniform, and failing to maintain an active driver's license. The applicant agreed to the counseling and signed the form.

(9) 14 January 2013, to inform the applicant of his responsibility to manage his financial affairs, the potential consequences of poorly managing finances, and to help the applicant develop a plan of action to resolve his financial problems. The applicant agreed with the counseling and signed the form.

g. Criminal Investigation Division Report, dated 1 November 2011, shows the applicant was named as the subject of the offenses of rape, sexual battery, and solicitation of a minor when he engaged in unlawful sexual acts with his then stepdaughter. The Investigation by Clarksville Police Department determined the applicant committed the offenses of rape, sexual battery, and solicitation of a minor when he engaged in unlawful sexual acts (oral sex) on his then stepdaughter, (age 13). The entire investigation report is available for the Board's consideration.

h. DA Form 3822 (Report of Mental Status Evaluation) dated 16 November 2011 shows the applicant was cleared for administrative separation but was unfit for duty due to personality disorder other mental condition that did not amount to a medical disability. This document further noted that the applicant could understand and participate in administrative proceedings, he could appreciate the difference between right and wrong, and met medical retention requirements. The applicant had a condition that was likely to impair his judgment or reliability to protect classified information. It was the professional opinion of the doctor that the applicant would not respond to command efforts at rehabilitation.

i. DA Form 2808 (Report of Medical Examination), dated 25 July 2012 and DA Form 2807-1 (Report of Medical History) does not indicate the applicant had any medical or mental health conditions.

j. A letter from Consumer Adjustment Corporation, a collection agency, dated 9 October 2012, shows the applicant's indebtedness. The entire letter and attachments are available for the Board's consideration.

k. A letter to the applicant's unit commander regarding the applicant's Military Star card, dated 30 December 2012, shows the applicant had a debt. The entire letter is available for the Board's consideration.

l. Memorandum subject Separation Under Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) Chapter 14-12(b), Patterns of Misconduct, dated 19 March 2013 shows the applicant's commander was initiating separation of the applicant for

- engaging in a sexual act with a child who had attained the age of 12 years but had not attained the age of 16 years.
- for being indebted to the Exchange Credit Program
- making a false official statement
- for being indebted to the Consumer Adjustment Corporation on two occasions
- failing to be at his appointed place of duty, at the time prescribed on three occasions.
- being derelict in the performance of his duties on three occasions
- disobeying a senior NCO
- leaving his appointment place of duty.

The applicant's commander was recommending the applicant receive an under honorable conditions (general) discharge. The intermediate commander(s) and separation authority were not bound by the commander's recommendation. On 19 March 2013, the applicant acknowledged receipt of the initiation of separation.

m. On 26 March 2013, the applicant stated he had been afforded the opportunity to consult with appointed military counsel. He voluntarily declined the opportunity. The applicant understood the basis for the action to separate him for patterns of misconduct, the rights available to him and the effect of waiving his rights. The applicant stated statements on his own behalf would not be submitted.

n. The applicant's chain of command recommended his separation for patterns of misconduct with an under honorable conditions (general) discharge. On 3 April 2013, the appropriate approval authority approved the separation of the applicant with the issuance of an under honorable conditions (general) discharge.

o. On 18 April 2013, the applicant was discharged accordingly. His DD Form 214 shows he was discharged under the provisions of chapter 14-12b of AR 635-200 with an under honorable conditions (general) characterization of service. He completed 8 years, 9 months, and 19 days of active duty service with 11 months and 12 days of prior active duty service. He had continuous honorable service from 30 June 2004 through 13 March 2008. He had service in Iraq from 28 September 2005 through 24 September 2005 and 13 October 2007 through 13 November 2008. He was separation code of JKA and a reentry code of RE 3. He was awarded or authorized the:

- Iraq Campaign Medal with Two Campaign Stars
- Army Commendation Medal (3rd Award)
- Army Achievement Medal (2nd Award)
- Meritorious Unit Commendation
- Valorous Unit Award
- Army Good Conduct Medal (3rd Award)
- National Defense Service Medal
- Armed Forces Expeditionary Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- NCO Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (2nd Award)
- Armed Forces Reserve Medal with M Device
- Combat Action Badge

p. The applicant does not provide any documentation nor does his service record show any military or final civilian court action regarding allegations of sexual misconduct with a minor or that the charges were substantiated or dismissed.

5. Based on the applicant's assertion he suffered from service-connected PTSD and the documentation he provided showing a diagnosis of PTSD and other mental health issues, the ARBA Medical Section provided a medical review for the Board's consideration.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge. He contends he experienced PTSD 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 into the ARNG on 27 February 2002. He then enlisted in the Regular Army on 30 June 2004; 2) The applicant deployed to both Afghanistan and Iraq (x2); 3) On 19 March 2013, the applicant's commander initiated separation of the applicant for (1) engaging in a sexual act with a child; (2) for being indebted to the Exchange Credit Program; (3) making a false official statement; (4) for being indebted to the Consumer Adjustment Corporation on two occasions; (5) failing to be at his appointed place of duty, at the time prescribed on three occasions; (6) being derelict in the performance of his duties on three occasions; (7) disobeying a senior NCO; and (8) leaving his appointment place of duty; 4) The applicant was discharged on 18 April 2013, Chapter 14-12(b), Patterns of Misconduct. He was issued an under honorable conditions (general) discharge.

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

d. The applicant asserts he was experiencing PTSD while on active service, which mitigates his misconduct. In addition, he reported experiencing significant family and legal stressors, which also impacted his behavior. The applicant was initially seen by behavioral health services after he self-referred himself due to being arrested for assaulting his wife in late June and early July 2007. He also reported financial problems at that time. He was diagnosed with a marital problem and referred to budget counseling and marital counseling with the applicant's Chaplain. After a consult was received in November 2008, attempts (x3) were made by the Family Advocacy Program (FAP) to contact the applicant and his wife to start services. There was no response from the applicant. Prior to his third deployment in March 2009, the applicant was assessed as part of Soldier Readiness Processing (SRP). The applicant was not diagnosed with a psychiatric condition, but he and his wife were again referred to marital counseling at FAP. The applicant engaged in one appointment before terminating counseling.

e. On 18 August 2010, FAP was contacted about allegations of sexual abuse of the applicant's eldest stepdaughter. The applicant began regular engagements with FAP in regard to this allegation and eventual charges of child sexual abuse. He was enrolled in Anger Management Group and Parenting Group. The applicant consistently attended these group sessions and completed the programs. On 19 November 2010, the applicant was seen as a walk-in appointment at behavioral health services. He was requesting a "psycho-sexual evaluation per the request of the court due to allegations of sexual assault." The applicant was informed this type of service was not a service provided by the military behavioral health clinic. He was given guidance on how to obtain this evaluation from a civilian provider. The applicant was seen for an individual appointment at FAP in December 2010 and to provide the psycho-sexual evaluation for review. There was evidence the applicant attended sessions of individual therapy at

FAP and was also receiving individual psycho-sexual therapy from a civilian behavioral provider. On 16 November 2011, the applicant underwent a mental status evaluation as part of his Chapter proceedings. He was not diagnosed with a psychiatric condition, and he was cleared to be administratively separated for a Chapter 14.

f. A review of JLV provided evidence the applicant has been diagnosed and treated for service-connected PTSD (70%) since 2013 due to his experiences in combat.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient 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, there is sufficient evidence the applicant was diagnosed with service-connected PTSD by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant reports experiencing PTSD during active service, and he has been diagnosed with service-connected PTSD since 2013.

(3) Does the condition experience actually excuse or mitigate the discharge? Partially, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. There is a nexus between PTSD and the applicant's misconduct of failing to be at his appointed place of duty, being derelict in the performance of his duties, disobeying a senior NCO, and leaving his appointment place of duty. Erratic and avoidant behaviors like these types of misconduct can be a natural sequelae to PTSD. However, there is no nexus between his PTSD and the applicant's misconduct of sexual abuse of a child, making a false statement, and repeated indebtedness in that: 1) these types of misconduct are not a part of the natural history or sequelae of PTSD; 2) PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends PTSD resulted in his misconduct, and per the Liberal Consideration Policy, his contention is sufficient for consideration.

BOARD DISCUSSION:

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 the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The applicant was discharged from active duty due to misconduct – pattern of misconduct (engaging in a sexual act with a child who had attained the age of 12 years but had not attained the age of 16 years; indebtedness, making a false official statement, failing to

be at his appointed place of duty, dereliction in the performance of his duties, and disobeying orders). He received a general, under honorable conditions discharge. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the advising official. The Board concurred with the medical reviewer's finding although there is a nexus between PTSD and the applicant's misconduct of failing to be at his appointed place of duty, being derelict in the performance of his duties, disobeying a senior NCO, and leaving his appointment place of duty; however, there is no nexus between his PTSD and the applicant's misconduct of sexual abuse of a child, making a false statement, and repeated indebtedness. Additionally, the applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.

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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, 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. AR 635-200, in effect at the time sets policies, standards, and procedures to insure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 pattern of misconduct consisting of discreditable involvement with civil or military authorities, conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct violative of the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time honored customs and traditions of the Army.

3. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), prescribes the specific authorities, reasons for separating Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JKA is used for discharge for misconduct.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. 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.

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; traumatic brain injury (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on 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.

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

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

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

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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//