

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 August 2024

DOCKET NUMBER: AR20230012117

APPLICANT AND HER COUNSEL REQUEST:

- reconsideration of her prior request for an upgrade of her under other than honorable conditions discharge to honorable
- a change in the narrative reason for separation and respective separation code to reflect hardship

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

- DD Form 149 (Application for Correction of Military Record)
- Letter of Representation and Counsel's Brief
- Exhibit 1 - DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Exhibit 2 - Self-Authored Statement
- Exhibit 3 - Investigation Records
- Exhibit 4 - Post-Service Medical Records
- Exhibit 5 - Medical Opinion from Dr. AH
- Exhibit 6 - Military Records

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210014064 on 20 May 2022.

2. The applicant, through counsel, states:

a. As new argument, counsel notes the applicant's discharge is an act of injustice because her post-traumatic stress disorder (PTSD) due to military sexual trauma (MST) was a major mitigating factor in the misconduct. The applicant has a diagnosis and is currently being treated for PTSD resulting from MST that occurred during her time in service. During her military service, the applicant was sexually assaulted by a fellow Soldier. The assault left the applicant feeling alone, afraid, and embarrassed. She did not have support or proper treatment, which led to her inability to cope with her symptoms. The assaults, and subsequent symptoms and mental health condition,

changed her behavior. Due to the changes, the applicant's performance suffered. Under the 2014 Hagel Memorandum and 2017 Clarifying Guidance, the Board must inquire into whether her PTSD excuses or mitigates the discharge. If the Board finds that the misconduct is sufficiently mitigated, the Board should upgrade her discharge.

b. Prior to joining the service, the applicant had no history of any mental health condition, counseling, or treatment. It was only after the MST and constant harassment from other Soldiers that she began to experience symptoms and received a mental health diagnosis. After she was assaulted, she began to experience anxiety, depression, and anger. She was constantly on edge, living in a flight-or-fight response. Post service, she began treatment at the Department of Veterans Affairs (VA) and has been diagnosed with PTSD secondary to MST. While there is conflicting evidence in the applicant's file about the circumstances that led to the assault, The Army Review Boards Agency is not required to find that a crime of sexual assault occurred in order to grant liberal consideration to the veteran. The applicant reported her rape, and an investigation was conducted, but she was never offered counseling. She was afraid to ask for support because she did not want to jeopardize her career. She was already receiving threats and being harassed for reporting the assault, and she was afraid to make the situation worse. Since the applicant suffered alone, the PTSD symptoms continued to increase and eventually overwhelmed her.

c. In her personal statement, the applicant explains what was going through her mind at the time of the altercation and explains why she reacted in the way she did. She was not trying to be insubordinate or disrespectful. Her anger was a symptom of her PTSD that she could not control due to the lack of support she had. Due to her always being in a "fight or flight" mindset, she was constantly on guard which caused her to be irritable and angry. The applicant did not know at the time or recognize that her actions were a result of her untreated PTSD symptoms. As explained above, her doctor explains the "combative behavior" was a symptom of the applicant's PTSD. She regrets the way she acted in these situations.

d. Her mental health condition and MST should be seen as strong mitigating factors in the misconduct given the direct connection. This question is answered affirmatively for the applicant given the circumstances of her discharge. During her separation proceedings, the MST she experienced was not considered. Today, service members receive heightened screening today to ensure the causal relationship of possible symptoms, MST, and discharge basis is fully considered, and characterization of service is appropriate. When compared with similarly situated individuals under today's standards, older Veterans may be the victim of an injustice because commanders are more fully informed today of such relationships and may opt for a less prejudicial discharge to ensure the veteran retains certain benefits.

e. The applicant's under other than honorable conditions discharge is based on misconduct that is a result of her PTSD due her MST. She did not expect to be assaulted in her bedroom and she did not expect to be harassed and threaten by others in her unit after she reported the assault. The PTSD resulting from her MST experience severely affected her behavior. If not for the MST, the applicant likely would have made a career of the Army. An honorable discharge characterization does not require flawless military service. Before the assault, she had no infractions requiring discipline during her service. It was not until after the increase of PTSD symptoms, that she began to have behavior issues. But for the traumatic experiences which resulted in her having PTSD, she likely would have continued to serve honorably as she set out to do when enlisted. It is respectfully requested that this Board upgrade her discharge to honorable and the related changes made to her DD Form 214.

3. The applicant provides:

a. A self-authored statement from the applicant wherein the applicant reiterated in more detail the sequence of events, as described by counsel, which led to her PTSD.

(1) In 2002, she was sexually assaulted by Sergeant (SGT) CH. She completed her extra duty and elected to stay up to put her laundry away and workout at the gym. She remembered SGT CH had her meal card and Vicks. She went to retrieve her items and he insisted on walking her back to her room. He entered her room and sat down, she asked him why he was in her room, and he began to make comments about her wanting him and how she was flirting with him. SGT CH pushed her onto the bed and began sexually assaulting her. She screamed at him to stop, but he did not care and continued to assault her. He forced himself on her while she screamed, begging him to stop, and attempted to fight him off. He finished and grabbed her shirt off the bed to clean himself and left. She gathered herself and immediately went to notify her noncommissioned officer (NCO) and he took her to see the commander. The commander immediately notified the Criminal Investigation Division (CID) and she was taken to the office for an interview. She was also taken to the hospital for a SAFE Kit.

(2) The commander instructed them to stay away from each other, but she continued to see him because they were in the same unit. Following the assault, she began to change. She was depressed, anxious, and angry. She did not want to be around others and could not bring herself to go to the store. She isolated herself, she did not seek treatment because it was not offered, and she was afraid to discuss her feelings because she did not want her career to end. Her care was limited to medical care following the assault and she never received behavioral health care. She knows that her emotional, physical, and spiritual health was greatly affected by the assault, and she was overwhelmed by feelings and emotions she could not process. She believed she had to "suck it up and drive on." She felt like she was living a nightmare, being harassed, threatened, and feared that something would happen to her. The threats she

was receiving from others in the unit began to take a toll on her and she did not know to cope with her symptoms. Specifically, she became angry and constantly on edge which eventually led to her misconduct resulting in discharge.

(3) She sought help for herself following her discharge at the VA. She made significant strides which included graduating with honors, obtaining several technical skills, and even learned how to build positive and meaningful relationships. She is grateful for the support she receives now from her husband. The assault left her feeling like no one cared about her, it changed her life, she felt alone, afraid, and embarrassed. She wanted to leave the military and she was not prepared to go to another duty station following her assault. She lost trust in her command and her peers. She did not feel safe and did not understand how the command handled.

b. The below listed documents previously considered and to be referenced in the service record:

- DD Form 214 (Exhibit 1), for the period ending 18 July 2003
- Military Records (Exhibit 6)

c. A CID investigation report (Exhibit 3), dated 16 July 2002, shows on 28 June 2002 in Camp Kyle, South Korea, the applicant was the victim of an alleged rape. The investigation established that probable cause did not exist to believe the offense of rape occurred. The applicant initially reported to members of her unit that she was forcibly raped in her barracks room by another member. The applicant subsequently rendered a sworn statement wherein she stated the member did not rape her, but rather she felt he took advantage of her. She said she initially did not want to engage in sexual intercourse with him but he continued his sexual advances and eventually persuaded her to engage in intercourse. The investigator opined that probable cause did not exist to believe the other member committed the offense of rape or that the offense of rape occurred.

d. The applicant's post-service medical records (Exhibit 4) for her PTSD and major depression treatment received from approximately October 2019 through April 2022.

e. A medical opinion (Exhibit 5) from Dr. AH which states he is a board certified Family Physician and has been the applicant's Primary Care Physician (PCP) since meeting her on 19 June 2020. She asked him to provide a statement regarding past MST that she suffered while on active duty and the impact that may have had on her duty performance and the characterization of her discharge from the military. Prior to this request, he had not discussed her history of MST. Her past medical conditions, specifically PTSD, likely affected her behaviors at the time of her discharge. PTSD can manifest in many symptoms including combative behaviors. Such behaviors can occur following a single incident as well as be aggravated by repeat trauma. In this case, his opinion is that the applicant's psychiatric symptoms contributed to and should be seen

as a mitigating factor in the misconduct that resulted in her under other than honorable conditions discharge.

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

a. She enlisted in the Regular Army on 24 October 2000.

b. Her Enlisted Record Brief shows she served in Korea from approximately 3 May 2001 to 18 November 2002.

c. The available service record was void of nonjudicial punishment which would have led to extra duty.

d. A DD Form 458 (Charge Sheet) shows on 2 June 2003, court-martial charges were preferred on the applicant for

- one specification of being disrespectful to SGT JCR on or about 11 April 2003
- one specification of assault against another Soldier by holding a knife to her throat
- one specification of assault committed against two military policemen in the execution of their duties by attempting to kick and strike them with her fists on or about 5 May 2003.

e. On 16 June 2003, after consulting with legal counsel she requested a discharge in lieu of trial by courts-martial under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. She acknowledged:

- maximum punishment
- she was guilty of the charges against her or of a lesser included offense
- she does not desire further rehabilitation or further military service
- if her request for discharge was accepted, she may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- she would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- she may be deprived of her rights and benefits as a Veteran under both Federal and State law
- she may apply to the Army Discharge Review Board or the ABCMR for upgrading
- she may expect to encounter substantial prejudice in civilian life

f. On 9 July 2003, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by

court-martial under the provisions of AR 635-200, Chapter 10. She would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted rank of private/E-1.

g. On 18 July 2003, she was discharged from active duty with an under other than honorable conditions characterization of service. Her DD Form 214 shows she was discharged under the provisions of chapter 10 of AR 635-200 with an under other than honorable conditions discharge. She completed 2 years, 8 months, and 25 days of active service. She was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4.

5. On 14 September 2009, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied her request for an upgrade of his discharge.

6. On 20 May 2022, the ABCMR rendered a decision in Docket Number AR20210014064. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Psychologist. The Board concurred with the medical reviewer finding insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

7. By regulation (AR 635-8), 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. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

8. By regulation (AR 635-5-1), provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in block 28 of the DD Form 214 exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "In Lieu of Trial by Court-Martial" in accordance with AR 635-200, Chapter 10.

9. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than

Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

10. In reaching its determination, the Board can consider the applicant's petition and her service record in accordance with the published equity, injustice, or clemency determination guidance.

11. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of her prior requests for an upgrade of her under other than honorable conditions discharge to honorable. In addition, she requests a change in the narrative reason for separation and respective separation code to reflect hardship. The applicant contends PTSD and MST mitigates her discharge.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted in the Regular Army on 24 October 2000.
- Her Enlisted Record Brief shows she served in Korea from approximately 3 May 2001 to 18 November 2002.
- A DD Form 458 (Charge Sheet) shows on 2 June 2003, court-martial charges were preferred against the applicant for one specification of being disrespectful to SGT JCR on or about 11 April 2003, one specification of assault against another Soldier by holding a knife to her throat, and one specification of assault committed against two military policemen in the execution of their duties by attempting to kick and strike them with her fists on or about 5 May 2003.
- On 16 June 2003, after consulting with legal counsel she requested a discharge in lieu of trial by court-martial under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10.
- On 18 July 2003, she was discharged from active duty with an under other than honorable conditions characterization of service. Her DD Form 214 shows she completed 2 years, 8 months, and 25 days of active service. She was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4.
- On 14 September 2009, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied her request for an upgrade of his discharge.
- On 20 May 2022, the ABCMR rendered a decision in Docket Number AR20210014064. The Board determined that the character of service the applicant received upon separation was not in error or unjust.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. As new argument, counsel notes the applicant's discharge is an act of injustice because her post-traumatic stress disorder (PTSD) due to military sexual trauma (MST) was a major mitigating factor in the misconduct. The applicant has a diagnosis and is currently being treated for PTSD resulting from MST that occurred during her time in service. During her military service, the applicant was sexually assaulted by a fellow Soldier. The assault left the applicant feeling alone, afraid, and embarrassed. She did not have support or proper treatment, which led to her inability to cope with her symptoms. The assaults, and subsequent symptoms and mental health condition, changed her behavior. Due to the changes, the applicant's performance suffered. Under the 2014 Hagel Memorandum and 2017 Clarifying Guidance, the Board must inquire into whether her PTSD excuses or mitigates the discharge. If the Board finds that the misconduct is sufficiently mitigated, the Board should upgrade her discharge.

d. Due to the period of service no active-duty electronic medical records were available for review.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is service connected for treatment purposes only for PTSD and Major Depressive Disorder. The VA electronic medical record shows on 6 November 2008, she participated in an initial mental health evaluation for the VA Homeless Program since the applicant did not have stable housing. However, she was found ineligible for services. She relocated and once again sought support from the local VA. A note dated 8 January 2010, indicates she was referred to social work for financial and housing issues. However, once again, she was found ineligible for services. The applicant participated in a C and P Examination on 20 April 2012, where the clinician opined, she did not meet diagnostic criteria for PTSD. However, she was diagnosed with Major Depressive Disorder and Anxiety Disorder. The examination notes the applicant's self-report of childhood sexual abuse and MST. In an initial mental health evaluation dated 6 March 2013, for the purpose of determining treatment needs, the applicant reported a chaotic childhood, and, as a result she "left high school for Job Corp," however, she was removed from the program because, "I told a lot of lies, confrontation was the only way I could solve anything". The applicant further shared experiencing disciplinary action against her while in the Army, prior to the physical altercations that led to her discharge. She described the incident that led to her discharge as follows: "I got into it with this girl, I had a knife and don't take BS from anyone, I'll stab them". The applicant was diagnosed with Depressive Disorder, Anxiety Disorder, and Personality Disorder, NOS. The applicant once again relocated and contacted the Veteran Crisis Line on 15 June 2018, reporting passive suicidal ideation, she was assessed and provided services. She did not engage with services until July 2019. Based on her history of MST and her symptoms of anxiety and depression, she was treated with individual psychotherapy and medication. In June 2020, the applicant was seen at Ft. Meade since she had

relocated there with her husband. A FAP note dated 19 May 2021, indicates she was referred due to anger management and was the perpetrator of spousal abuse. In a later session, dated 28 May 2021, the applicant acknowledged that part of the problem in her marriage was communication, "I talk over him and treat him like my child". The applicant participated in individual and couples therapy via FAP until December 2021.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is evidence the applicant had an experience and subsequent BH condition. The applicant's BH condition partially mitigates her misconduct, however, her more serious offense of assaults against a fellow soldier and two military police are not mitigated.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating condition, PTSD and MST.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is service-connected for treatment purposes for MST-related PTSD and Major Depressive Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. The applicant was discharge from military service due to being disrespectful to a sergeant, assault against another Soldier by holding a knife to her throat, and one specification of assault against two military policemen in the execution of their duties by attempting to kick and strike them with her fists. The applicant's record shows evidence that she has been treated for MST, PTSD, and Major Depressive Disorder. Given the nexus between PTSD and difficulty with authority, the applicant's charge of being disrespectful towards a sergeant is mitigated by her BH condition. However, her more serious offense of physical assaults are not mitigated by any of her BH conditions including MST, PTSD, and/or Major Depressive Disorder. Assault is not a natural history or sequela of any of her BH conditions and, as such, would not mitigate her discharge. In addition, her BH conditions do not impact the ability to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The available evidence shows the applicant was charged with commission of offenses (being disrespectful, assault against another Soldier by holding a knife to her throat, and assault committed against two military policemen) punishable under the UCMJ with a punitive discharge. After being charged, she consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in her separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding that although there is evidence to support the applicant had a condition or experience that partially mitigates her disrespect misconduct; however, her behavioral health condition does not mitigate her more serious offense of assaults against a fellow soldier and two military police. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation were not in error or unjust.

b. Narrative Reason and corresponding codes: Deny. The Board noted that the applicant's narrative reason for separation was assigned based on the fact that after she committed multiple serious offenses, court-martial charges were preferred against her. She chose the voluntary discharge in lieu of trial by a court-martial in accordance with chapter 10 of AR 635-200. Absent her misconduct and subsequent court-martial charges, there was no reason for her to submit a request for voluntary discharge under chapter 10 of AR 635-200. The underlying reason for her discharge was her request for voluntary discharge in lieu of trial by court-martial. The only valid narrative reason for separation permitted under chapter 10 of AR 635-200 is "in Lieu of Trial by Court-Martial." Again, the Board found no error or injustice in the reason for her separation.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

1. Regarding the issue being reconsidered (discharge upgrade), 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 to amend the decision of the ABCMR set forth in Docket Number AR20210014064 on 20 May 2022.

2. Regarding the new issue (reason for separation), 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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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 (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged in lieu of trial by court-martial.

2. Army Regulation 635-5 (Separation Processing and Documents) states 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. The information entered thereon reflects the conditions as they existed at the time of separation. Block 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (Separation Program Designator (SPD) Codes).

3. Army Regulation 635-5-1 (Separation Program Designator Codes) provides separation program designator (SPD) codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The narrative reason for the separation will be entered in Block 28 of the DD Form 214 exactly as listed in the regulation. SPD code KFS is listed with the narrative reason as, "In Lieu of Trial by Court-Martial" in accordance with AR 635-200, Chapter 10.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former

service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

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

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

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

7. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the

Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//