

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20230011042

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge
- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), to show in:
 - item 4a (Grade, Rate, or Rank): sergeant first class (SFC)
 - item 4b (Pay Grade): E-7
 - item 28 (Narrative Reason for Separation): Secretarial Authority

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief, Tully Rinckey, PLLC, dated 5 June 2023
- Three self-authored statements, dated 22 March 2023
- Department of Veterans Affairs (VA) Form 21-0781 (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder [PTSD]), dated 22 March 2023
- letter, National Personnel Records Center (NPRC), dated 30 March 2023
- DD Form 214, for the period ending 30 January 1989
- Service Treatment Records (23 pages), dated 8 February 1975 to 12 December 1988
- Civilian Medical Records (20 pages), dated 1 January 2020 to 22 May 2023
- Memorandum, Acting Under Secretary of Defense for Personnel and Readiness, A.M. Kurta, dated 24 August 2017
- letter, VA, dated 10 March 2023

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. While serving in the 82nd Airborne Division, he recalls a training mission, on or about October 1977, when his parachute did not deploy properly. He was descending at a high rate of speed and had to deploy his reserve parachute. He slammed into the ground, making final impact face down. His entire body felt on fire, his hearing was impaired, his head was throbbing, his neck was “sprung,” and his knees and legs were killing him. The traumatic effects of that incident have never gone away. He tried to conceal the trauma, but his unit and family were beginning to see a change in his behavior. He began to develop severe stress, hear voices, and hallucinate.

b. In a second incident, he was the gunner during a direct fire exercise. His gun platform was placed in an area with a lot of sand. Both times he fired, the cannon kicked backwards, which caused his ears to ring. This incident followed him throughout his career and as a civilian.

c. While serving in Panama, he was admitted to the psychiatric ward twice. He was highly stressed, and his ears were ringing. Things intensified to the point that he was constantly hearing voices, lost sense of his surroundings, and had flashbacks of past military experiences. He did not trust anyone and considered “all of them” the enemy. He experienced a lot of stress due to the loss of his mother and other military trauma. His behavior was strange to people he worked with. After leaving the psychiatric ward, he was shipped back to the states, without any knowledge of the crime he was charged with. He had no psychiatric evaluation, and his attorney was assigned by his “accusers.” It was impossible for him to win. The applicant notes post-traumatic stress disorder (PTSD) and other mental health as conditions related to his request.

3. Counsel states, in effect:

a. The applicant served for over 13 years without any adverse action. In 1987, while stationed at Fort Huachuca for training, he was informed that his mother was ill. At the time, he was also suffering from undiagnosed PTSD and schizophrenia. Overcome with grief, he left his unit to be with his mother.

b. Upon his return, he was committed to an inpatient facility at Fort Clayton, Panama. Despite his inpatient treatment and uncharacteristic behavior, the applicant’s chain of command preferred court-martial charges against him. The applicant was unknowingly suffering from serious mental illness which calls into question his ability to effectively defend himself with counsel and to make well thought out decisions. He was not in the right state of mind and lacked necessary mental capacity. His request for discharge should never have been accepted. The government had ample knowledge of his mental health condition. Yet they refused to order a Rules for Courts-Martial (R.C.M.) 706 board, which they are required to do by law.

c. PTSD was a mitigating factor in his misconduct, and his mental health issues should have been a mitigating factor in the separation proceedings. He should have been separated through medical processing rather than as an accused facing court-martial charges. The applicant is currently considered 100 percent (%) disabled by the Department of Social Security.

4. The applicant enlisted in the Regular Army on 8 November 1976, for a 3-year period.

5. The applicant received an administrative letter of reprimand from his commander, on 25 October 1988, for driving his car at a high rate of speed, making an illegal turn, being disrespectful and committing battery against a Transit Policeman, failing to report nonofficial contact with a foreign police organization, and absence from his unit due to misconduct. The commander informed him the reprimand was an administrative action and not punishment under the Uniform Code of Military Justice (UCMJ). Any matters submitted in rebuttal would be considered prior to the filing determination. On that same date, the applicant acknowledged receipt and elected not to make a statement in his own behalf. The commander directed the reprimand be filed in the applicant's Official Military Personnel File.

6. Two DA Forms 4187 (Personnel Action), show the applicant was reported absent without leave on 7 November 1988. He returned to duty on 9 November 1988.

7. Two DA Forms 3647 (Inpatient Treatment Record Cover Sheet), show the applicant was admitted to Gorgas Army Community Hospital, Republic of Panama, on 15 November 1988 and 12 December 1988. The diagnoses at the time of his admittance were as follows:

- Alcohol Abuse, Continuous (2)
- Adjustment Disorder with Depressed Mood (2)
- Gastroenteritis
- Antabuse Therapy

8. Court-martial charges were preferred against the applicant for a violation of the UCMJ. The relevant DD Form 458 (Charge Sheet) is not available for review in the applicant's service record.

9. The applicant consulted with legal counsel on 19 December 1988.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the UCMJ, the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested a discharge for the good of the service, under the provision of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting a discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. He was advised he could submit any statements he desired in his behalf. He elected not to submit a statement.

10. On 20 December 1988, the separation authority approved the applicant's requested discharge, for the good of the service, and further directed the applicant be reduced to the lowest enlisted grade and the issuance of an UOTHC discharge.

11. A Statement of Option, dated 27 January 1989, shows the applicant elected not to undergo a separation medical examination.

12. The applicant was discharged on 30 January 1989, under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial. His DD Form 214 shows his characterization of service as under other than honorable conditions, with separation code KFS and reenlistment code RE-3, 3B, 3C. He completed 12 years, 2 months, and 22 days of active service, with lost time from 7 November 1988 to 8 November 1988.

a. He was awarded or authorized the following:

- Army Service Ribbon
- Overseas Service Ribbon
- Noncommissioned Officer Professional Development Ribbon (2nd award)
- Army Commendation Medal
- Parachutist Badge
- Army Good Conduct Medal (3rd award)
- Expert Marksmanship Qualification Badge with Rifle Bar (M-16)
- German Marksmanship Badge (Silver)

b. His DD Form 214 also contains the following entries:

- Item 4a – PV1

- Item 4b – E-1
- Item 28 – For the Good of the Service-In Lieu of Court-Martial

13. On 11 February 2004, the Army Discharge Review Board reviewed the applicant's request for a change in the character and/or reason for his discharge. After careful consideration, the Board determined the applicant was properly and equitably discharged. His request for relief was denied.

14. The applicant provides:

a. A VA Form 21-0781, dated 22 March 2023, contains the administrative data pertaining to his three self-authored statements, which are summarized in paragraph 2 of this Record of Proceedings (ROP).

b. A letter, from NPRC, dated 30 March 2023, shows counsel requested and received the applicant's Service Treatment Records from NPRC.

c. 23 pages of Service Treatment Records, dated 8 February 1975 to 12 December 1988, and 20 pages of Civilian Medical Records, dated 1 January 2020 to 22 May 2023, include behavioral health treatment records which will be summarized, in pertinent part, in the "MEDICAL REVIEW" portion of this ROP.

d. The Kurta Memorandum provides clarifying guidance to Military Discharge Review Boards (DRBs) and Boards for the Correction of Military/Naval Records (BCM/NR) on liberal consideration, statute of limitations, and requests by Veterans for modification of their discharge due to mental health conditions, sexual assault/harassment, PTSD, and traumatic brain injury.

e. A letter, from the VA, dated 10 March 2023, shows the applicant's military service for the period 8 November 1976 to 30 January 1989 was considered "Under Honorable Conditions" for VA purposes.

15. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of a trial by court-martial. An under other than honorable conditions characterization of service is normally considered appropriate.

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

17. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service and correction of his DD 214 to update his rank from private to sergeant first class, pay grade from E1 to E7 and narrative reason for separation to Secretarial Authority. He contends he experienced PTSD and Other Mental Health Issues that mitigates his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army on 08 November 1976 as a Cannon Crewmember and attained the rank of E-5, 2) the applicant was awarded numerous awards, ribbons and badges during his time in service to include the Army Good Conduct Medal (three awards), 3) the applicant detailed two seminal events that impacted his mental health while in-service to include October 1977 wherein his parachute did not deploy properly and another incident wherein he was the gunner and the cannon kicked backwards causing his ears to ring, 4) in 1988 the applicant was psychiatrically hospitalized twice while in-service in Panama and diagnosed with the following BH-related conditions Alcohol Abuse, Continuous, Adjustment Disorder with Depressed Mood, and Antabuse Therapy, 5) he received a letter of reprimand on 25 October 1988 for driving his car at a high rate of speed, making an illegal turn, being disrespectful and committing battery against a Transit Policeman, failing to report nonofficial contact with a foreign police organization, and absence from his unit due to misconduct, 6) the applicant was absent without leave (AWOL) on 07 November 1988 and returned to duty on 09 November 1988, 7), Court-martial charges were preferred against the applicant for a violation of UCMJ; however, the charge sheet is unavailable for review in the applicant's service records, 8) On 30 January 1989 the applicant was discharged under the provisions of Army Regulation (AR) 635-200, Chapter 10, for the good of the service-in lieu of trial by court martial.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. Civilian medical records were available for review from 01 January 2020 to 22 May 2023. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. Military service treatment records (STR) show the applicant was psychiatrically hospitalized twice while in-service at Gorgas Army Community Hospital in the Republic of Panama on 15 November 1988 and 12 December 1988. BH-related diagnoses rendered at that time were Alcohol Abuse, Continuous, Adjustment Disorder with

Depressed Mood, and Antabuse Therapy. During his hospitalization it was documented that the applicant was experiencing problems with concentration, decreased appetite, overwhelmed by family problems, feeling depressed since arriving in Panama and that he 'felt like a bomb ticking waiting to explode.' It was documented that the applicant was a poor historian and reported some amnesia. The reason for admission is unclear based on the provided documentation.

d. VA records in JLV were available for review from 19 March 1997 through 03 June 2024, with primary establishment of care through the VA in March 2023. Per review of JLV, the applicant is 100% service-connected (SC) through the VA for Posttraumatic Stress Disorder. Per the C&P exam, he was diagnosed with PTSD and Schizophrenia, Multiple Episodes, Currently in Partial Remission. It was documented that the applicant had at least four additional psychiatric hospitalizations post-discharge. The VA Compensation and Pension (C&P) exam documented that his psychiatric hospitalizations and hallucinations are congruent with his diagnosis of Schizophrenia and depression and anxiety symptoms are subsumed under his PTSD diagnosis. His index trauma is identified as a parachuting incident while in-service wherein his first parachute did not open. Additionally, it was documented the applicant reported there were several additional parachute incidents in which he feared for his life and caused injuries due to bad weather, high winds or hard landings. The applicant's behavioral health conditions are currently being managed with Seroquel and Prazosin and documented that he reported being on these medications for at least 10 years. In a note dated 31 March 2023, the applicant reported he experienced increased anxiety, flashbacks and nightmares following a parachuting accident. It was documented that the applicant reported he started hearing voices in 1979 and did not seek help due to shame. Following the death of his mom the applicant reported that the intensity of his auditory hallucinations increased, experienced paranoia, had difficulty sleeping and decompensated. It was further documented that the applicant has had difficulty maintaining employment since his discharge from the military due to poor concentration, paranoia, and auditory hallucinations. Furthermore, it was reported that he experiences frequent panic attacks, avoidance of leaving his home due to fear of panic attacks, flashbacks of the parachuting incident, avoids driving, hypervigilance, and frequent nightmares. A VA letter dated 10 March 2023 indicated that the VA determined his service from November 8, 1976 to January 30, 1989 is under honorable conditions for VA purposes.

e. Civilian BH records from NC-HRC Behavioral Health & Psychiatry were available for review from 01 January 2020 to 22 May 2023. Documentation notes that the applicant was diagnosed with PTSD and Bipolar Disorder. The records indicate the applicant associated his PTSD symptoms with his military service which were re-triggered after his son's suicide in 2021. It was documented that the applicant reported he experienced intrusive memories, flashbacks and sleep problems. He was prescribed Alprazolam, Quetiapine, Xanax, and Prazosin.

f. The applicant is requesting his characterization of service be upgraded from UOTHC to honorable and update his DD 214 to update his rank from private to sergeant first class, pay grade from E1 to E7 and narrative reason for separation to Secretarial Authority. The applicant contends he was discharged from the military due to PTSD and Other Mental Health Issues. Review of the available records show that the applicant was diagnosed with Adjustment Disorder with Depressed Mood and Alcohol Abuse while in-service and was psychiatrically hospitalized twice two months prior to discharge from the military. Since being discharged from the military, the applicant has been diagnosed with PTSD and Schizophrenia through the VA and is 100% SC for PTSD. Furthermore, it was documented that the applicant continues to experience occupational and social impairment due to these conditions. Based on the available documentation, the applicant's symptoms and behaviors while in-service are consistent with ongoing symptoms associated with his PTSD and Schizophrenia diagnoses. The records indicate the applicant was charged with being AWOL in November 1988. As avoidance symptoms are part of the natural history and sequelae of trauma/PTSD, there is a nexus between his PTSD symptoms and AWOL. Furthermore, the VA C&P exam specifically subsumed his depressive symptoms under his PTSD diagnosis, which are consistent with depressive symptoms he experienced while in-service (i.e., poor concentration, depression, poor sleep). Additionally, there is a nexus between the applicant's erratic behavior in October 1988 that resulted in a letter of reprimand and symptoms of PTSD and Schizophrenia. In particular, there is an association between driving his car at a high rate of speed, making an illegal turn and being disrespectful as impulsivity/reckless behavior and increased irritability are symptoms of PTSD. There is also an association between his paranoia and fears that someone was after him and his committing battery against a Transit Policeman, failing to report nonofficial contact with a foreign police organization, and absence from his unit due to misconduct as paranoia and disorganized behavior are symptoms associated with Schizophrenia. As such, there is evidence of in-service BH conditions that would mitigate the sum of his misconduct that is available for review.

g. Based on the available information it is the opinion of the Agency BH Advisor the applicant's documented behavior in the STR and medical record, specifically being AWOL, would be consistent with behaviors associated with PTSD and mitigation would otherwise be supported as AWOL may be a sign of avoidance behavior, a symptom of PTSD. Moreover, the misconduct addressed via a letter of reprimand in October 1988 would also be consistent with behaviors associated with PTSD and underlying Schizophrenia. Specifically, symptoms of PTSD and Schizophrenia such as impulsivity/recklessness, irritability, paranoia and disorganized behavior are associated with battery against a Transit Policeman, failing to report nonofficial contact with a foreign police organization absence from his unit due to misconduct. As such, medical

mitigation for the sum of his misconduct would be supported based on the information available.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is 100% SC for PTSD through the VA and has also been diagnosed with Schizophrenia.

(2) Did the condition exist or experience occur during military service? Yes, the applicant's assertion is supported by his subsequent diagnoses of PTSD and Schizophrenia and 100% SC for PTSD.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes. The applicant asserts mitigation due to PTSD and Other Mental Health Issues at the time of his offense/discharge. Per liberal consideration guidelines, his assertion alone is worthy of consideration by the Board. He has been diagnosed with PTSD secondary to his experience in the military and 100% SC for this condition through the VA. Furthermore, the applicant has been diagnosed with Schizophrenia through the VA and there is sufficient evidence that the applicant had an underlying diagnosis of Schizophrenia while in-service. Given the nexus between symptoms of PTSD and Schizophrenia his misconduct (i.e., AWOL, driving under a high rate of speed, making an illegal turn, being disrespectful, battery against a transit policeman, failing to report unofficial contact with a foreign police organization and absence from his unit due to misconduct) medical mitigation would be supported as these behaviors are characteristic of avoidance, impulsivity/recklessness and increased irritability associated with PTSD while paranoia and disorganized behavior are associated with Schizophrenia.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's contention of post-traumatic stress disorder and the medical advisor's review of documented behavior being consistent with his contention; however, found no evidence of a behavioral health

condition. Based on a preponderance of the evidence, the Board concluded that the characterization of service and narrative reason for separation the applicant received upon separation were not in error.

2. Upon review of the applicant's petition and military record, the Board found no evidence and the applicant did not provide documentation he was recommended for or promoted to the rank/grade of sergeant first class (SFC)/E-7. Therefore, the Board denied relief.

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, 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. Title 10, USC, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent (%).

4. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.

a. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career.

b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

5. 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 regulation provides that the ABCMR begins its consideration of each case with the presumption of

administrative regularity. The ABCMR is not an investigative body and decides cases based on the evidence presented in the military records provided and the independent evidence submitted with the application.

6. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of physical unfitness is made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).

7. AR 635-5 (Personnel Separations) prescribes policies and procedures regarding separation documents.

a. Prior to 1989, the regulation did not provide for an additional entry for continuous honorable active service, when a Soldier who previously reenlisted without being issued a DD Form 214 was discharged with any characterization of service except honorable. However, an interim change, published on 2 October 1989 does provide for such an entry.

b. The DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The instructions for the completion of Item 4 (Grade, Rate, or Rank), states the entry will note the individual's active duty grade or rank and pay grade at the time of separation.

8. AR 635-5-1 (Separation Program Designator Codes) provides the specific authorities (regulatory or directive), narrative reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the appropriate narrative reason to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, with separation code KFS is "for the good of the service – in lieu of court-martial."

9. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) 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. It states, in part, that only the unfitting conditions or defects that contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. The mere presence of impairment does not, in and of itself, justify a finding of unfitness because of physical disability.

10. AR 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

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 provides that 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. Separations under paragraph 5-3 (Secretarial Plenary Authority) are the prerogative of the Secretary of the Army. This authority is exercised sparingly and seldom delegated. It is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army.

d. Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

11. The Rules for Courts-Martial (R.C.M.) govern the procedures and punishments in all courts-martial and whenever expressly provided, preliminary, supplementary, and appellate procedures and activities. Rule 706 states, if it appears to any commander who considers the disposition of charges, or to any investigating officer, trial counsel, defense counsel, military judge, or member that there is reason to believe that the accused lacked mental responsibility for any offense charged or lacks capacity to stand trial, that fact and the basis of the belief or observation shall be transmitted through appropriate channels to the officer authorized to order an inquiry into the mental condition of the accused.

12. 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. 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.

13. 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//