

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2024

DOCKET NUMBER: AR20230010392

APPLICANT REQUESTS: in effect

- recall from retirement to correct purported errors in her military records regarding her discharge due to irregularities in the Integrated Disability Evaluation System (IDES) process
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record) (online)
- Memorandum, Subject: Request for Retiree Recall
- Issues Submitted to the U. S. Army Physical Disability Agency (USAPDA)

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 states she was not afforded a proper Medical Evaluation Board (MEB) and was never given the chance to out process the Army due to a disconnect in orders and discharge stations. Her selections at the start of the IDES process were not considered at the conclusion of the MEB and her MEB counsel was ignored by both the Walter Reed Primary Care Manager (PCM) and the PDA during the Physical Evaluation Board (PEB) process. She has exhausted all avenues of correction and finally found the right approach through talking to the former Air Force BCMR Director, ML\_\_\_. He said there was a definite injustice, and the ABCMR would need to bring her back on active duty to make the corrections since they were extensive. Also, she needed time for her brain to heal so she could put all the pieces together. She has had zero advocacy in this process.
3. The applicant provides:

a. Memorandum, Subject: Request for Retiree recall, 17 October 2018, by the applicant shows a request to recall to active duty the applicant submitted to reinstate a medical separation. She states:

(1) In July 2015, she was diagnosed with Multiple Sclerosis (MS) and in September 2015, began medical separation procedures per the regulations listed above, which were improperly executed throughout, to include out-processing the Army. This was due to a lack of due diligence of both medical personnel at Walter Reed National Military Medical Center (WRNMMC) and the PEB and the PDA.

(2) The ABCMR informed her that she would need to be assessed on active duty to correct all the issues. None of the following agencies can resolve any issue without her being on active duty: Human Resources Command, Office of the Chief, Army Reserve/US Army Reserve Command (USARC). Once assessed, she should be assigned to the WRNMMC Warrior Transition Unit (WTU) in order to complete another medical board that will evaluate all conditions and propose correct ratings. Once the medical board is completed correctly, she should out-process from the Ft. Bragg Demobilization site.

(3) Prior to her leaving the military, there were numerous issues that were not resolved medically, financially, and for out-processing the Army, detailed further in enclosure 2 (below):

a. The medical board was derailed by her PCM at the WRNMMC, initiating immediate retirement proceedings.

b. The PEB and the PDA failed to conduct due diligence in resolving all service-related issues and prevented her from out processing the Army.

c. By her retirement date on 16 October 2016, service-related conditions were still not evaluated and she was unable to work. Had she been assigned to the WTU, they would have advocated on her behalf for evaluation, diagnoses of all outstanding conditions, and continued care until the brain swelling resolved.

d. The retirement benefits and ratings are incorrect for both the Army and the Department of Veterans Affairs (VA).

(4) According to officials at various DoD agencies, there has been a clear violation of public law, policies and regulations, and benefits. She has been advised to hire a lawyer on a contingency basis in order for file a congressional and sue the government. She'd like to resolve this at the Army level if at all possible.

b. A document in which the applicant lists issues that she submitted to the U. S. Army Physical Disability Agency (USPDA) shows the purpose and contentions the applicant puts forth regarding her retirement, an out-processing timeline, and related issues (complete information available for review):

- contusion in transition process
- chest pains while on active duty and not allowed to evaluate
- extenuating circumstances in out process, due to health
- Army responsibilities not met before separating her
- accession back on Active duty (retiree recall) while the army is fixing the issues

4. The applicant's service records show:

a. DA Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the USAR on 22 November 2002.

b. The applicant entered active duty for training on 7 September 2003. She was honorably released from active duty for training on 10 December 2003 and transferred to the USAR. Her DD Form 214 (Certificate of release or Discharge from Active Duty) shows she completed 3 months, and 4 days of net active service.

c. DA Form 71 (Oath of Office-Military Personnel) shows the applicant was commissioned as a Reserve Commissioned Officer on 11 December 2003.

d. The applicant entered active duty on 30 August 2004. She was honorably released from active duty on 24 January 2005 and transferred to the USAR. Her DD Form 214 shows she completed 4 months, and 25 days of net active service.

e. Orders 245-0025, 2 September 2009, released the applicant from active duty, not by reason of physical disability with an effective date of 4 October 2009.

f. Her Officer Record Brief shows she entered active duty on 10 June 2013.

f. Orders 270-0004, 26 September 2016, reassigned the applicant for separation processing. Her retirement and separation date was listed as 15 October 2016.

h. On 15 October 2016, she was honorably retired from active duty and transferred to the USAR. Her DD Form 214 shows she was retired under the provisions of Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), Chapter 4 for Disability, Permanent (Enhanced). She received a separation code of "SEJ". She completed 3 years, 4 months, and 6 days of

net active service with 4 years, 11 months, and 2 days of total prior active service and 5 years, 7 months and 16 days of total prior inactive service.

h. DA Form 5016 (Chronological Statement of Retirement Points), 26 October 2016 shows her qualifying time for retirement was 13 years, 10 months and 24 days, with a total points creditable of 3794.

i. The applicant's available record is void of any documentation to show she received a MEB, PEB or IDES processing. In addition, her record is void of her separation packet containing the specific facts and circumstances surrounding her separation.

5. Although the applicant submitted a prior request to the ABCMR in Docket Number AR20160015095, on 10 April 2018, she withdrew her application.

6. In the processing of this case an advisory opinion was obtained, 27 December 2023, from the USPDA, Legal Advisor who opined in pertinent part:

a. The applicant requests to be recalled from retirement to correct purported errors in her military records, and irregularities in the IDES process. Based on the evidence presented, we recommend denial of the request for the reasons set forth in more detail, below.

b. Background: The MEB for the applicant convened on 1 December 2015. The MEB thoroughly reviewed 14 medical conditions, including MS and referred her to a PEB. She was represented by legal counsel during the MEB process. On 9 February 2016, the applicant concurred with the MEB's findings and recommendation. An Informal PEB was convened on 3 May 2016. The Informal PEB found the applicant to be unfit for MS with a disability rating of 30 percent. On 16 May 2016, the applicant non-concurred, requested to personally appear before a formal PEB and filed a written appeal through counsel contending that she was also unfit for fibromyalgia. On 1 June 2016, the PEB returned the file to the MEB to further consider the applicant's diagnosis of fibromyalgia. On 8 June 2016, the MEB returned the case file to the PEB, reflecting that the MEB proceedings, DA Form 3947, were amended to include fibromyalgia as a medical condition. On 2 August 2016, she withdrew her request for a formal PEB. However, on 22 September 2016, she requested, through her assigned MEB legal counsel, to be removed from transition processing due to an unspecified medical condition discovered 1 week prior. The PDA consulted with medical personnel who determined that, based on the evidence presented, there was no basis for further IDES evaluation. The request was therefore denied, and the applicant was separated on 6 November 2016, and placed on the Retired List the following day.

c. Analysis: Army Regulation (AR) 15-185, para. 2-9, states that, with respect to the allegations of errors related to military records, there is a presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Additionally, under AR 15-185, para. 2-4, applicants must file an application for the correction of military records within 3 years after an alleged error or injustice is discovered or reasonably should have been discovered. The ABCMR may deny an untimely application. The ABCMR may excuse untimely filing in the interest of justice. The applicant has failed to carry her burden of demonstrating error or injustice, or that there is otherwise reasonable justification for her untimely application.

d. With respect to matters within the jurisdiction of the PDA, the record reflects that all of the evidence was carefully reviewed at each level of the IDES process. The applicant concurred with the MEB findings that recommended referral of her MS condition to the PEB. Following the IPEB, she initially non-concurred but later withdrew her request for an FPEB. The record further reveals that her various contentions that she made with the assistance of counsel, such as requesting consideration of her fibromyalgia condition, and being removed from transition processing to permit further evaluation of her then-newly discovered medical condition, were promptly and diligently considered. This includes the PEB returning the case to the medical training facility in order for them to consider FM as a medical condition, ultimately resulting in amendment to the MEB proceedings. The evidence also shows that the PDA consulted with medical personnel regarding the issue of whether additional medical evaluation was warranted. Additionally, in her own words, she was afforded extended time by the PDA to out-process.

e. In summary, the applicant has not demonstrated that there were errors committed by the PDA during the IDES process. She has further failed to adequately demonstrate that her delay in filing an ABCMR application is justified. As for her alleged errors, assuming for purposes of argument that she has proven that any such errors exist, she has not shown that recall from retirement is necessary to correct the record.

f. Conclusion: Based on the evidence presented, they recommended denying the applicant's request.

7. On 20 October 2024, the applicant was provided with a copy of the advisory opinion with an opportunity to respond. No response was received as of 3 November 2024.

8. By Army Regulation 15-185, the ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

## 9. 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 (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and 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 essentially requesting an increase in her military disability rating: She states in part:

"In July 2015, MAJ [Applicant] was diagnosed with Multiple Sclerosis and in September 2015, began medical separation procedures per the regulations listed above, which were improperly executed throughout, to include out-processing the Army.

This was due to a lack of due diligence of both medical personnel at Walter Reed National Military Medical Center (WRNMMC) and the Physical Evaluation Board (PEB) and Physical Disability Agency (PDA)."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her DD 214 shows the former USAR Officer entered active duty on 10 June 2013 and was permanently retired for physical disability on 15 October 2016 under provisions in chapter 4 of AR 635-40, Physical Evaluation for Retention, Retirement, or Separation (20 March 2012).

d. A Soldier is referred to the Integrated Disability Evaluation System (IDES) when they have one or more conditions which appear to fail medical retention standards reflected on a duty limiting permanent physical profile. At the start of their IDES processing, a physician lists the Soldiers referred medical conditions in section I the VA/DOD Joint Disability Evaluation Board Claim (VA Form 21-0819). The Soldier, with the assistance of the VA military service coordinator, lists all other conditions they believe to be service-connected disabilities in block 8 of section II of this form, or on a separate Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

e. Soldiers then receive one set of VA C&P examinations covering all their referred and claimed conditions. These examinations, which are the examinations of record for the IDES, serve as the basis for both their military and VA disability processing. The medical evaluation board (MEB) uses these exams along with AHLTA encounters and other information to evaluate all conditions which could potentially fail retention standards and/or be unfitting for continued military service. Their findings are then sent to the physical evaluation board for adjudication.

f. All conditions, both claimed and referred, are rated by the VA using the VA Schedule for Rating Disabilities (VASRD). The physical evaluation board (PEB), after adjudicating the case, applies the applicable ratings to the Soldier's unfitting condition(s), thereby determining his or her final combined rating and disposition. Upon discharge, the Veteran immediately begins receiving the full disability benefits to which they are entitled from both their Service and the VA.

g. On 15 October 2006, the applicant was referred to the IDES for multiple sclerosis. The applicant claimed 18 additional conditions on a separate Statement in Support of Claim (VA Form 21-4138). A medical evaluation board (MEB) determined the applicant's multiple sclerosis was the sole condition to fail medical retention standards. They determined 13 additional conditions met medical retention standards.

h. The applicant requested an Impartial Medical Review of her MEB, requesting that three conditions be the focus of the review: Bilateral pes planus (flat feet), bilateral hallux valgus (bunions), and "head injury."

i. In his 8 December 2015, the reviewing physician concluded no changes were warranted:

"I have made a thorough and comprehensive review of MAJ [Applicant]'s Medical Evaluation Board (MEB) documents, including the available medical records, the Compensation and Pension Examination by the Department of Veterans Affairs, and the Narrative Summary (NARSUM). In addition to my comprehensive review, per the IMR request, my review also focused specifically on Bilateral pes planus, Bilateral hallux valgus and Head injury.

I find the NARSUM adequately and appropriately reflects the spectrum of injuries, illness, and limitations."

j. The applicant concurred with the MEB's findings and recommendations on 9 February 2016, and her case was forwarded to a physical evaluation board.

k. The PEB noted the applicant had recently been diagnosed with fibromyalgia and requested the MEB opine of this condition. In their 28 January 2016 response, the chief of medical boards informed the PEB there were no documented limitations for this condition, the recent diagnosis had not failed treatment, and it was medically acceptable IAW paragraph 3-41d of AR 40-501, Standards of Medical Fitness (4 August 2011). This paragraph states fibromyalgia only fails medical retention standards “When severe enough to prevent successful performance of duty.”

l. On 3 May 2016, the applicant’s informal physical evaluation board (PEB) found her multiple sclerosis was the sole medically unfitting condition for continued service. They determined the remaining 13 conditions to not be an unfitting for continued service. On 16 May 2016, after being counseled on the PEB’s findings and recommendation by her PEB Liaison Officer (PEBLO), she non-concurred with the PEB’s findings and recommendation, requested a formal hearing with the assistance of regularly appointed counsel, and declined to request a VA reconsideration of her ratings.

m. Through counsel, the applicant requested an informal reconsideration requesting her fibromyalgia also be determined unfitting for continued service. In their informal reconsideration of the case, the PEB maintained the recently diagnosed condition was not unfitting for continued service:

“In your counsel’s 16 May 2016 written appeal, you request the Board find your fibromyalgia condition unfitting.

The condition was diagnosed in December 2015. The MEB found that this condition met retention standards. Per 12 January 2016 VA C&P assessment, the condition is not refractory to treatment, no medication is required for treatment.

Internal Medicine clinic visit dated 11 May 2016 indicates your symptoms include “stable pains and weakness”, although the latter is more likely associated with multiple sclerosis. There has been 1 subsequent treatment by acupuncture on 04 May 2016. It is not clear that this condition has reached MRDP [medical retention determination point, i.e., has failed treatment and fails retention standards] yet. One temporary profile dated 20160511 was noted and one permanent profile with the same date lacks an approving authority signature. The Board notes the absence of additional sufficient medical or performance evidence warranting a change to the informal findings.

As such, the Board reaffirms the findings of the informal board. Consistent with your earlier election, you will be scheduled for a formal hearing and notified by separate correspondence of the date, time, and location.”

n. Following this reconsideration, the PEB applied the VBA derived rating of 30% and recommended she be permanently retired for physical disability.

o. On 2 August 2016, the applicant concurred with the informal PEB’s findings and recommendation and canceled the scheduled formal hearing. The PEB approved the requested cancelation of the formal PEB and her PEB findings and recommendation were approved for the Secretary of the Army on 8 August 2016.

p. JLV shows he has been awarded multiple VA service-connected disability ratings, including the 30% rating for multiple sclerosis and a 20% rating for fibromyalgia. 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.

q. It is the opinion of the ARBA medical advisor that neither an increase in her military disability rating nor a referral of her case back to the DES is warranted.

#### 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.

2. The Board carefully considered the applicant’s contentions, her record of service, her medical diagnoses, the record of MEB and PEB proceedings, the reason for her separation and the condition that resulted in her medical retirement. The Board considered the review and conclusions of the Agency medical advisor. The Board found that the applicant’s MEB and PEB determined only one medically unfitting condition for continued service. The PEB determined 13 other conditions that were not unfitting for continued service. The Board noted that 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



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 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

6. 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.

7. 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.

8. 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.

9. 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.

11. 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.

12. 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//