

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 March 2025

DOCKET NUMBER: AR20230011215

APPLICANT REQUESTS: in effect, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show:

- an upgrade of his under honorable conditions (general) discharge
- medical separation
- reinstatement of medical separation with severance pay
- reinstatement of his lost G.I. Bill educational benefits
- compensation for 36 days of lost leave
- reimbursement for the cost of his final move after separation from the military

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Affidavit
- Attorney Brief
- Applicant's Jump Record
- Certificates: Awards and Training
- Memorandum for Record (MFR), Subject: Appointment of Standing Board of Inquiry, 17 October 2018, (IO Sworn Statements, IO Character Statements (27), IO Letters of Endorsement)
- MFR, Subject: General Officer Memorandum Reprimand (GOMOR), 7 January 2020
- MFR, Subject: Commanders Recommendation on Filing Determination, 13 January 2020
- MFR, Subject: Filing Determination, 26 January 2020
- MFR, Subject: Initiation of Elimination 29 January 2020
- MFR, Subject: Standing Board of Inquiry (BOI), 17 October 2019
- MFR, Subject: Acknowledgement of Receipt, 31 January 2020
- MFR, Subject: Acknowledgement of Notification, 28 February 2020
- MFR, Subject: Release of Jurisdiction, 2 March 2020
- MFR, Subject: Referral of the Officer Elimination Proceedings of Applicant to Standing Board of Inquiry (BOI) Bravo, 25 March 2020
- Computerized Polygraph Examination, 6 June 2020

- BOI Summary of Proceedings, 8 June 2020
- Attorney Letter, 13 July 2020
- MFR, Subject: Officer Elimination Action, 10 November 2020
- Physical Profile, 26 January 2021
- Medical Evaluation Board (MEB)
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings
- Officer Record Brief (ORB)
- Master's degree Certificate
- Two Department of Veterans Affairs (VA) Letters
- Training Letter
- Volunteer Letter
- Employment Letter
- DD Form 215 (Correction to DD Form 214)

FACTS:

1. The applicant states in his affidavit, 17 August 2023, in April or May 2019 after he had begun his company command, he injured his knee during an Airborne operation, likely causing a partial tear of his anterior cruciate ligament (ACL). He was told he would not deploy due to this injury. He felt pressured to deploy. Even though his knee was seriously injured, it was not until he was due for another Army Physical Fitness Test (APFT) that a formal profile was created around September or October 2019. After he got back to the U. S. in March 2020, he tried to get his knee surgery scheduled but encountered serious pushback from the unit. He finally had surgery in April 2020. He was approved for enrollment into Integrated Disability Evaluation System (IDES) which then led into the MEB process to begin in December 2020. His MEB was complete in March 2021. After he was separated from the Army, he was disenrolled in IDES. The applicant lists post-traumatic stress disorder (PTSD) as related to his request.

a. When the investigation began, he was interviewed many times by the IO. At least once, the IO interviewed the applicant without reading him his rights. Because of their location in Afghanistan, there was no trial defense service (TDS) counsel present in country. He attempted to contact TDS in Kuwait numerous times and even reached out to TDS in Germany to seek assistance. He was never able to make contact with an attorney and hired his own. After he was suspended from command, his computer access was severely limited. It limited his ability to defend himself. While he was in Afghanistan, the Brigade legal office implied that he may have to stay in Afghanistan for his BOI to occur. This is one of the reasons he decided not to submit a conditional resignation. He made repeated efforts to submit post-BOI rebuttal matters to the division legal office after his BOI. The division legal office repeatedly lost these matters.

b. Because he was separated under Army Regulation (AR) 600-8-24 (Officer Transfers and) rather than medically separated, the military would not give him an

extension to move back to his Home of Record. He ended up incurring significant costs to move, in the amount of approximately \$11,000. In addition, he lost 36 days of leave that he was not able to use or sell back.

c. Life after the Army's characterization of service decision has resulted in significant emotional trauma, tremendous financial burden for legal expenses, totaling more than \$55,000, severe marital relationship distress necessitating counseling services, and delayed medical benefits for his dependents. He completed his MBA at Duke University's Fuqua School of Business. He volunteers with numerous Veteran transition and assistance organizations. Recently he was promoted to Senior Manager within his company. Finally, he did not receive most of his GI Bill benefits.

d. Attorney brief, undated reiterates the above. In addition, he states the unit initiated an investigation due to baseless complaints from members of the unit. The applicant's counsel sought to admit a polygraph that he had taken prior to the BOI. The polygrapher had found that he was being truthful when he stated that he did not threaten reprisal against the complainants. Evidence that the applicant sought to admit was information about an active criminal warrant facing specialist/SPC M__. The existence of the warrant and SPC M's__ knowledge of it was relevant because SPC M__ had recently been allowed to reenlist prior to the BOI, and appeared he did not disclose this warrant to his command prior to his reenlistment. Had the BOI members learned that SPC M__ had failed to disclose the warrant, it would have reflected negatively upon his character for truthfulness.

e. During the BOI closing argument, the recorder abruptly interrupted the applicant's counsel and falsely stated that he would still receive his benefits if he received a under honorable conditions (general) discharge. This highly irregular and inappropriate outburst misled the BOI members as to the impact of their decision on the applicant's future.

f. The applicant served honorably for over a decade. He deployed to a combat zone with a serious knee injury and the unit improperly delayed the medical separation process. The investigation and separation board processes that led to his separation were critically flawed. The applicant suffers from PTSD and is entitled to relief under the Kurta and Wilkie memorandums. His post-service conduct has been highly commendable.

2. The applicant provides through counsel:

- a. Multiple course completion and award certificates, various dates.
- b. Report of Proceedings by IO shows the investigation commenced on 29 October 2019. Sworn statements, character statements and letters of endorsement, during the

investigation, is available for review. The letters, in effect, attest to the applicant's sound character, judgment as well as his high integrity. He is morally and ethically straight. He is professional and has compassion for Soldier's.

c. MFR, Subject: Findings and Recommendations of IO Concerning Formal EO Allegations Against the applicant, 27 November 2019, shows the IO was appointed on 29 October 2019 to conduct an investigation into formal EO complaints by SPC TM__ and SPC JW__ against the applicant. The IO found the SPC's allegations are substantiated, and the applicant violated Army EO policy, by unlawfully discriminating against SPC M__ and SPC W__ through his use of disparaging terms. He also attempted to dissuade SPC M__ and SPC W__ from filing EO complaints. Furthermore, the applicant retaliated against SPC M__ by threatening to take Uniform Code of Military Justice (UCMJ) action against him the morning after SPC M__ made a protected communication to an EO representative. The entire brief is provided for the Board's review.

(1) The IO found the applicant violated Army EO policy by unlawfully discriminating against SPC M__ and SPC W__ through his use of disparaging terms. The applicant made multiple comments, described above, to SPC M__ and SPC W__ with negative connotations pertaining to stereotypes about African Americans. It is more likely than not that the applicant treated SPC M__ and SPC W__ differently because of their race. Further, the applicant's behavior was offensive, inappropriate, and unprofessional. The applicant attempted to dissuade SPC M__ and SPC W__ from filing EO complaints. Furthermore, the applicant retaliated against SPC M__ by threatening to take UCMJ action against him the morning after SPC M__ made a protected communication to an EO representative.

(2) The IO recommended; the command consider taking appropriate administration action against the applicant for violating Army EO policy.

d. MFR, Subject: GOMOR, 24 December 2019 shows the applicant was reprimanded for violating the Army's Equal Opportunity (EO) policy, pressuring a Soldier to withdraw an EO complaint, and retaliating against a Soldier who made a protected communication with an EO representative. He made a number of disparaging racial comments to a group of African American supply clerks. He threatened to "crack the whip" on one of them, referred to them as the "Westside supply gang," repeatedly joked about them stealing, and asking them "why most black people have shaving profiles" and "why black people can't swim," among other inappropriate comments. After a Soldier filed an EO complaint on the basis of these behaviors, he offered to withdraw a recommendation that he face UCMJ action in exchange for him discontinuing the EO complaint. After another Soldier spoke to an EO representative about the complaint, he threatened him with UCMJ action. His actions represent a failure to treat Soldiers with dignity and respect, and amount to an abuse of your command authority. This

reprimand is imposed as an administrative measure and not as punishment under the UCMJ.

e. MFR, Subject: Appeal to GOMOR and Relief for Cause, 7 January 2020 states, upon review of his comments, He respectfully request that administrative action is not taken to relieve him of Command, permanently damage or potentially end his Army career. He fully supports the Army's Equal Opportunity Program, and humbly request he be allowed an opportunity to rehabilitate himself and learn from this incident. He categorically denies that he harbors any racial animus towards African Americans or any other racial or minority group. He has proven track record as a successful and caring Leader, and he have attached numerous character letters to support his history. He will address each of the allegations cited in your memorandum. He strongly denies violating his oath as a Commissioned Officer, squandering his integrity, or willingly sacrificing his care for Soldiers whom he has been charged to command in combat.

f. MFRs, Subject: Commander Recommendation on Filing Determination, 13 January 2020 shows the commander's recommended that the GOMOR be permanently filed in the applicant AMHRR. They found the applicant's lack of judgment, use of disparaging terms, and failure to understand his environment very disturbing.

g. MFR, Subject: Filing Determination on Reprimand, 26 January 2020 shows the GOMOR would be placed permanently in the applicant's Army Military Human Resource Record (AMHRR).

i. MFR, Subject: Acknowledgement of Receipt of Notification of Initiation of Elimination, 29 January 2020 the applicant was required to show cause for retention on active duty under the provisions of AR 600-8-24, paragraph 4-2b, due to derogatory information, misconduct, and moral and professional dereliction. If he was eliminated for misconduct, and moral or professional dereliction, the least favorable discharge he may receive is a other than honorable discharge.

j. MFR, Subject: Acknowledgement of Receipt of Notification of Initiation of Elimination, 31 January 2020 shows the applicant acknowledged receipt of notification he was being considered for elimination. He did believe that he suffers from PTSD or Traumatic Brain Injury (TBI) as a result of deployment overseas in support of a contingency operation during the previous 24 months.

k. MFR, Subject: Acknowledgement of Notification for Recommendation for Involuntary Release from active Duty, 28 February 2020 the applicant received the memorandum recommending his involuntary separation from active duty and he did not make a statement or submit a rebuttal at is time. He requested personal appearance before a Board of Inquiry.

I. MFR, Subject: Release of Jurisdiction, 2 March 2020 shows the applicant was notified that the Major General (MG) commander, was releasing jurisdiction of his elimination action. The applicant was scheduled to redeploy on 9 March 2020. As such, there is not sufficient time to conduct a BOI prior to his scheduled redeployment. His decision to release jurisdiction of his elimination proceedings does not reflect any determination about the merits of the case and does not preclude another General Officer Show Cause Authority from taking action.

m. MFR, Subject: Referral of Officer Elimination Proceedings of the applicant, 25 March 2020 shows a BOI was stood up to determine if the applicant should be eliminated from the United States Army under the provisions of AR 600-8-24 (Officer Transfers and Discharges, paragraphs 4-2b for misconduct and 4-2c for derogatory information.

n. The applicant's Computerized Polygraph Examination, 6 June 2020 shows in the opinion of AG __, Multistate licensed and certified Polygraph examiner, that after careful review of the multiple charts collected that there is a non-deceptive result to the truthfulness of the specific issue statement test questions available for review.

o. The BOI Summary Proceedings shows the board convened on 8 June 2020. The findings were the applicant violated the Army's EO policy by making disparaging racial comments to a group of African American supply clerks, a basis for elimination under AR 600-8-24, paragraph 4-2b, (is) supported by a preponderance of the evidence. The finding warranted separation of the applicant.

(1) The allegation that the applicant pressured a Soldier to withdraw an EO complaint, offered to withdraw a recommendation that he face adverse action in exchange for him discontinuing the EO complaint, a basis for elimination under AR 600-8-24, paragraph 4-2b, (is not) supported by a preponderance of the evidence. This finding (does not) warrant the separation of the applicant.

(2) The allegation that he retaliated against a Soldier who made a protected communication with an EO representative, threatening him with adverse action, a basis for elimination under AR 600-8-24, paragraph 4-2b, (is) supported by a preponderance of the evidence. This finding (does) warrant separation of the applicant.

(3) The allegation that derogatory information, as indicated by the GOMOR, 24 December 2019 was filed in the applicant's AMHRR on 26 January 2020. This finding does warrant the separation of the applicant.

(4) In view of the above findings, the board recommends that the applicant be separated from the U.S. Army with a General (under honorable conditions) characterization of service.

p. The applicant's attorney wrote a letter, 13 July 2020 to point out some legal errors that occurred in the applicant's BOI. His attorney stated the legal errors committed warrant a new proceeding.

q. MFR, Subject: Officer Elimination Action, 10 November 2020 shows elimination action was initiated against the applicant on 29 January 202 for misconduct and derogatory information and that he be discharged with a characterization of service under honorable conditions (general).

r. Physical Profile Record, 26 January 2021 shows right knee injury/pain.

s. The applicant's OERs shows he is highly qualified.

t. MEB Proceedings show the applicant was evaluated remotely and the narrative summary was submitted on 20 April 2021. The diagnosis not meeting retention standards is right knee ACL rupture s/p repair and meniscus tear, date of origin 8 May 2013. The condition has been stable for more than 12 months. The Soldier has had treatment but continues to have significant right knee pain. The condition interferes with the performance of military occupational specialty (MOS) duties and the duties of a Soldier; further treatment is not likely to return him to full duty. There is a temporary profile for substance abuse treatment issued on 28 January 2021, to expire 28 April 2021.

u. PEB Proceedings, 11 May 2021 show the board found the applicant is physically unfit and recommends a rating of 10% and that the applicant's disposition be separated with severance pay. The disability is right knee ACL rupture status post repair and meniscus tear. The applicant concurred and waived a formal hearing of his case, and he did not request reconsideration of his VA ratings.

v. MFR, Subject: Administrative Termination of PEB Findings, 8 July 2021 shows the Physical Disability Agency has administratively terminated the IDES case for the applicant, his case has been disenrolled from the IDES in the Veterans Tracking Application.

w. VA letter, 3 May 2023, shows the applicant is a Veteran and is being treated by Dr. CM__, psychiatrist. He is being treated for PTSD, anxiety disorder, and depression since 21 October 2022.

x. VA letter, 22 June 2023 shows the applicant continues to be treated by the above psychiatrist and gives information regarding his symptoms.

y. Two letters show the applicant completed a seven-day in-residence program for those struggling with PTSD and/or combat stress and he volunteered with the program.

z. An employment letter, 10 August 2023 shows the applicant was offered a transfer to another position.

3. A review of the applicant's service record shows:

a. The applicant did not provide moving documents regarding his move or documents to show he had 36 days that were lost regarding his leave.

b. The applicant enlisted in the U.S. Army Reserve (USAR) on 14 July 2006.

c. The applicant entered active duty on 14 July 2006. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty to enter service academy and transferred to the USAR on 1 July 2007. He completed 11 months, and 18 days net active service.

d. The applicant was appointed a Regular Army commissioned officer, branch Armor on 21 May 2011 in the grade of second lieutenant/O1.

e. His Officer Record Brief shows he served in Afghanistan from 17 June 2019 through 1 April 2020.

f. In an Army Review Boards Agency Docket Number AR20200010257, MFR, Subject: Officer Elimination Case/PEB, 15 June 2021, it shows the applicant's BOI involuntarily eliminated him from the service based on misconduct and moral or professional dereliction, and derogatory information with a under honorable conditions (general) characterization of service. On 11 May 2021, an Informal PEB convened and recommended separation with severance pay. Ad Hoc Review Board subsequently reviewed both cases. ARBA determined this elimination is based on misconduct and moral or professional dereliction, and derogatory information. The Pre-Decisional Deliberative Process is available for review.

g. MFR, Subject: Release Date Under AR 600-9-24, Chapter 4-2B, 1 July 2021 shows the applicant received officer notification on 28 June 2021 that he is to be involuntary discharged from active duty under the provision of AR 600-8-24 Chap 4-28. Discharge will be completed no later than 14 days after the date of my notification; however, in no event will discharge be delayed past 19 days from date of HRC message. He consents to discharge from active duty on 12 July 2021. He understands that his discharge prior to the 14 calendar days after he received notification will have no bearing on his entitlements.

h. Orders 182-0270, 1 July 2021, reflects the applicant was processed for discharge from the Regular Army. Storage of household goods, at government expense, is

authorized up to 6 months after separation. It does not appear to authorize shipment of his goods only storage. Severance pay is not mentioned in this document.

i. MFR, Subject: Administrative termination of PEB Findings, 8 July 2021 shows the Physical Disability Agency has administratively terminated the IDES case for the applicant, his case has been disenrolled from the IDES in the Veterans Tracking Application.

j. Accordingly, he was discharged on 12 July 2021. His DD Form 214 shows he was discharged under the provisions of AR 600-8-24 for unacceptable conduct. He completed 9 years, 9 months, and 29 days net active service. His DD Form 214 does not reflect he received severance pay. He was awarded or authorized:

- Army Commendation Medal (2nd award)
- Army Achievement Medal (7th award)
- Army Superior Unit Award (2nd award)
- National Defense service Medal
- Global War on Terrorism Service Medal
- Afghanistan Campaign Medal with campaign star
- Army Service Ribbon
- Overseas Service Ribbon
- North Atlantic Treaty Organization Medal
- Pathfinder Badge
- Senior Parachutist Badge
- Parachutist Badge

4. In the processing of this case an advisory opinion was obtained regarding the applicant request for the GI Bill, 28 June 2024, from the Chief, Education Incentives Branch, U. S. Army Human Resources Command, who opined in pertinent part:

a. "We are unable to process the applicant's request for reinstatement of his Post 9/11 GI Bill (PGIB) education benefits as this falls under the purview of the Department of Veterans Affairs (DVA). A Soldier establishes eligibility for the GI Bill after attaining an aggregate of at least 90 cumulative qualifying Active-Duty days in honorable periods of service after 11 September 2001 and receiving an Honorable Discharge.

b. The applicant has two periods of service. From 14 July 2006 to 1 July 2007, he attended the United States Military Academy Preparatory School and was discharged from the Preparatory School with an "Honorable" characterization of service in order to attend the United States Military Academy (USMA). Upon graduation from the USMA, he was commissioned into the Regular Army on 21 May 2011, and was discharged from the Army with an "Under Honorable Conditions (General)" characterization of service on

12 July 2021. He was not medically discharged from the Army; the VA diagnosed him with PTSD after his separation.

c. On 12 June 2024, the VA confirmed to our office that the applicant was eligible for the GI Bill education benefits because he had one honorable period of service (14 July 2006 to 1 July 2007). Therefore, the VA issued him a Certificate of Eligibility for 36 months. He subsequently used 4 months and 21 days of benefits during 2021. In accordance with PL 110-252 Section 3321 (a)(1), the applicant's GI Bill benefits were subject to a 15-year delimiting period and expired on 1 July 2022. This 15-year delimiting period can be reset if the individual serves 90 or more days of qualifying active-duty service and has an additional honorable period of service.

d. This office has no authority to reinstate the applicant's GI Bill education benefits. The VA administers the GI Bill under Title 38, Chapter 33 authority. This office is tasked with assisting the VA with determining a Service Member's eligibility to transfer the earned GI Bill education incentive to eligible dependents (called Transfer of Educations Benefits or TEB). A Soldier is automatically eligible for the GI Bill education benefits at the 50 percent payable rate, after they have served honorably a minimum of 90 Post 9/11 qualifying duty days. He became automatically eligible for the GI Bill benefits due to his attending the United States Military Academy Preparatory School for more than 90 days. Should the applicant's current discharge be upgraded to Honorable, he must contact the VA for reinstatement of his benefits under Public Law 110-252 Section 3321 (a)(2).

e. The Army Discharge Review Board is responsible for adjudicating the applicants request to have his discharge upgraded from "Under Honorable Conditions (General)" to "Honorable".

f. We cannot address his requests for severance back pay compensation for 36 days of lost leave and reimbursement for moving costs as those issues are not within the purview of our office.

g. The applicant's military service may make his dependents eligible for other types of assistance".

5. On 26 July 2024, the applicant was provided with a copy of the advisory opinion to allow the applicant the opportunity to submit comments on the opinion. No response was provided.

6. 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, the Army Aeromedical Resource Office (AERO), 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 requesting reversal of the DASA-RB's decision to terminate his disability processing, an upgrade of his under honorable conditions (general) discharge, and reinstatement of his separation with disability severance pay. On his DD 149, he has indicated that PTSD is an issue related to his requests.
- c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 for the period of Service under consideration shows the former Officer entered the regular Army on 13 July 2012 and received an under honorable conditions (general) discharge 12 July 2021 under the provision provided in paragraph 4-2b of AR 600-8-24, Officer Transfers and Discharges (8 February 2020: Misconduct, moral or professional dereliction, or in the interests of national security).
- d. The behavioral health aspects of this case will be addressed by an ARBA behavioral health advisor in a separate advisory opinion.
- e. A Major was assigned to investigate several equal opportunity complaints against the applicant on 29 October 2019. He stated in the executive summary of his 27 November 2019 report:

"Executive Summary. I find SPC M. and SPC W's allegations are substantiated. CPT [Applicant] violated Army EO policy, AR 600-20, Chapter 6, by unlawfully discriminating against SPC M. and SPC W. through his use of disparaging terms. CPT [Applicant] also attempted to dissuade SPC M. and SPC W. from filing EO complaints. Furthermore, CPT [Applicant] retaliated against SPC M. by threatening to take UCMJ action against him the morning after SPC M. made a protected communication to an EO representative."
- f. On 29 January 2020, Commanding General of the United States National Support Element - Afghanistan informed the applicant he was "required to Show Cause for retention on Active Duty under the provisions of AR 600-8-24, paragraph 4-2b "due to derogatory information, misconduct, and moral and professional dereliction." He stated:

“My actions are based upon the following specific reasons for elimination:

- a. You violated the Army's equal opportunity (EO), policy by making a number of disparaging racial comments to a group of African-American supply clerks.
- b. You pressured a Soldier to withdraw an EO complaint, offered to withdraw a recommendation that he face adverse action in exchange for him discontinuing the EO complaint.
- c. You retaliated against a Solder who made a protected communication with an EO representative, threatening him with adverse action.
- d. Derogatory information, as indicated by the General Officer Memorandum of Reprimand, dated 24 December 2019, that was filed in your Army Military Human Resource Record (AMHRR).”
- g. A Board of Inquiry was convened at Ft. Bragg, NC in June 2020. They found that three of the allegations were supported by the preponderance of the evidenced and warranted the applicants separation from the Army:
 - (1) That he “violated the Army's equal opportunity (EO) policy by making disparaging racial comments to a group of African-American supply clerks;”
 - (2) That he retaliated against a Soldier who made a protected communication with an EO representative, threatening him with adverse action;
 - (3) “The allegation that derogatory information, as indicated by the General Officer Memorandum of Reprimand dated 24 December 2019 was filed in CPT [Applicant]’s Army Military Human Resources Record (AMHRR) on 26 January 2020, a basis for elimination under AR 600-8-24, paragraph 4-2c, is supported by 6 a preponderance of the evidence.
- h. The Board recommended:

“In view of the above findings, the board recommends that CPT [Applicant] be separated from the United States Army 17 with a General (under honorable condition) characterization of service.”

i. On 10 November 2020, the Commanding General of the 82nd Airborne Division stated:

“On 29 January 2020, elimination action was initiated against CPT [Applicant] for misconduct and derogatory information ...

CPT [Applicant] be discharged with a characterization of service general (under Honorable conditions).”

j. The applicant was referred to the Integrated Disability Evaluation System (IDES) in January 2021 for “Right knee s/p ACL reconstruction and lateral meniscus repair.” He claimed an additional 41 medical conditions. The medical evaluation board (MEB) found that his right knee condition was the only condition which failed medical retention standards.

k. The MEB narrative summary states he injured the right knee playing soccer in May 2013. Excerpts from the summary

“He required little care for the knee condition over the next few years beyond naproxen as needed until May 2019.

On 21 May 2019, he presented to PCM [primary care manager] Clinic at Fort Bragg and reported increased right knee pain of 3 weeks duration after an Airborne jump on 29 April 2019 and a hyperextension injury playing soccer 20 May 2019 for All American Week.

Treatment Summary and Results:

CPT [Applicant] has been on and off of profiles for knee pain since 21 May 2019. He tried right knee bracing, NSAIDs, physical therapy [PT] HEP [home exercise program (June 2019). AHLTA is silent over the next several months because his command team deployed him to Afghanistan June 2019 – March 2020 although his Battalion PA encouraged him not to deploy.

On 05 March 2020, he followed up with PCM clinic after deployment and reported wearing a stability brace and doing some informal physical therapy with occasional evaluation from the unit PA and PT while deployed. He was referred to Orthopedics off post and on 22 April 2020 he underwent a right knee diagnostic arthroscopy with ACL reconstruction using allograft tissue and lateral meniscus repair.

Present Condition:

The Soldier can perform the activities of daily living to include driving a vehicle and he does not use any ambulatory assistive devices. He does not run at all due to right knee pain.

On VA C+P exam, the knee RROM is within acceptable limits. The knee strength is 5/5 bilaterally."

I. On 26 April 2021, the applicant concurred with the board's decision, declined the opportunities for an impartial medical review and/or to submit a written appeal, and his case was forwarded to the physical evaluation board for adjudication.

m. On 11 May 2021, the Informal Physical Evaluation Board (PEB) determined the applicant's right knee condition was the sole unfitting condition for continued military service. They applied the VA derived rating of 10% and recommended the applicant be separated with disability severance pay. On 20 May 2021, after being counseled on the Board's findings and recommendation by his PEB liaison officer, the applicant concurred with the PEB, waived his right to a formal hearing, and declined to request a VA reconsideration of his ratings.

n. Paragraph 4-3g of AR 635-40, Disability Evaluation for Retention, Retirement, or Separation (19 January 2017) states:

"g. Officers pending administrative elimination.

(1) Generally, officers approved to resign for the good of the Service in lieu of trial by court-martial are ineligible for referral to the MEB and PEB. However, if the officer was referred to the MEB prior to approval of the resignation, the MEB and/or PEB must be completed and the case dual processed as described in paragraph 4-3g(2).

(2) Officers pending administrative elimination under AR 600-8-24 are normally dual processed for the elimination action and completion of the DES. For dual processing to occur, referral to the MEB must occur before the date the Deputy Assistant Secretary of the Army (Review Boards) approves the officer's elimination."

o. On 15 June 2021, the DASA-RB he directed the applicant "be involuntarily eliminated from the United States Army with a General (Under Honorable Conditions) characterization of service. This elimination is based on misconduct and moral or

professional dereliction (Army Regulation 600-8-24, paragraph 4-2b), and derogatory information (Army Regulation 600-8-24, paragraph 4-2c).

p. The applicant's was subsequently disenrolled from the IDES and separated as directed by the DASA-RB.

q. It is the opinion of the ARBA Medical Advisor that the granting of the applicant's requests is not warranted.

BEHAVIORAL HEALTH REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general discharge) and a referral to DES as a result of physical and PTSD. This opine will focus only on PTSD, which the applicant asserts is related to his requests. 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 U.S. Army Reserve (USAR) on 14 July 2006, and he was appointed as a Regular Army commissioned officer on 21 May 2011 in the grade of second lieutenant/O1; 2) The applicant was deployed to Afghanistan from 17 June 2019-01 April 2020; 3) Officer Elimination Case/PEB, on 15 June 2021, shows the applicant's BOI involuntarily eliminated him from the service based on misconduct and moral or professional dereliction, and derogatory information with a under honorable conditions (general) characterization of service. On 11 May 2021, an Informal PEB convened and recommended separation with severance pay. Ad Hoc Review Board subsequently reviewed both cases. ARBA determined this elimination is based on misconduct and moral or professional dereliction, and derogatory information; 4) The applicant was discharged on 12 July 2021. He was discharged under the provisions of AR 600-8-24 for unacceptable conduct. His characterization of service was "Under Honorable Conditions (General)."

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA), the VA's Joint Legacy Viewer (JLV), military, VA, and civilian hardcopy medical documentation provided by the applicant were also examined.

c. The applicant is requesting an upgrade of his under honorable conditions (general) discharge and a referral to DES as a result of PTSD. The applicant first engaged with behavioral health services on 03 April 2020 when he was referred for a Mental Status Exam as part of his Officer Elimination administrative separation proceedings. The applicant was screened for Depression, Military Sexual Trauma (MST), PTSD, and Traumatic Brain Injury (TBI) as part of the evaluation. The applicant did report depressive symptoms, PTSD symptoms, and a history of TBI. However, a

complete clinical interview did not provide sufficient evidence the applicant met full criteria for PTSD or Depression. The applicant was recommended for individual therapy to assist the applicant with his reported stress related to his marital, legal, and occupational problems. In addition, the applicant was referred to additional assessment for his reported TBI, which did not result in a later diagnosis of TBI. The applicant attended only one of three scheduled appointments between April-May 2020 at behavioral health, and he was not diagnosed with a mental health condition. The applicant was seen again at behavioral health services on 10 December 2020, and he was again reporting stress but his reported symptoms did not meet criteria for PTSD. The applicant did not follow-up further with this provider. On 25 January 2021, the applicant was seen for an initial intake at SUDCC for self-reported increased alcohol abuse. He was diagnosed with Alcohol Dependence and enrolled in SUDCC outpatient individual and group treatment program. He continued in SUDCC treatment till his discharge. There was insufficient evidence the applicant was placed on a permanent psychiatric profile, required inpatient psychiatric treatment, attended six months of behavioral health treatment for PTSD, or found to not meet retention standards from a psychiatric perspective while in active service.

d. A review of JLV provided evidence the applicant was treated at the VA after his discharge for PTSD. He underwent a Compensation and Pension Evaluation for mental health conditions in 2021, and he was diagnosed with service-connected PTSD (50%SC). He has also attended civilian residential treatment programs in 2023 for PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that the applicant has been diagnosed with service-connected PTSD by the VA, and he was diagnosed with Alcohol Dependence and reported stress related to the negative consequences of his legal and occupational problems while on active service. However, there is insufficient evidence the applicant was performing inadequately from a psychiatric perspective while on active service. In addition, there is insufficient evidence he was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition including PTSD while on active service. Thus, there is insufficient evidence his case warrants a referral to DES for a behavioral health condition at this time. In addition, there is no nexus between the applicant's PTSD and his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he was experiencing PTSD while on active service, and he has been diagnosed with service-connected PTSD by the VA.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing PTSD while on active service, and he has been diagnosed with service-connected PTSD by the VA.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, the applicant has been diagnosed with service-connected PTSD by the VA, and he was diagnosed with Alcohol Dependence and reported stress related to the negative consequences of his legal and occupational problems, while on active service. However, there is insufficient evidence the applicant was performing inadequately from a psychiatric perspective while on active service. In addition, there is insufficient evidence he was ever placed on a psychiatric profile while on active service, required inpatient psychiatric treatment while on active service, or was found to not meet retention medical standards IAW AR 40-501 from a psychiatric perspective. Therefore, there is insufficient evidence the applicant was medically unfit as a result of a mental health condition including PTSD while on active service. Thus, there is insufficient evidence his case warrants a referral to DES for a behavioral health condition at this time. In addition, there is no nexus between the applicant's PTSD and his misconduct of violations of EO's policies in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's PTSD; 2) PTSD does not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the Board made the following findings and recommendations related to the requested relief:

- Discharge Upgrade: GRANT: based upon the lengthy period of honorable service prior to the misconduct leading to the applicant's separation, the Board concluded the totality of the applicant's service warranted an upgrade to Honorable.
- Change to medical separation: DENY, based upon the available documentation and the findings and recommendations by the medical and behavioral health reviews.
- Reinstatement of medical separation with severance pay: DENY, based upon the available documentation and the findings and recommendations outlined in the medical and behavioral health review
- Reinstatement of his lost G.I. Bill educational benefits: DENY, based upon the available documentation and the findings and recommendation outlined in the HRC advisory opinion, which was not rebutted by the applicant.
- Compensation for 36 days of lost leave: PARTIAL GRANT, by referring the applicant's record to DFAS for review to determine whether the applicant had any prior leave cashed out. If not, the Board recommends permitting the applicant payment for up to 60 days of lost leave.
- Reimbursement for the cost of final move after separation: GRANT, based upon the applicant receiving an Honorable characterization of service, the Board recommends showing the applicant was authorized for movement of household goods IAW Joint Travel Regulation weight limitations.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

:XXX :XXX :XXX GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:
 - reissuing the applicant a DD Form 214 showing:
 - Characterization of Service: Honorable
 - Separation Authority: No change
 - Separation Code: No change
 - Reentry Code: No change
 - Narrative Reason for Separation: No change
 - referring the applicant's record to Defense Finance and Accounting Service (DFAS) for review to determine whether the applicant has previously sold any unused accrued leave, and pay up any accrued leave up to 60 accrued days
 - authorize and pay the applicant for his final move to his Home of Record IAW limitations outlined in the Joint Travel Regulation and/or other regulatory limitations
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to all other requested relief.

//SIGNED//

X

CHAIRPERSON

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. 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.
2. 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.

3. 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.

4. 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.

5. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

6. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

7. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative

alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

8. 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.
9. 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.
10. 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.

11. Army Regulation 600-8-24 (Officer Transfers and Discharges) provides for officer transfers from active duty to the Reserve component and discharge functions for all officers on active duty for 30 days or more.

a. Paragraph 1-22 provides, in pertinent part, that an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearly for reasons that do not involve acts of misconduct.

b. Paragraph 1-22 provides, in pertinent part, that an officer will normally receive a general discharge when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Additionally, paragraph 1-22 provides, in pertinent part, that a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. An officer will normally receive a discharge under other than honorable conditions when they resign for the good of the service, are dropped from the rolls of the Army, or are involuntarily separated due to misconduct, moral or professional dereliction, or for the final revocation of a security clearance as a result of an act or acts of misconduct, including misconduct for which punishment was imposed.

d. Chapter 4 (Eliminations) states an officer is permitted to serve in the Army because of the special trust and confidence the President and the nation have placed in the officer's patriotism, valor, fidelity, and competence. An officer is expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times. However, an officer who will not or cannot maintain those standards will be separated.

e. Chapter 4 provided the tasks, rules, and steps for eliminating officers in the Active Army for substandard performance of duty, misconduct, moral or professional dereliction, and in the interests of national security. Paragraph 4-2a (Reason for Elimination) states while not all inclusive, when one of the several listed or similar conditions exist, elimination action may be or will be initiated for Substandard performance of duty.

(1) A downward trend in overall performance resulting in an unacceptable record of efficiency, or a consistent record of mediocre service.

(2) Failure to keep pace or to progress with contemporaries, as demonstrated by a low record of efficiency when compared with other officers of the same grade and competitive category.

(3) Failure to exercise necessary leadership or command expected of an officer of their grade.

(4) Failure of an officer to absorb technical proficiency required for grade and competitive category.

(5) Failure to properly perform assignments commensurate with an officer's grade and experience.

(6) Apathy, defective attitudes, or other characteristic disorders to include inability or unwillingness to expend effort.

(7) Failure to respond to alcohol or drug problem rehabilitation efforts in a reasonable length of time. (See AR 600-85 for further explanation.) Elimination action will be initiated. Care should be taken to avoid the inclusion of limited use evidence, as defined in AR 600-85, chapter 6.

(8) Failure to conform to prescribed standards of dress, personal appearance, or military deportment.

(9) Failure to achieve satisfactory progress after enrollment in the Army weight control program or failure to maintain the weight/body fat standards established under the provisions of AR 600-9 after removal from an established weight control program. Elimination action will be initiated.

(10) Failure of a course at a service school for academic reasons by a probationary or non-probationary RA officer. For failure by an RC officer, see paragraph 2-33.

(11) Failure of a probationary officer to resign under paragraph 3-9 when their commander determines the best interest of the Government, and the individual can be served by the officer's discharge.

(12) The discovery of other conditions concerning a probationary officer that, had they been known at the time of appointment, would have precluded appointment.

(13) The discovery of any other condition concerning a probationary officer that indicates the officer's retention in the Army would not be in the best interest of the United States.

(14) Probationary RA commissioned and warrant officers entering AD who are confirmed Human Immunodeficiency Virus (HIV) positive within 180 calendar days of their original appointment or probationary USAR, ARNG commission and warrant officers who report for initial entry training in an AD (other than ADT) status and are confirmed HIV positive within 180 calendar days of reporting to AD will be processed for elimination.

(15) Failure to establish an adequate Family Care Plan in accordance with AR 600-20, paragraph 5-5.

f. Paragraph 4-5 (Separation date) states an officer approved for involuntary separation by the Secretary of the Army or his designee, or whose request for resignation or discharge in lieu of elimination is approved for misconduct, moral, or professional dereliction, or in the interest of national security will be separated according.

12. AR 37-104-4 (Military Pay and Allowances Policy) states, only the Director, DFAS-IN may make settlement actions affecting the military pay accounts of Soldiers as a result of correction of records by the ABCMR per provisions of AR 15-185.

13. Army Regulation 621-202 (Army Educational Incentives and Entitlements):

a. Paragraph 2-3 (Eligibility) Soldiers who entered active duty for the first time after 30 June 1985. Completed a qualifying term of service. Served three or more years of continuous active duty if the obligated period of service was three or more years.

- reduced from pay or contributed \$1,200.00 to the Department of Treasury
- after completion of the qualifying service, the Soldier separates from active duty with a fully honorable discharge

b. Exceptions to completing the first qualifying term of service:

- Soldier is discharged or released from active duty for a service-connected disability
- Sole survivorship discharge
- medical condition that pre-existed active duty
- physical or mental condition that interferes with duty that is not a result of the Soldier's willful misconduct

14. Volume 1 (Uniformed Service Personnel) of the Joint Travel Regulation (JTR) contains basic statutory regulations concerning official travel and transportation of members of the uniformed services.

- a. Paragraphs U5130, U5230, and U5365-F contain the policy and procedures pertaining to the shipment of HHG to a permanent duty station (PDS) by uniformed service personnel upon retirement. In effect, these paragraphs authorize a member travel and transportation allowances to a PDS selected by the member from his or her last PDS upon retirement. They state that a member on active duty is entitled to travel and transportation allowances to a home selected by the member from the last PDS upon retirement. They also establish time limitations for shipment of HHG and state that travel must be completed within 1 year from the active service termination date.
- b. Extension provisions to the 1-year time limit are also provided for deserving cases under the Secretarial process. This process allows for extensions based on an unexpected event beyond the member's control that prevents movement to a PDS within the specified time limit. An extension of the time limit may be authorized by the Secretarial process if it is in the best interest of the service or substantially to the benefit of the member and not costly or otherwise adverse to the service. These extensions are approved for the specific period of time that the member anticipates is needed to complete the move, and if additional time is required, the member may request a further extension. Paragraph U5012-I of volume 1 of the JTR provides the policy on restrictions to time limit extensions and states that a written time limit extension that includes an explanation of the circumstances justifying the extension may be approved for a specific additional time using the Secretarial process. However, extensions under this process will not be authorized if it extends travel and transportation allowances for more than 6 years from the separation/retirement date.

15. Army Regulation 600-8-24 provides for officer transfers from active duty to the Reserve component and discharge functions for all officers on active duty for 30 days or more.

- a. Paragraph 1-22 provides, in pertinent part, that an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearly for reasons that do not involve acts of misconduct.
- b. Paragraph 1-22 provides, in pertinent part, that an officer will normally receive a general discharge when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
- c. Additionally, paragraph 1-22 provides, in pertinent part, that a discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. An officer will normally receive a discharge under other than honorable conditions when they resign for the good of the service, are dropped from the rolls of the Army, or are involuntarily separated due to misconduct, moral or

professional dereliction, or for the final revocation of a security clearance as a result of an act or acts of misconduct, including misconduct for which punishment was imposed.

d. Chapter 4 (Eliminations) states an officer is permitted to serve in the Army because of the special trust and confidence the President and the nation have placed in the officer's patriotism, valor, fidelity, and competence. An officer is expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times. However, an officer who will not or cannot maintain those standards will be separated.

e. Paragraph 4-2b (Reason for Elimination) states while not all inclusive, when one of the several listed or similar conditions exist, elimination action may be or will be initiated for misconduct, moral or professional dereliction, or in the interests of national security; acts of personal misconduct, conduct unbecoming an officer, or conduct or actions that result in the loss of a professional status.

f. Paragraph 4-5 (Separation date) states an officer approved for involuntary separation by the Secretary of the Army or his designee, or whose request for resignation or discharge in lieu of elimination is approved for misconduct, moral, or professional dereliction, or in the interest of national security will be separated accordingly.

16. Military leave is governed by Titles 10 and 37, USC. There are two instances, detailed in sections 876 and 1182, wherein a service member may be required to take leave. Section 876 describes cases where the service member is pending review of certain court-martial convictions and section 1182 discusses cases where a board of inquiry has determined an officer will not be retained on active duty. There is no provision in the law requiring the approval of leave for any other circumstance.

17. Army Regulation 600-8-10 (Leaves and Passes) prescribes policies and procedures for military personnel absences, to include military leave.

a. Requests for leave require approval by a commander and can be granted within the constraints of operational military requirements.

b. Leave is subtracted from leave accrual for lost time, excess leave, or other non-pay status within a given month. Table 2-1 (Part-Month Leave Credit) states when lost days are between 13 to 18 days, 1 1/2 days leave is subtracted from that month's leave accrual.

c. Leave is not accrued for periods during which the Soldier is in civil confinement. Payment of accrued leave is made per Title 10 USC, section 501h. By law, payment of

accrued leave is limited to 60 days one time during a military career, unless earned in a missing status.

18. Army Regulation 600-8-24 (Officer Transfers and Discharges) provides when a commissioned or warrant officer, as applicable, is being processed for one of the actions listed in paragraphs 1–25b(1) through 1–25b(4):

a. The officer will be processed in accordance with the provisions of this regulation and through the Medical Evaluation Board (MEB)/PEB system pursuant to AR 635–40. If the result of the physical disability evaluation is a finding of physical fitness, the Army Physical Disability Agency will approve the findings for SECARMY and forward the proceedings to Commander, Human Resources Command (AHRC–OPD–A), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5400, to be processed with the other action. If a physical disability evaluation results in a finding of physical unfitness, both actions will be forwarded by HRC (AHRC–OPD–A), to SECARMY or designee for determination of appropriate disposition.

(1) Referral to the DAADB except when the DAADB is convened as a result of an imposed reduction in force.

(2) Involuntary REFRAD due to civil conviction or moral turpitude.

(3) Referral for elimination under chapter 4 of this regulation.

(4) Request for separation, resignation, or retirement in lieu of elimination.

b. Note. Generally, officers approved to resign for the good of the Service in lieu of trial by court-martial are ineligible for referral to the MEB and PEB. However, if the officer was referred to the MEB prior to approval of the resignation, the MEB and/or PEB must be completed and then action may be taken on the resignation request; Officers pending administrative elimination are normally dual processed for the elimination action and completion of the Disability Evaluation System. For dual processing to occur, referral to the MEB must occur before the date the DASA (RB) approves the officer's elimination pursuant to AR 635–40.

19. Public Law (PL) 110-252 Section 3321 (a)(1), states, the applicant's GI Bill benefits are subject to a 15-year delimiting period. This 15-year delimiting period can be reset if the individual serves 90 or more days of qualifying active-duty service and has an additional honorable period of service.

//NOTHING FOLLOWS//