

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 April 2024

DOCKET NUMBER: AR20230010755

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service to under honorable conditions (general), and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief (31 pages), undated
- Enclosures, Table of Contents
 - Enclosure A, Drug Use and Substance Abuse in the Military
 - Enclosure B, "Other Than Honorable" Discrimination
 - Enclosure C, Post-Traumatic Stress Disorder (PTSD) in Kosovo Veterans
- Tabs, Table of Contents
 - Tab A, Photo, family rifle
 - Tab B, Photos (6), Kosovo war zone
 - Tab C, DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 3 February 2000
 - Tab D, Memorandum, Mental Status Evaluation, 13 January 2000
 - Tab E, self-administered Department of Veterans Affairs (VA) test for PTSD
 - Tab F, Photos (2), applicant's car
 - Tab G, omitted
 - Tab H, omitted
 - Tab I, Statement of support, applicant's father, 16-December 2022
 - Tab J, Statement of support, A.K., undated
 - Tab K, Letter, Staff Judge Advocate (SJA), Headquarters, 1st Armored Division, Fort Bliss, TX, 9 December 2022

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect:

a. He was born to be a Soldier. Every first-born Rxxxx male has served in the military. His father was in Army Special Operations Forces. He taught the applicant duty and honor. He excelled in basic training. After training as an Infantryman, he was transferred to Intelligence Analysis. He was stationed in Germany. Approximately six months later, he deployed to Kosovo.

b. They were "KFOR" peacekeeping in Tirana, Albania, and were "in country" for about four months. Everyone was secretive about their mission. Emotions ran high. Kosovo was brutal. Federal police were corrupt. He was depressed by the number of displaced locals. He saw desperate, starving people. He could not see how "we" did anything to help. There were no basic necessities. Most locals smoked hashish, and many did heroin. The local government was a joke. Gangs ran the country. He became disheartened. He saw second-rate preparation, negligence, deliberate dereliction, and selfishness. He saw sloppy, careless Soldiers, who were poorly trained, badly led, and unprepared to deploy. It made him very nervous. He was constantly scared for (and of) his fellow Soldiers. It broke his spirit to see officers and noncommissioned officers do incredibly stupid things.

c. He was one of a handful of "real Soldiers" in his unit. He was never sure whether a disaster was right around the corner. He lived in dread. It was a "Mickey Mouse" outfit. He saw weak leaders, who had no clue about how to be cool-headed, competent, or responsible. The senior leadership never took care of them. He did his best to take care of everyone. He acquired a fungal infection from feces which continues to cause him pain. He has to see a doctor every few years. He felt the peace keeping mission was a big failure. It was a show for politicians to look good.

d. Back in garrison, troops told crazy stories, self-congratulating themselves as heroes. Leaders papered over mistakes. He came back with "big-time" stress for which there was zero help. He abused liquor to try to relax. He formed a bond with a small circle of friends who looked out for each other as best they could. He was nervous, suspicious of others, angry, and edgy. His sleep was disturbed. He had bad nightmares. He fumed at the failure of those in charge. He was fed up with Army leaders, and it was hard for him to do his job. He got no mental health treatment. He cannot explain how

troubled his mind was. His love and loyalty for the Army was betrayed by the mass murder and rape of decent people in Albania.

e. He began to party at local bars. His drinking grew out of control. One night, a German national offered them "pot." They got high. He knew it was wrong, but he was frantic to escape his mental straitjacket. For a brief period of time, he foolishly smoked hashish, did lines of amphetamines, and took methylenedioxymethamphetamines (MDMA). For a little while, he could forget the tension from Albania. It continued for about eight to ten weeks. He tested positive on a urinalysis. They were brought to the Criminal Investigation Division (CID). Some of them confessed. He was placed on restriction and court-martialed. His defense did very little to help him. He signed the deal the trial counsel offered. He served his jail time at Mannheim and waited for his discharge.

f. Seeing an Army that had no honor shook his world. He had no leadership help, no one to calm the stress or fix the trauma. It is no excuse, but for a little while, drugs seemed to settle him down. He has spent a lot of time recuperating from his ugly war experience. He was forced to get clean and grow up. He still struggles with trusting anyone in authority. He tends to assume the worst. The smallest things cause him anxiety. He has excelled in all of the jobs he has held. He works out to deal with stress. His dream is to open a car repair shop. He customized his own car and would like to create and sell his own cars from scratch. Everything he has done since the Army has been to help him learn or improve a needed skill.

g. He cares deeply for his family and helps out as needed. He is ashamed of turning to drugs. The Army taught him a lot at an early age. He loves his country and wishes his time in service would have turned out better. The applicant notes PTSD as a condition related to his claim.

3. Counsel states, in effect, a discharge upgrade is merited. The applicant did drugs after combat service in a bad war with bumbling leadership and no aftercare. There was no psychiatric help or rehabilitation from deep depression/PTSD. Being denied the benefit of lawful drugs, the applicant self-medicated resulting in his banishment with an undesirable discharge. He experiences recurring/distressing past recollections, estrangement, difficulty sleeping, outbursts of anger, hypervigilance, and difficulty maintain effective work/social relationships. He is asking for a modest upgrade.

4. The applicant enlisted in the Regular Army on 8 January 1998 for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 11M (Mechanized Infantryman). The highest rank he attained was private first class/E-3.

5. A DD Form 2624 (Specimen Custody Document – Drug Testing), dated 7 September 1999, shows that a urine sample provided by the applicant on 16 August 1999, tested positive for amphetamine, methylenedioxyamphetamine (MDA), and MDMA.

6. A CID Report, dated 15 September 1999, shows the applicant and seven other Soldiers were the subjects of an investigation, at Baumholder, Germany, pertaining to the wrongful distribution, possession, and use of dangerous drugs, and the wrongful distribution, possession, and use of marijuana. The applicant was apprehended and interviewed by CID on 14 September 1999, at which time he confessed to using and sharing illegal drugs.

7. On 17 September 1999, the applicant was formally counseled by his commander for testing positive on a urinalysis for amphetamine, MDA, and MDMA, and for admitted possession, use, and distribution of marijuana and controlled substances. The applicant was ordered to not use, consume, or possess alcohol and/or illegal, controlled substances at any time. He was placed on driving and liberty restriction and referred to the Community Counseling Center. The applicant acknowledged understanding and a willingness to comply with the requirements.

8. The applicant's immediate commander notified the applicant on 3 December 1999 of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14-12c, by reason of serious misconduct. As the specific reason, the commander cited the applicant's wrongful use, possession, and distribution of marijuana, amphetamine, MDA, and MDMA.

9. On that same date, the immediate commander formally recommended the applicant's separation, prior to the expiration of his term of service, under the provisions of AR 635-200, Chapter 14-12c, with a service characterization of UOTHC.

10. A DD Form 2329 (Record of Trial by Summary Court-Martial) shows the following:

a. Before a summary court-martial on 10 December 1999, the applicant pled guilty to and was found guilty of the following charges/specifications: One specification each:

- wrongful use of marijuana and MDMA, on or about (o/a) 7 August 1999
- wrongful use of marijuana, amphetamine, and MDMA, o/a 13 August 1999
- wrongful use of amphetamine, MDA, and MDMA, o/a 14 August 1999
- wrongful distribution and the wrongful introduction of MDA and amphetamine, o/a 15 August 1999
- wrongful use of marijuana, and amphetamine, o/a 21 August 1999
- wrongful distribution of MDA, o/a 22 August 1999
- wrongful use of marijuana and amphetamine, on/a 12 September 1999

b. The applicant was sentenced to reduction to private/E-1, forfeiture of \$300.00 pay, confinement for 25 days. On 6 January 2000, the sentence was approved and ordered executed.

11. On 6 January 2000, the applicant acknowledged receipt of his immediate commander's notification to initiate separation action against him. He consulted with counsel and was advised of the basis for the contemplated separation action and its effects; of the rights available to him; and the effect of any action taken by him to waive his rights. He elected to submit a statement in his own behalf; however, the statement is not available for review in the applicant's service record.

12. The applicant underwent a mental status evaluation on 13 January 2000. In a memorandum to the commander, the evaluating provider noted the following:

a. The applicant admitted to periodic abuse of alcohol, cannabis, amphetamines, and MDMA. He was referred to Community Counseling Services after failing a urinalysis but did not attend due to unit requirements and demands.

b. The initial diagnostic impression was alcohol, amphetamine, cannabis, and hallucinogen abuse.

c. The mental status examination was within normal limits. There was no evidence of a serious psychiatric disorder. It was the provider's opinion the applicant's condition would be amenable to rehabilitative efforts by his command. He was psychiatrically cleared for administrative action deemed appropriate by his command.

13. A Standard Form (SF) 93 (Report of Medical History), dated 14 January 2000, and the corresponding SF 88 (Report of Medical Examination) show the applicant reported a history of several medical issues to include frequent trouble sleeping his "whole life." The examining provider determined he was medically qualified for separation.

14. On 18 January 2000, the applicant's intermediate commanders recommended approval of the separation action under the provisions of AR 635-200, Chapter 14-12c, further recommending a UOTHC characterization of service.

15. The separation authority approved the recommended separation action on 25 January 2000, waived further rehabilitative and counseling requirements, and directed the issuance of a UOTHC discharge.

16. The applicant was discharged on 3 February 2000. His DD Form 214 shows he was discharged under the provisions of AR 635-200, paragraph 14-12c (2), by reason of misconduct with an UOTHC characterization of service (Separation code JKK and

Reentry Code 4). He was credited with 2 years and 26 days of net active service. He was authorized or awarded the following:

- Army Commendation Medal
- Army Achievement Medal
- Army Service Ribbon

17. The applicant provides:

a. Enclosure A, Drug Use and Substance Abuse in the Military, provides statistics from a blog post at <https://armycourt martialdefense.info>, dated 28 May 2021, and the National Institute of Health, National Institute on Drug Abuse (NIH/NIDA), on the prevalence of drug use/abuse in the military.

b. Enclosure B, "Other Than Honorable" discrimination, provides two excerpts from Marcy L. Karin et. al, "Other Than Honorable" Discrimination, Case Western Reserve Law Review, Volume 67, Issue 1, (2016), and Vanessa Baehr-Jones, A "Catch-22" for Mentally Ill Military Defendants: Plea-Bargaining Away Mental Health Benefits, 204 Mil. L. Rev. 51.51, (2010) which discuss the implications of an other than honorable discharge and the underlying conditions which result in misconduct.

c. Enclosure C, PTSD in Kosovo Veterans, provides an excerpt of a study to explore the prevalence of PTSD in veterans eight years after war. Participants in the study were 687 veterans selected from six municipalities of Kosovo. Results indicated 11.2 percent (%) of veterans in Kosovo were suffering from PTSD even eight years after the war ended.

d. Tab A, a photo of the applicant's family rifle which shows his proud military heritage.

e. Tab B, six photographs of the "dismal situation in the war zone."

f. Tabs C and D, the applicant's DD Form 214 and Mental Status Evaluation have been summarized above.

g. Tab E, A self-administered VA test for PTSD shows the applicant's assessment of his physical, cognitive, emotional, and behavioral matters.

h. Tab F, shows two photos of the applicant's customized car.

i. Tab G and H have been omitted.

j. Tab I, in a statement of support, dated 16 December 2022, the applicant's father (a retired master sergeant) states, in effect, he taught his son to respect leadership and

to identify good and weak leadership. He grew up seeing how his father trained, deployed, and treated the people under his leadership. During his deployment, his son could not believe what he saw compared to what he had been taught. He lost trust in leadership and believed they did not care about the Soldiers. Nor did they try to protect them. He went from being a happy young man to one who cannot control his temper and has little patience for others. In employment, he questions his bosses' ability and believes management does not care for workers. He stresses about how the job is being run.

k. Tab J, in an undated statement of support, A. K., states, in effect, he served in the same unit as the applicant. They deployed to Kosovo together. It was a very unorganized ordeal, a haphazard operation. It was a battle every day to find people to assist and get information from. Morale was very low. The clay turned to mud after the first rain, and it smelled really bad. [The applicant] seemed tired and on edge. Coming back from Kosovo was relief. They spent many nights talking and drinking to get the bad days behind them. There was no support from the unit. [The applicant] seemed changed when they came back. He was more cautious and on edge. He would disappear alone to drive in his car and did not hang around as much as before.

l. Tab K, from the SJA, Headquarters, 1st Armored Division, Fort Bliss, TX, dated 9 December 2022, in response to an inquiry from Congresswoman A.C., shows that command climate survey records from Headquarters and Headquarters Company, 2nd Armored Brigade Combat Team, 1st Armored Division, from 1998 to 2000, were not located. Regulatory guidance requires surveys to be kept for five years. The records were unlikely to exist anymore.

18. Regulatory guidance provides when an individual is discharged under the provisions of AR 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. Characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

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

20. MEDICAL REVIEW:

a. The applicant requests upgrade his UOTHC discharge to Under Honorable Conditions, General. He contends his misconduct was related to PTSD.

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 Regular Army on 8 January 1998; 2) A DD Form 2624 (Specimen Custody Document – Drug Testing), dated 7 September 1999, shows that a

urine sample provided by the applicant on 16 August 1999, tested positive for amphetamine, methylenedioxyamphetamine (MDA), and MDMA; 3) A CID Report, dated 15 September 1999, shows the applicant and seven other Soldiers were the subjects of an investigation, at Baumholder, Germany, pertaining to the wrongful distribution, possession, and use of dangerous drugs, and the wrongful distribution, possession, and use of marijuana; 4) On 17 September 1999, the applicant was formally counseled by his commander for testing positive on a urinalysis for amphetamine, MDA, and MDMA, and for admitted possession, use, and distribution of marijuana and controlled substances. The applicant's immediate commander notified the applicant on 3 December 1999 of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 14-12c, by reason of serious misconduct; 5) Before a summary court-martial on 10 December 1999, the applicant pled guilty to and was found guilty of the wrongful use of marijuana and MDMA, on or about 7 August 1999, the wrongful use of marijuana, amphetamine, and MDMA, on or about 13 August 1999, the wrongful use of amphetamine, MDA, and MDMA, on or about 14 August 1999, the wrongful distribution and the wrongful introduction of MDA and amphetamine, on or about 15 August 1999, the wrongful use of marijuana, and amphetamine, on or about 21 August 1999, the wrongful distribution of MDA, on or about 22 August 1999, and the wrongful use of marijuana and amphetamine, on or about 12 September 1999; 6) On 18 January 2000, the applicant's intermediate commanders recommended approval of the separation action under the provisions of AR 635-200, Chapter 14-12c, further recommending a UOTHC characterization of service; 7) The separation authority approved the recommended separation action on 25 January 2000, waived further rehabilitative and counseling requirements, and directed the issuance of a UOTHC discharge. The applicant was discharged on 3 February 2000, accordingly.

c. The VA electronic medical record (JLV), ROP, and casefiles were reviewed. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Included in the applicant's casefile is a Mental Status Evaluation, dated 13 January 2000 that shows the applicant admitted to periodic abuse of Alcohol, Amphetamine, Cannabis, and Hallucinogen. The provider diagnosed him with Alcohol, Amphetamine, Cannabis, and Hallucinogen Abuse, found that there was no evidence of serious psychiatric disorder that impaired the applicant's judgement or mental faculties, that he was mentally responsible, able to distinguish between wrong and right and adhere to the right, and had the mental capacity to understand and participate in administrative proceedings. Also included in the casefile is a Report of Medical Examination, dated 14 January 2000, that shows the applicant medically qualified for administrative separation. Additionally, the casefile contains a Sworn Statement, rendered by the applicant, dated 14 September 1999, wherein he, in part, states he and another Soldier began using drugs to party with local German females,

then he and additional Soldiers began experimenting with other drugs more frequently, while partying, and eventually decided to bring the drugs onto the installation, and party in the barracks. There was no mention during the MSE or other interviews that the applicant abused drugs to treat BH-related symptoms. No additional military BH-related documentation was provided for review. A review of JLV was void of any treatment history for the applicant and he does not have a SC disability. No civilian BH-related documentation was provided for review.

d. The applicant requests upgrade his UOTHC discharge to Under Honorable Conditions, General. He contends his misconduct was related to PTSD. A review of the records shows the applicant with in-service diagnosis of Alcohol Abuse, Amphetamine Abuse, Cannabis Abuse, and Hallucinogen Abuse. No evidence was provided supporting a post-service diagnosis. The available evidence, to include the applicant's sworn statement, also suggest that the applicant substance abuse was in the context of partying with German locals and other Soldiers, and not as method of self-medicating BH-related symptoms. Additionally, the applicant states in the ROP that treatment for Depression and PTSD were not available, however, given the applicant underwent a Mental Status Evaluation, conducted by a Clinical Psychologist, his assertion of non-availability of BH service appears inaccurate. Further, although the applicant contends his misconduct was related to PTSD, there is no medical evidence in the records supporting his assertion, and he provided no medical documentation showing a diagnosis of PTSD. In absence of sufficient evidence to support the applicant's assertion of PTSD, there is insufficient evidence to establish that this misconduct was related to or mitigated by PTSD. Additionally, although the applicant has in-service substance abuse diagnoses, substance abuse diagnoses in absence of a non-substance related BH condition is not offered relief under liberal guidance.

e. Conversely, if the applicant assertion of PTSD is taken as fact, misconduct characterized by substance abuse would be mitigated PTSD given the nexus between PTSD and substance abuse to self-medicate related symptoms. However, distribution of drugs would not be mitigated as the misconduct is not natural sequela of PTSD.

f. Based on the available information, it is the opinion of the Agency BH Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends his misconduct was related to PTSD and per liberal guidance, his contention is sufficient to warrant the Board's consideration.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Yes. The contends his misconduct was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records shows the applicant with in-service diagnosis of Alcohol Abuse, Amphetamine Abuse, Cannabis Abuse, and Hallucinogen Abuse. No evidence was provided supporting a post-service diagnosis. The available evidence, to include the applicant's sworn statement, also suggest that the applicant substance abuse was in the context of partying with German locals and other Soldiers, and not as method of self-medicating BH-related symptoms. Additionally, the applicant states in the ROP that treatment for Depression and PTSD were not available, however, given the applicant underwent a Mental Status Evaluation, conducted by a Clinical Psychologist, his assertion of non-availability of BH service appears inaccurate. Further, although the applicant contends his misconduct was related to PTSD, there is no medical evidence in the records supporting his assertion, and he provided no medical documentation showing a diagnosis of PTSD. In absence of sufficient evidence to support the applicant's assertion of PTSD, there is insufficient evidence to establish that this misconduct was related to or mitigated by PTSD. Additionally, although the applicant has in-service substance abuse diagnoses, substance abuse diagnoses in absence of a non-substance related BH condition is not offered relief under liberal guidance.

(4) Conversely, if the applicant assertion of PTSD is taken as fact, misconduct characterized by substance abuse would be mitigated PTSD given the nexus between PTSD and substance abuse to self-medicate related symptoms. However, distribution of drugs would not be mitigated as the misconduct is not natural sequela of PTSD.

BOARD DISCUSSION:

1. The Board determined 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.
2. 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.
 - a. The applicant was discharged from active duty due to misconduct, commission of a serious offense (wrongful use, possession, and distribution of marijuana, amphetamine, MDA, and MDMA). He received an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. 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 reviewing official finding insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board agreed that applicant's substance abuse would be mitigated PTSD given the nexus between PTSD and substance abuse to self-medicate related symptoms. However, distribution of drugs would not be mitigated as the misconduct is not natural sequela of PTSD.

b. The Board also noted that the applicant completed 2 years and 26 days of active service. He served in Germany and deployed to Kosovo. Additionally, he provides multiple letters in support of a clemency determination, speaking of his Army experience and service in a poor command climate. However, the Board determined that his misconduct was too serious and does not warrant an upgrade of his character of service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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

■

■

■

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, 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 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. 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 has the discretion to hold a hearing; applicants do not have a right to appear personally before the Board. The Director or the ABCMR may grant formal hearings whenever justice requires.
4. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:
 - a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.
 - b. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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 appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

5. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) 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. 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.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and 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, 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//