

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230012520

APPLICANT REQUESTS: in effect:

- upgrade of his dishonorable discharge to an honorable discharge
- his narrative reason for separation and Separation Program Designator (SPD) code be changed to show he was separated under "Secretarial Authority"
- issuance of a new DD Form 214 (Certificate of Release or Discharge from Active Duty) which reflects these corrections
- his Defense Central Investigations Index (DCII), National Criminal Information Center (NCIC) records, and Army Records information Management System (ARIMS) be cleared of any information pertaining to his court-martial conviction
- an official letter from the Secretary of the Army or equivalent official that communicates this correction and relieves him of all related sexual abuse reporting on both the Federal and State level
- to appear before the Board via video/telephone

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Statement from the applicant's mother
- Character reference letter from Second Lieutenant (2LT) JH
- Character reference letters from Chaplain Colonel (COL) JJ (3)
- Character reference letter from DJ, Chaplain JJ's wife
- Letter from BA, Assistant District Attorney (DA), 34th Judicial District, El Paso, TX, dated 17 May 2017
- Office of the Under Secretary of Defense Memorandum for Secretaries of the Military Departments, Subject: Clarifying Guidance to Military Discharge Review Boards (DRB) and Boards for Correction of Military/Naval (BCM/NR) Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment, dated 25 August 2017 (Commonly referred to as the Kurta Memo)

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, U.S. Code (USC), Section 1552 (b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant and his mother provide a nine-page co-written statement, which is available in its entirety for the Board's consideration.

a. They contend the applicant is factually innocent of the charges for which he was convicted for the following reasons:

(1) The El Paso DA's Office declined to pursue charges based on their determination of the unreliability of the witnesses, insufficient evidence, and the DA's office psychological determination after interviewing the child that the mother improperly influenced the child. A forensic examiner who questioned both the mother and the child concluded no charges should be brought against the applicant, but the Army decided to go forward with a General Court-Martial.

(2) The child's numerous under oath denials of the occurrence of the alleged incident.

(3) The child's mother perjured herself numerous times, which is on the record. An investigator determined her life was at a critical point and she was fully aware that her prior bad life decisions and judgments put her in a desperate predicament as a single mother raising two young daughters with a live-in boyfriend who still had one foot in his bachelor life. In order to get her boyfriend to start paying more attention to her and her daughters, she needed to drive a wedge between him and his friends. So, she came up with a scheme to frame the applicant for sexual child abuse one night when he was staying overnight at their home. She attested the applicant had gone into her youngest daughter's bedroom and physically molested her.

(4) The plausible relationship disclosed on the record between the child's mother and a member of the convicting panel.

(5) The expert witness misrepresented her credentials and testified at trial to the extent of the child's harm without even conducting an interview with the child.

(6) The imposition of a sentence by the panel inconsistent with its findings of guilt.

(7) The improper conduct of the Army Prosecutor's verbal expression of glee and "fun" to prosecute the applicant during the proceedings.

(8) The well-documented fact that charges are disproportionately escalated to the court-martial level for African American Soldiers. He believes he was court-martialed based upon his race rather than factual evidence. Racial disparities in military justice undermine the nation's respect and confidence in our military, erode morale and a unit's ability to function effectively.

(9) The child's mother testified that the child was now afraid of African Americans. However, this was contradicted by the statement of an Army Colonel and Chaplain who stated he saw the child in a line getting lunch and did not see her have any issue with the African American Soldiers and citizens nearby. In fact, one of those Soldiers was the applicant, and the child demonstrated no reaction to him being within approximately ten feet of her.

(10) Notwithstanding the solicitation and use of perjured testimony, legal errors, and evidence that the child was harmed neither emotionally nor physically, the jury returned a verdict against the applicant for sexual assault of a minor under 12 years old. As a result, he was sentenced to 6 months confinement, a dishonorable discharge, and the loss of his military benefits.

b. After reading the Under Secretary of Defense for Personnel and Readiness guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations, dated 25 July 2018, they believe a new effort has evolved to champion fairness and justice for those previously harmed by unfair disparate punishment.

c. The applicant indicated on his DD Form 149 that post-traumatic stress disorder (PTSD) is related to his request.

3. On 19 November 2013, the applicant enlisted in the Regular Army for a period of 4 years. Upon completion of initial entry training, he was assigned to a unit at Fort Bliss, TX. He was advanced to private first class (PFC)/E-3 on 19 November 2014.

4. The applicant's service record is void of the complete facts and circumstances surrounding his trial by General Court-Martial, to include the DD Form 458 (Charge Sheet) depicting the offenses he was accused of committing in violation of the Uniform Code of Military Justice (UCMJ).

5. General Court-Martial Order (GCMO) Number 15, issued by Headquarters, Fort Bliss, Fort Bliss, TX on 21 July 2017 show the applicant was arraigned and tried before a General Court-Martial.

a. He pled not guilty, but was found guilty of violating Article 120b, of the UCMJ by committing a lewd act upon a child who had not attained the age of 12 years, to wit: touching her buttocks with his hands, on or about 5 November 2015.

b. He was sentenced to confinement for six months and to be dishonorably discharged from the service. The sentence was adjudged on 8 March 2017.

c. The sentence was approved, and the record of trial was forwarded for appellate review. The applicant was also required to register as a military sexual offender.

6. Memorandum, Subject: Documented Sex Related Offense (DSRO) for [the applicant], shows documentation of the applicant's sex-related offense was forwarded to U.S. Army Human Resources Command for filing in the "Performance Disciplinary" folder of his Army Military Human Resource Record (AMHRR). It was also requested that his records be updated with the Assignment Consideration Code of "L3 DSRO" in the appropriate Human Resources system.

7. The applicant's duty status was changed from Present for Duty (PDY) to Confined by Military Authorities (CMA) effective 8 March 2017 as a result of a court-martial. His Enlisted Record Brief shows he was reduced to private/E-1 on 21 July 2017.

8. The appellate review and GCMO ordering the dishonorable discharge to be duly executed is not available for review.

9. Orders and the applicant's DD Form 214 show he was discharged in the grade of E-1 on 28 June 2019, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 3 by reason of Court-Martial (Other). He was assigned SPD code "JJD" and Reentry Code "4." He was credited with completion of 5 years, 2 months, and 14 days of net active service this period. He had time lost due to confinement from 8 March 2017 to 3 August 2017. He had completed his first full term of service, including a period of 673 days in excess leave.

10. The applicant provides the following:

a. A character reference letter rendered by 2LT JH shows he was the applicant's Team Chief from October 2014 to January 2016. He notes the applicant did not enlist until after attending college, so he was a bit older than the average PFC. He expressed very favorable comments about the applicant's work ethic, job skills, initiative, and commitment. He opined that his character and integrity are beyond reproach.

b. Two character reference letters and a declaration rendered by COL JJ show he served at all echelons in the Army, and has known the applicant and his mother since early 2008 and recommended him for enlistment. He made very favorable comments regarding the applicant's respectfulness, motivation, character, career expectations, and commitment. To demonstrate his family's support for the applicant, the chaplain and his wife travelled from their home in Virginia to Fort Jackson, SC to attend the applicant's graduation from Basic Combat Training. He also visited the applicant at Fort Bliss, TX and had occasions to witness his interactions with his superiors and fellow Soldiers. He opined the applicant had developed Army Values and embraced the Army culture enthusiastically and the allegations against him were not at all consistent with the character of the man he knew. In a declaration, Chaplain JJ stated he and his wife attended the applicant's court-martial for the purpose of testifying on his behalf as character witnesses. They both witnessed the testimony of the child's mother, expert witnesses, other character witnesses. The chaplain had seen the child in question in the hall of the courthouse, so he was aware of who she was. When the judge recessed the court for a lunch break, he and his wife went to a nearby food court. The applicant and other character witnesses travelled to the food court in a separate vehicle from him and his wife and walked in a few minutes before them. As they secured a table to eat near where the young men were in line, his wife pointed out who was in line behind them. He had just witnessed earlier that morning the mother of the child describing pretty strongly how her daughter who, because of an assault supposedly by the applicant, had become "scared of African Americans, who have the same characteristics," of the applicant. The chaplain watched the mother and child stand in the line not four feet in distance from the applicant, who supposedly was the cause of the girl's nightmares. The other two men were standing right beside the applicant. All three of them were African Americans with similar characteristics. The little girl had a clear view of them, noticed them, and had no reaction.

c. A character reference letter rendered by Chaplain JJ's wife, DJ, states during the time she spent in the courtroom, she became familiar with the member of the prosecuting team known as Assistant Trial Counsel, Captain (CPT) PS. During one of the occasions which she was standing outside the double doors located between the prosecution and defense areas in the rear of the courtroom, she overheard CPT PS make the comment, "This is so much fun; isn't this fun?" to one or more of his colleagues in the prosecution area. It was obvious he was discussing the proceedings taking place in the courtroom at that time concerning the prosecution of the applicant. She was taken aback and dismayed at hearing an officer involved in such a serious case make a comment so glib, characterizing the proceedings as sport or entertainment.

d. A letter rendered by BA, Assistant DA, 34th Judicial District, El Paso, TX, dated 17 May 2017, shows the charge against the applicant of "Indecency with a Child Sexual Contact" was declined by their office as a felony offense on 2 February 2016.

e. The Kurta Memo, which will be discussed further in the "REFERENCE" section.

11. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

12. By law and regulation, titling only requires credible information that an offense may have been committed. It further indicates that regardless of the characterization of the offense as founded, unfounded, or insufficient evidence, the only way to administratively remove a titling action from the DCII is to show either mistaken identity or a complete lack of credible evidence to dispute the initial titling determination. Individuals who desire to resolve any inconsistencies they believe exists between the offense(s) they committed and what is listed on their Federal Bureau of Investigation (FBI) report should submit a request for amendment along with relevant information to the Director, U.S. Army Crime Records Center, Attention: Freedom of Information/Privacy Act Division, 6010 6th Street, Fort Belvoir, VA 22060-5585, which is the agency responsible for information on the DCII which is the basis for the NCIC and FBI report.

13. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board.

14. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his dishonorable characterization of service, his narrative reason for separation and that his Separation Program Designator code be changed to show he was separated under "Secretarial Authority." The applicant is also requesting that his Defense Central Investigations Index (DCII), National Criminal Information Center (NCIC) records, and Army Records information Management System (ARIMS) be cleared of any information pertaining to his court-martial conviction as well as an official letter from the Secretary of the Army or equivalent official that communicates this correction and relieves him of all related sexual abuse reporting on both the Federal and State level. The applicant asserts that he is innocent of the charges to which he was convicted. Regarding the scope of this advisory, this Advisor will only address the applicant's BH history as related to the documented misconduct that led to his separation to determine if BH mitigation is supported. On his DD Form 149, the applicant indicated that Posttraumatic Stress Disorder (PTSD) was related to his request. The specific facts and

circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) the applicant enlisted in the Regular Army on 19 November 3013, 2) his service record is void of the complete facts and circumstances surrounding his trial by General Court-Martial depicting the offenses he was accused of committing, 3) on 21 July 2017, the applicant was arraigned and tried before a General Court-Martial. He pled not guilty but was found guilty of violating Article 120b by committing a lewd act upon a child who had not attained the age of 12 years, to wit: touching her buttocks with his hands, on or about 05 November 2015 and he was sentenced to six months in confinement, 4) the applicant was discharged on 28 June 2019 under the provisions of Army Regulation (AR) 635-200, Chapter 3, by reason of Court-Martial, 5) the applicant provided a letter from the civilian District Attorney's office in El Paso, Texas dated 17 May 2017 shows that the case was declined by their office as a felony offense on 02 February 2016.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's military treatment records were available for review through JLV from 08 January 2014 through 28 September 2021. The applicant was command referred to the Army Substance Abuse Program (ASAP) on 10 November 2015. He was subsequently referred to the emergency room for a safety evaluation due to reporting suicidal ideation. While at ASAP, the applicant said he "wouldn't want to live" if he had done what he was being accused of and as such was referred for a safety evaluation. The applicant told the provider that he would never harm anyone, especially in the manner he was being accused and did not believe the allegations. The applicant was diagnosed with Adjustment Disorder and Alcohol Use Disorder and was placed on a 90-day profile.

d. The applicant was seen for a safety check following his discharge from the emergency room on 13 November 2015. At the time of the appointment the applicant reported symptoms of anxiety and depression as well as hypervigilance and exaggerated startle response which he said started in response to the sexual abuse allegation. It was documented on 20 and 24 November 2015 that the applicant did not show for his safety check scheduled for 16 November 2015 and that command was notified. The applicant presented to BH on 25 November 2015 and he reported that he had been doing better since the initial notification of the investigation. The diagnosis was noted as Problems Related to Other legal Circumstances. He did not show for his scheduled ASAP intake appointment on 07 December 2015. The applicant was psychiatrically admitted on 11 December 2015 due to suicidal ideation. At the time of discharge on 17 December 2015, he was diagnosed with Adjustment Disorder and

started on Lexapro (antidepressant) though it was later documented the applicant discontinued the medication as he did not believe in taking medication for mental health issues. Throughout his hospitalization, it was documented that the applicant did not have psychotic symptoms. It was also documented that the applicant endorsed experiencing depressive symptoms 2-3 years ago and that he was also diagnosed with ADD (now known as ADHD) as a child. The applicant completed two safety checks post-discharge on 18 and 20 December 2015. He was referred to the behavioral health intensive outpatient program (IOP) to learn more coping skills to deal with his stressors. The applicant denied experiencing suicidal ideation and it was documented that he did not have any signs of mania or psychosis.

e. The applicant completed the IOP intake on 12 January 2016 and was diagnosed with Adjustment Disorder with Depressed Mood. It was documented that the applicant reported his depressive symptoms started 2 years ago and worsened in 2015 due to the allegations of sexual assault. He was enrolled in the IOP program from 19 January to 11 February 2016. Throughout the program it was documented the applicant met criteria for Adjustment Disorder with Depressed Mood and did not experience psychotic symptoms. An ASAP rehabilitation team meeting (RTM) was held on 03 February 2016 and the command decided to not enroll the applicant in the program and instead was referred to attend Prime for Life 22-23 March 2016. The applicant was evaluated on 16 February 2016 following his discharge from IOP. He refused continued BH services and planned to attend the 4-week IOP aftercare treatment group instead, which he completed on 22 March 2016. The applicant presented to BH on 18 July 2016 as a walk-in at the request of his command as they preferred charges against him on 15 July 2016. It was documented that the applicant reported he took the news ok but was going to continue to fight the charges because he knows he did nothing wrong. His diagnosis was documented as Other Specified Problems Related to Psychosocial Circumstances. On 08 March 2017, the applicant was medically cleared at his confinement physical.

f. The applicant did not have any records available through the VA. Of note, the applicant's discharge renders him ineligible for VA services.

g. The applicant is applying to the ABCMR requesting an upgrade of his dishonorable characterization of service, his narrative reason for separation and Separation Program Designator code be changed to show he was separated under "Secretarial Authority." On his application form, the applicant marked that PTSD was related to his request. Review of the applicant's in-service medical records document that he was diagnosed with Adjustment Disorder with Depressed Mood and Alcohol Use Disorder, Mild while in-service. Although it was documented that the applicant reported his depressive symptoms started two years prior to 2015 and were worsened due to the allegations, there is no previous documentation available of the applicant's reported pre-service mood and functioning. The available records are void of any history of diagnosis of PTSD. The applicant contends that he is innocent of the misconduct. However, he

contends PTSD was related to his reason for discharge, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends that PTSD was related to the reason for discharge.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was diagnosed with Adjustment Disorder with Depressed Mood and Alcohol Use Disorder, Mild in-service. His diagnosis of Adjustment Disorder was rendered in response to a decompensation in his mood following allegations of sexual assault that were presented against him. Neither of these conditions are constituted as mitigating conditions. Throughout the applicant's BH treatment, there is no indication that the applicant experienced symptoms consistent with severe mental illness (e.g., no symptoms of mania or psychosis) and he was not diagnosed with PTSD. Furthermore, even if the applicant was found to have a potentially mitigating BH condition, the seriousness of the misconduct outweighs the relief offered under Liberal Guidance and thus BH mitigation would not be supported.

Regarding his assertion that PTSD was related to his reason for discharge, although there is no evidence that the applicant has been diagnosed with this condition, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising official finding no indication that the applicant experienced symptoms consistent with severe mental illness. The opine noted, applicant was diagnosed with adjustment disorder with Depressed Mood and Alcohol Use Disorder, mild in-service.

2. The Board carefully considered the evidence from the El Paso district court and finding insufficient evidence to charge the applicant. The Board note, the applicant's numerous character letters of support attesting to the applicant's integrity, prior periods of honorable service, work ethic and being a model Soldier. Furthermore, the Board agreed, it was documented that the applicant reported his depressive symptoms started two years prior to 2015 and were worsened due to the allegations, as such, there is no previous documentation available of the applicant's reported pre-service mood and functioning. However, the Board found based on court martial proceedings insufficient evidence of mitigating factors to overcome the misconduct. ABCMR is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. The Board determined the applicant did not sufficiently demonstrate an error and therefore relief was denied.

3. This board is not an investigative body. The Board determined despite the absence of the applicant's service records, they agreed the burden of proof rest on the applicant, however, he did not provide any substantiating documentation and his service record has insufficient evidence to support the applicant contentions of a being wrongfully discharged due to racial injustices. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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

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

REFERENCES:

1. Title 10, USC, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Title 10, USC, Section 1552(b), provides, with respect to courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice (UCMJ), action to correct any military record of the Secretary's Department may extend only to actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.
4. Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Court-martial convictions stand as adjudged

or modified by appeal through the judicial process, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

5. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.

6. Department of Defense Instruction 5505.7 contains the authority and criteria for titling decisions. It states, in pertinent part, that titling only requires credible information that an offense may have been committed. It further indicates that regardless of the characterization of the offense as founded, unfounded, or insufficient evidence, the only way to administratively remove a titling action from the DCII is to show either mistaken identity or a complete lack of credible evidence to dispute the initial titling determination.

7. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge was separation with honor. Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate. Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A discharge under other than honorable conditions (UOTHC) is an administrative separation from the Service under conditions other than honorable. It may be issued for

misconduct, fraudulent entry, homosexual conduct, security reasons, or in lieu of trial by court martial in the following circumstances.

(1) An under-other-than-honorable-conditions discharge will be directed only by a commander exercising general court-martial authority, a general officer in command who has a judge advocate or legal advisor available to his/her command, higher authority, or the commander exercising special court-martial convening authority over the Soldier who submitted a request for discharge in lieu of court-martial (see chapter 10) when delegated authority to approve such requests.

(2) When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. Examples of factors that may be considered include the following:

- Use of force or violence to produce bodily injury or death
- Abuse of a position of trust
- Disregard by a superior of customary superior-subordinate relationships
- Acts or omissions that endanger the security of the United States or the health and welfare of other Soldiers of the Army
- Deliberate acts or omissions that seriously endanger the health and safety of other persons

d. A bad conduct discharge will be given to a Soldier pursuant only to an approved sentence of a general or special court-martial. The appellate review had to have been completed and the affirmed sentence then ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

e. A dishonorable discharge will be given to a Soldier pursuant only to an approved sentence of a general court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing staff judge advocate.

f. Chapter 5, paragraph 5-3 states separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

8. Army Regulation 635-5-1 (Separation Program Designator Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. It states that the separation code "JJD" is an appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 3, by reason of court-martial.

9. 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.

10. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness [Kurta Memo] 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.

11. 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.

//NOTHING FOLLOWS//