

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20230012291

APPLICANT REQUESTS:

- Upgrade his general discharge under honorable conditions to an honorable character of service for both his DD Form 214 (Certificate of Release or Discharge from Active Duty) and National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service)
- In effect, amend the narrative reasons for separation on his DD Form 214 and NGB Form 22 so that the entries do not reflect the abuse of illegal drugs
- Permission to appear personally before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- State Assemblyman Letter with enclosure
- Memorandum, subject: Clemency Letter – [Applicant] with 21 enclosures
- Letter to State Assemblyman
- Separation Packet with 17 documents
- Unit Testing Procedures Handbook; Alcohol and Drug Abuse Prevention and Control Program; State Alcohol and Drug Control Officer (ADCO), California Army National Guard (CAARNG)
- DD Form 214
- NGB Form 22

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, in effect, he was a member of the CAARNG from 1984 to 1994; in December 1993, the unit conducted a mandatory urinalysis and his results came back positive for cocaine. As a result, the CAARNG separated him for drug abuse.

a. The applicant declares he did not, and to this day, still does not, use illegal drugs. He argues, when the unit took his urine sample, they did not follow proper procedures; he provides a copy of a Unit Testing Procedures Handbook to support his claim. The applicant affirms he told the administrative separation board about procedural errors, but the board members stated they were not concerned about procedures; they recommended his separation anyway.

b. The applicant states, "All I ask is that you please read through the packet and you will be able to tell I'm telling the truth." He affirms that, up to now, he has never had anything negative in his record, and he is currently serving as his community's Mayor Pro-Tem (Pro Tempore, a member of a city council appointed to act in the absence of the actual mayor). Additionally, he volunteers with the sheriff department and has earned numerous local and national awards.

3. According to the National Personnel Records Center, the applicant's service records are unavailable. However, his submitted documents offer sufficient basis for the Board to consider his requests.

4. The applicant's documents show the following:

a. According to his NGB Form 22, the applicant enlisted into the CAARNG, on 25 May 1984; as of 30 June 1987, the applicant held the primary military occupational specialty of 92Y (Unit Supply Specialist). On 4 October 1988, he entered active duty in an Active Guard/Reserve (AGR) status. Effective 13 August 1990, his CAARNG leadership promoted him to staff sergeant (SSG)/E-6.

b. Based upon information from a confidential informant, the Division Artillery (DIVARTY) commander (Lieutenant Colonel (LTC) R.L. T__) directed Soldiers in the applicant's unit (2nd Battalion, 144th Field Artillery Regiment) to undergo a urinalysis test.

(1) In a 17 February 1994 MFR, the DIVARTY ADCO, Captain (CPT) W. F. K__, details how, on 11 December 1993, he conducted the collection of urinalysis specimens; one female AGR Soldier assisted him.

(a) On his arrival at the testing site, CPT K__ met the DIVARTY Administrative Officer (Major (MAJ) J. J. K__). MAJ K__ showed them to location of the latrine; CPT K__ noted the latrine was away from the battalion area and had limited access.

(b) Only male Soldiers were tested, and as they arrived, CPT K__ escorted them individually and one at a time into the latrine.

- At the entrance to the latrine, CPT K__ had a table where the Soldiers verified their social security number, and CPT K__ obtained their military identification (ID) cards
- CPT K__ entered the Soldier's information on the DA Form 5180-R (Urinalysis Custody and Report Record) and the Drug Testing Ledger
- CPT K__ asked each Soldier whether they were taking any medications that might influence the results, and he added comments as appropriate
- After completing paperwork, CPT K__ withdrew one bottle from the box and directed the Soldier to the toilet area; he instructed the Soldier to remove his Battle Dress Uniform (BDU) shirt and wash his hands
- CPT K__ removed the bottle lid, ensured the bottle was empty, and provided the bottle to the Soldier
- CPT K__ stood at the extreme end of the wash basins where he could maintain both visual contact of the latrine door and directly observe the Soldier providing the urine sample
- As each Soldier completed the test, CPT K__ handed them the bottle lid and had them reattach the lid to the bottle; CPT K__ then tightened the lid and held in the Soldier's view while the Soldier washed his hands and replaced his BDU shirt; the bottle was returned to the table
- Once at the table, CPT K__ asked the Soldier if the urine sample was his; when the Soldier replied, "Yes," CPT K__ had the Soldier initial bottle's label; CPT K__ applied tamper proof tape, affixed the label to the bottle in the Soldier's presence, and placed the bottle in the box

(c) Several Soldiers were unable to initially give a sample, so CPT K__ took the bottles from them, then crushed and discarded them. One Soldier (possibly the applicant, though CPT K__ could not remember for certain) submitted only a partial sample; each sample was supposed to contain 60 milliliters.

- CPT K__ told the Soldier he would have to provide a full sample before being released to the unit; the Soldier expressed concerns, saying he needed to return to his unit and that he had urinated before arriving at the Armory
- CPT K__ told the Soldier that he had a choice: throw out the current sample and start over, or allow CPT K__ to seal the bottle with tamper proof tape, place it on the table where the Soldier could observe it, and finish filling the bottle when he was able; the Soldier elected to seal the bottle and wait
- CPT K__ took the bottle, sealed it with tamper proof tape, and placed it directly on the Soldier's military ID; he placed the bottle on the right front corner of the table where it could be observed, and he escorted the Soldier to the latrine door; CPT K__ then resumed testing the other Soldiers
- After a time, the Soldier stated he was ready to give additional urine; CPT K__ escorted the Soldier to the table, showed him that the tamper proof tape was still intact

- Because the Soldier had interrupted the test, CPT K__ asked if the Soldier could confirm the bottle was his and that no one had tampered with it; the Soldier verified the bottle was his and that it showed no signs of tampering
- In the Soldier's presence, CPT K__ removed the tamper proof tape and they resumed the testing procedure; after the Soldier finished giving his sample, CPT K__ resealed the bottle, asked the Soldier if the bottle was his, to which the Soldier replied that it was
- Both CPT K__ and the Soldier initialed the label, CPT K__ affixed the label to the bottle, and placed the bottle in the box

(d) Upon completion of testing, CPT K__ immediately sealed the box containing the urine sample bottles and prepared it for mailing to the laboratory; due to the number of participants, there was more than one box, and all were subsequently transported to the Post Office for further transmission.

(2) On or about 23 December 1993, the laboratory completed testing the urine samples and found two contained cocaine; the applicant had provided one of those two specimens.

c. On 13 January 1994, the following actions occurred:

(1) The battalion administrative officer (CPT J__ J. W__) advised the applicant of his rights and informed him his urinalysis test had come back positive for cocaine; the applicant was to seek treatment and rehabilitation from a State-certified substance abuse treatment center.

(2) MAJ J__ J. K__, DIVARTY Administrative Officer, met with the applicant and told him that the unit intended to initiate the applicant's involuntary separation from the AGR program; the applicant had three choices: prepare a written rebuttal, take no action, or submit a voluntary resignation from the AGR program.

(3) MAJ J__ J. K__, DIVARTY Administrative Officer, forwarded a written memorandum to higher headquarters, requesting the applicant's involuntary separation from the AGR program. He cited the applicant's positive urinalysis results and stated the battalion commander was preparing separation documentation; he added that he had advised the applicant of the three possible actions available to him.

(4) The applicant's battalion commander (LTC J__ G. S__) signed a memorandum in which he advised the applicant he was initiating separation action against him, citing the provisions of Army Regulation (AR) 600-85 (Alcohol and Drug Abuse Prevention and Control Program (ADAPCP)) and National Guard Regulation (NGR) 600-85 (Drug Abuse Prevention and Control). The battalion commander stated he was taking this action because the applicant was a rehabilitation failure.

d. On 25 January 1994, the applicant submitted a rebuttal to his proposed separation. He provided a chronology of events and made the following arguments:

(1) The applicant believed his leadership had discriminated against him; had violated his rights; and, in general, had threatened, intimidated, and coerced him to make unfair choices without being granted access to counsel. Additionally, he felt that, because he was an AGR Soldier, the command was treating him more harshly than it would for an M-Day Soldier (i.e., a drilling ARNG member not on active duty).

(2) The command had initiated its drug abuse investigation based upon statements made by a former member of the unit who had been arrested for drug use and trafficking and been separated due to being absent without leave (AWOL). This person had a motive for providing false information because the other Soldier with a positive urinalysis test had kicked her out of his apartment.

(3) The appointment of MAJ J__ J. K__, DIVARTY Administrative Officer, as the investigating officer was, in the applicant's view, very questionable; if the matter was as serious as the command maintained, why did they not call in CID (U.S. Army Criminal Investigation Command) or civilian law enforcement.

(4) Allegedly, the urinalysis testing had been command-directed, but no one ever clarified which commander had ordered the test; the applicant's battalion commander stated he did not know about the test until 30 minutes before it started.

(5) Testing procedures were not followed; the improprieties included:

- Leaving partial specimens unobserved and unlabeled
- The same person administering the test also acted as the observer, and then placed all completed specimens in a location out of that person's view
- MAJ J__ J. K__ had free access to the testing site
- Soldiers with partially filled bottles were allowed to return later to finish filling the bottles; the partially filled specimens sat on a table unlabeled and were unobserved for periods of time
- Confidentiality was not maintained; numerous Soldiers knew of the applicant's test results before he did

(6) The battalion commander, who never spoke to the applicant, supposedly removed the applicant from his position, while the other person who tested positive was allowed to continue his normal duties. Additionally, the battery commander (CPT M__ C. M__) never counseled the applicant, and the battalion commander recommended the applicant's separation from the CAARNG without ever consulting the battery commander. The applicant contended this showed improper command influence.

(7) Pending the outcome of his separation proceedings, the command forced the applicant to use his leave; his only other option would have been to travel to DIVARTY headquarters, which was too far from his home, and this would have forced him to directly work for the commander who was discharging him.

e. On 25 January 1994, the applicant filed a complaint with the CAARNG Inspector General's (IG) office; on 28 January 1994, he sent a letter to Office of The Adjutant General (OTAG), CAARNG. Both documents detailed the events surrounding his pending separation action and requested a full investigation. The applicant does not include any responses he may have received from the IG or OTAG.

f. On an unknown date in January 1994, the applicant declared his elections for his pending separation action. He acknowledged he had been advised of the basis for his separation action and indicated he was requesting counsel. Additionally, he affirmed that he wished to appear personally and with counsel before an administrative separation board, and he would not be submitting statements in his own behalf.

g. On 1 February 1994, a community crisis center provided a letter confirming the applicant had enrolled in the center's outpatient drug counseling program; in addition to attending weekly group sessions, the applicant would be required to submit to random urine testing.

h. On 10 February 1994, the applicant sent a second letter to OTAG, CAARNG, requesting a full investigation to address how his unit had conducted the 11 December 1993 urinalysis test. He argued the unit had failed to follow published guidance.

i. In February 1994, members of the applicant's command provided written responses to the applicant's rebuttal; these included the following:

(1) On 11 February 1994, the DIVARTY commander affirmed he had directed the urinalysis test.

(2) On 14 February 1994, the applicant's battalion commander (LTC J__ G. S__) stated, because the applicant had tested positive for cocaine, he had arranged with the DIVARTY Administrative Officer to offer the applicant the chance to work in another DIVARTY location while his involuntary separation was being processed. The applicant elected to take terminal leave.

(3) On 17 February 1994, CPT W. F__ K__, DIVARTY ADCO, outlined the procedures he had followed in conducting the 11 December 1993 urinalysis test. He countered what he described as inaccuracies in the applicant's rebuttal:

- All Soldiers tested were male; a female specialist assisted him and she played an important role by securing the testing area and ensuring no tampering occurred with the urine specimens
- The applicant's rebuttal did not clarify the layout of the latrine; CPT K__ affirmed he had an unobstructed view of the door and the table on which the specimens were situated
- The applicant had alluded to "unmarked bottles" but did not address the fact that his bottle had been sealed with tamper proof tape and was sitting on his ID card
- At no time was there more than one "halfway full" bottle on the table
- The applicant did not acknowledge that CPT K__ had him confirm that the specimen and social security number were his, and he failed to mention that CPT K__ had given him the option of destroying the partially filled bottle and replacing it with a new one
- The applicant claimed testing procedures were not followed but cited invalid and inaccurate information to support his arguments
- There is no requirement for the observer to be a different person from the ADCO, and the specimens were accessible to CPT K__ and no one else; CPT K__ had full view of the table and the completed specimens were kept in the latrine until prepared for shipping

(4) MAJ J__ J. K__, DIVARTY Administrative Officer, clarified the following:

- The applicant's battalion commander had expressed a desire to immediately and involuntarily separate the applicant from the AGR program due to the positive drug test results
- As to different treatment for AGR vs. M-Day Soldiers, DIVARTY felt very strongly that drug use was incompatible with Army service and the unit had a zero tolerance policy towards drug users
- The applicant's battery commander was not consulted about separating the applicant from the AGR program; however, it is the battalion commander's prerogative to unilaterally take such action
- Regarding a lack of confidentiality, MAJ K__ gave the test results only the battalion commander, the battalion administrative officer, and the battalion ADCO; in MAJ K__'s opinion, the applicant and the other Soldier who tested positive discussed the matter and shared information to formulate their rebuttals
- MAJ K__ stated he found no proof anyone had discriminated against the applicant; all actions occurred based upon his positive drug test results

j. On 18 March 1994, three noncommissioned officers (NCO) gave sworn statements, wherein they described what happened when they gave urine specimens on 11 December 1993. Each stated:

- One person at a time entered the latrine to provide a urine sample
- Upon entering, they completed some forms and removed their BDU shirts
- The CPT gave them a urine specimen bottle and watched as they filled the bottle
- After filling the bottle, they handed it to the CPT, who put a label on it and placed it in a box

k. On 29 April 1994, the applicant appeared with counsel before an administrative separation board; the applicant did not include a copy of the proceedings. On or about 5 May 1994, the applicant learned the board had recommended his separation with a general discharge under honorable conditions. On 5 May 1994, the applicant wrote a memorandum to OTAG, CAARNG requesting clemency.

(1) The applicant maintained that, during the board, his counsel consistently tried to show how the ADCO had not followed proper procedures during 11 December 1993 test; however, the board did not appear to be at all interested. Numerous times, MAJ D__, the board president, commented that she was not concerned with whether or not procedures had been followed.

(2) The applicant's battery commander offered supporting comments about the applicant's duty performance but added that he would never recommend a senior NCO for retention when they had tested positive for illegal drugs. The applicant pointed out that this was completely untrue as there were NCOs with similar circumstances who had been retained in the unit.

(3) Another concern was that both he and the other Soldier who tested positive had appeared before the same board; while both the applicant and the other Soldier had agreed to this arrangement, the applicant now felt that decision had been detrimental.

l. On 5 May 1994, the applicant's State Assemblyman sent a letter to OTAG, CAARNG, noting his representative had attended the applicant's administrative separation board and made some concerning observations. He included a copy of his representative's memorandum, which reported the following:

- Members of the board mentioned several times they were not interested in hearing about drug test procedures and the layout of the latrine
- Testimony by CPT W. F__ K__, DIVARTY ADCO indicated that, while a Unit Testing Procedures Handbook was in circulation, its procedures were not adhered to; according to the CAARNG ADCO, those procedures should have been followed
- Participants should have received a briefing prior to testing, and all partially filled bottles should have been destroyed

m. On 31 July 1994, the CAARNG simultaneously separated the applicant from AGR status and from the CAARNG; both separation documents listed his character of service as Under Honorable Conditions (General).

(1) The applicant's DD Form 214 shows he completed 5 years, 9 months, and 27 days of net AGR service, with 3 years of prior active service. The report additionally reflects the following:

(a) Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized):

- NCO Professional Development Ribbon with Numeral "2"
- Army Reserve Components Achievement Medal (2nd Award)
- National Defense Service Medal (2nd Award)
- Army Achievement Medal (3rd Award)
- Army Commendation Medal
- CA State Service Ribbon (2nd Award)
- CA Recruiting Achievement Ribbon (5th Award)
- CA Drill Attendance Ribbon (5th Award)
- CA Enlisted Excellence Ribbon
- CA Good Conduct Ribbon
- CA Commendation Medal

(b) Special Additional Information:

- Item 25 (Separation Authority) – NGR 600-5 (The AGR Program – Title 32 (National Guard), Full-Time National Guard Duty (FTNGD))
- Item 26 (Separation (Separation Program Designator (SPD)) Code) – "JKK"
- Item 27 (Reentry (RE) Code) – RE-3
- Item 28 (Narrative Reason for Separation) – Misconduct – Abuse of Illegal Drugs

(2) His NGB Form 22 indicates he completed 10 years of CAARNG service.

- Item 23 (Authority and Reason) – OTAG Order Number 117-578, dated 21 June 1994; Section 260 (Causes for Enlisted Personnel Discharges), California Military and Veterans Code and paragraph 8-26q (Acts or Patterns of Misconduct), NGR 600-200 (Enlisted Personnel Management)
- Item 26 (Reenlistment (RE) Code) – RE-3

5. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states an applicant is not entitled to a hearing before the Board;

however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requested, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation failing to demonstrate the applicant was not afforded all due process rights and/or a lack of evidence demonstrating an error in processing, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's record.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

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

//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 ` this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), in effect at the time, prescribed policies and procedures for managing Army National Guard (ARNG) enlisted personnel. Chapter 8 (Discharge) stated:

a. Paragraph 8-3 (Notification Action and Administrative Discharge Boards).

(1) All Involuntary administrative discharges required commanders to notify Soldiers concerning intent to initiate discharge procedures. If the basis for discharge was included in Army Regulation (AR) 135-178 (ARNG and Army Reserve – Separation of Enlisted Personnel), that regulation stated the notification and separation procedures to be used.

(2) Except as modified by AR 135-178 and this regulation, administrative discharge boards were to conform to the provisions of AR 15-6 (Procedure for Investigating Officers and Boards of Officers). The proceedings of the board were to be summarized. A verbatim record was only required for findings and recommendations.

b. Paragraph 8-7 (Types of Administrative Discharges and Character of Service). Honorable Discharges. Issued to Soldiers separated with honor.

c. Paragraph 8-25 (Reenlistment Codes). Reenlistment codes were determined at discharge. They provided information concerning the Soldier's service in the ARNG, which would be considered upon future reenlistment. If the reason for discharge was waivable, the reenlistment code was supposed to be RE-3. The RE codes were defined as follows:

- RE-1 – Eligible for reentry
- RE-3 – Waivable disqualification
- RE-4 – Not eligible for reentry

d. Paragraph 8-26q (Discharge from State ARNG and/or Reserve of the Army – Acts of Patterns of Misconduct).

(1) An administrative board was required for separation under this provision when the Soldier had 6 years or more of total military service, or the separation

authority was considering an under other than honorable conditions character of service.

(2) Soldiers separated under this provision received an RE-3 reenlistment code, and the provision included discharges based on abuse of illegal drugs. Soldiers identified as drug abusers had to be referred for treatment or counseling, regardless of the commander's intent to take administrative, nonjudicial, or judicial action.

(3) Commanders were required to begin separation processing or recommend retention for the following categories of Soldiers:

- First-Time Drug Offenders, Sergeant through Sergeant Major were mandated to be processed for separation or retention
- First-Time Drug Offenders, Private through Corporal could be processed for separation
- Second-Time Drug Offenders, regardless of enlisted grade, were processed for discharge

3. NGR 600-5 (The AGR Program – Title 32 (National Guard), Full-Time National Guard Duty (FTNGD)), in effect at the time, outlined policies and procedures for ARNG Active Guard/Reserve (AGR) Soldiers. Chapter 6 (Separation) addressed release from FTNGD and separation from the AGR program.

a. Paragraph 6-1 (General). State The Adjutants General (TAG) were the final separation authority for AGR Soldiers.

b. Paragraph 6-5 (Separation for Cause and Procedures).

(1) AGR Soldiers were to be involuntarily separated for cause from Full-Time National Guard Duty in accordance with the provisions and procedures of this paragraph. TAGs were to review all recommendations for separation under this paragraph and make the final determination. This authority could not be delegated. TAGs, as the approval authority, were precluded from initiating separation action.

(2) Guidelines for Involuntary Separation. Counseling or a letter of reprimand were to be initiated by the commander or supervisor when an individual had committed a derogatory act. When deciding whether to initiate separation proceedings, the commander was to consider the seriousness of the events or conditions that formed the basis for separation; the likelihood those events/conditions would continue or recur; and whether the Soldiers actions would have an adverse impact on the unit's mission and affect his/her ability to do their job.

(3) Involuntary separation for cause recommendations were to be made by the commander or supervisor at the level commensurate with the AGR soldier's full time duty position, and the commander/supervisor was to refer the written recommendation to the Soldier for comment. The Soldier was given 15 days to submit a rebuttal and had to be advised of the availability of, and provided assistance by, a Judge Advocate General officer.

(4) Reasons for involuntary separation included inappropriate professional and personal conduct and moral or professional dereliction.

4. AR 135-178, in effect at the time, outlined administrative separation policies and procedures for Reserve Component enlisted personnel.

a. Paragraph 1-18b (1) (Characterization of Service – Honorable). An honorable character of service was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty for military personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 7-11c.1 (Acts or Patterns of Misconduct – Abuse of Illegal Drugs) required commanders to process for discharge all ranks of enlisted Soldiers who were discovered to have committed a second drug offense. "Processed for discharge" meant commanders were to initiate separation action and route the action through the chain of command to the separation authority for appropriate action.

(1) Commanders were to use the notification procedure when an under other than honorable conditions discharge was not contemplated.

(a) Under the notification procedure, commanders advised the Soldier in writing of the command's intent to separate the Soldier, the basis for the separation action, the least favorable character of service he/she could receive, and the rights he/she had per AR 135-178; this included the right to counsel, the right to submit statements, and the right to appear personally before an administrative separation board, if the Soldier had 6 or more years of total Regular and Reserve military service. The Soldier could also waive his/her rights.

(b) The regulation stated Soldiers were to be given a reasonable period of time (not less than 30 calendar days) to act on the commander's notification. After receiving advice from counsel, the Soldier's decisions had to be recorded on the appropriate form, and both the applicant and his/her counsel signed the form.

(2) In cases where the commander's notification was authorized to be sent via mail and the Soldier failed to respond in a timely manner, the lack of response was deemed a waiver of the Soldier's rights.

5. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For the reentry (RE) code, preparers were to use the code associated with the SPD, as listed on the SPD/RE Code Cross Reference Table.

6. AR 635-5-1, in effect at the time, showed the Army issued SPD "JKK" to Soldiers separated under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), paragraph 14-12c (2) (Commission of a Serious Offense – Abuse of Illegal Drugs).

7. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers; the table shows the SPD code and its corresponding RE code. The SPD code of "JKK" has a corresponding RE code of "4."

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

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, 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.

9. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

(2) The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

c. Paragraph 2-11 (ABCMR) Hearings. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//