

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 July 2024

DOCKET NUMBER: AR20230012879

APPLICANT REQUESTS: in effect,

- an upgrade of his under other than honorable conditions (UOTHC) discharge to either an honorable discharge or a general, under honorable conditions discharge
- the narrative reason for his separation, corresponding Separation Program Designator (SPD) code, and Reentry Eligibility (RE) code be amended to reflect "Secretarial Authority" instead of "In Lieu of Trial by Court-Martial"

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Letter from counsel
- Applicant's consent to counsel
- Counsel Brief and 17 Exhibits (54 pages)

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. A self-authored statement from the applicant is provided as Exhibit Q. The applicant provides a brief synopsis of his upbringing, his uncle's military achievements during World War II, and his own military service.

a. While the applicant was stationed in Germany, his brother passed away back home. Although he had always liked being alone, the loss of his brother caused the loneliness to kick in more than ever.

b. The applicant sustained a head injury in 1982 that caused a change in his personality. He had a hard time being around others and had difficulty socializing and relating himself to others. He was distant, angry, irritable, aggressive, and continued to

enjoy being by himself. He lost his ability to cope with stressful or upsetting situations and does not recall having this problem prior to his head injury. When he returned home, everyone noticed a difference in him. He has struggled in his personal and working relationships ever since sustaining his head injury.

c. He regrets not reaching out for the help he needed while in the Army when he needed it the most. He believes he earned an honorable discharge, and nothing would make him prouder to be an American Soldier than having a 21-gun salute with an American flag flying at his funeral.

3. Counsel provides a letter, brief, and 17 exhibits on behalf of the applicant which are available in their entirety for the Board's consideration. Counsel states, in part, a mental health professional diagnosed the applicant with a mental health condition, Traumatic Brain Injury (TBI), stemming from his military service. As such, pursuant to Title 10, U.S. Code, subsection 1552(g), a mental health professional must be included as a member of the Board who reviews the application for relief. This application for relief due to injustice is based primarily on matters relating to TBI because the applicant received a discharge UOTHC for conduct directly related to a TBI he suffered during service.

a. Counsel notes the applicant sustained a severe head injury on 21 June 1982 while serving in Korea. Medical records show he was in and out of consciousness for 15 hours following his injury. As a result of this injury, he noticed dramatic changes in his speech, ability to taste and smell, disposition, mental state, ability to get along with others, and ability to conform to the expectations of the military environment. His TBI symptoms began immediately after his injury in 1982 and persist to this day. From the time of his injury until the present, he has been treated for symptoms relating to his injury, including chronic headaches, seizure disorder, tremors, and dizziness. He also continues to experience devastating behavioral symptoms, including irritability, mood swings, depression, and self-destructive thoughts. As a result of his TBI, the applicant was unable to cope with the pressures of the military environment and went AWOL for 133 days in 1983. He had no infractions during his three years of service prior to his TBI.

b. Under the 2014 Hagel Memorandum, subsequent Carson Memorandum, and 2017 Clarifying Guidance, this Board must inquire into whether the applicant's TBI, and its effects on his physical and mental health condition, excuse or mitigate his discharge. If the Board finds that the misconduct is sufficiently mitigated, the Board should upgrade his discharge to honorable.

c. In the months following his injury, the applicant repeatedly sought medical care for the symptoms he was experiencing that are commonly associated with a severe brain injury. He found that performing his duties was increasingly difficult and he felt significant pressure as well as a deterioration in his personal life. Approximately eleven

months after the head injury he suffered in Korea, the applicant was AWOL for a period of approximately four months. Due to his AWOL, he was discharged for the good of the service, in lieu of court martial. Records completed by his commanding officer at the time of his discharge from the Army reflect that the applicant believed the symptoms he was experiencing as a result of his skull fracture played a role in his AWOL. For example, in his discharge paperwork, under "Reason for AWOL," his commanding officer stated that the applicant "wanted to kill a fellow SM [servicemember] so he left. The applicant also stated that due to a skull fracture received in Korea he was unable to cope with day to day pressure and went AWOL to get away. Further, as set forth in his personal statement in Exhibit Q, the applicant explained that feeling "too much pressure" contributed to his period of AWOL, and that he wanted to leave the Army because he was "unable to withstand the pressure and confusion that the Army creates in its surroundings." Records of his visits with medical staff prior to the head injury he suffered in June 1982 do not contain any references to or complaints of feeling pressure or stress, personality changes, memory loss, or a lack of ability to cope with his military duties or environment.

d. Although the applicant was charged with possession and use of marijuana in November 1982, approximately five months after he experienced the head injury, as set forth in the Commander's Information Sheet, dated 12 October 1983, relating to his discharge, the applicant "felt that he had been improperly charged with possession and use of marijuana."

e. Although in some cases the severity of the misconduct may outweigh any mitigation from mental health conditions, in the case of the applicant, the mental health condition outweighs the misconduct. The profound effect that TBI has had on his life cannot be overstated. This injury changed him and changed the trajectory of his life. While he was once mellow and easy-going, he became angry, anxious, and easily triggered. For the first time, he started having self-destructive thoughts and struggling with memory and focus. He got divorced shortly after he was discharged and believes his injury is one of the main reasons his marriage ended. The applicant's going AWOL was a consequence of his TBI. Struggling to understand and control his volatile feelings and need for self-isolation, he could not cope with the rigors of life on base and felt compelled to remove himself from that setting. Given his record of service prior to his injury, if he had never sustained his TBI it seems unlikely that he would have gone AWOL and received a discharge UOTHC.

f. The symptoms associated with the head injury the applicant suffered while serving in Korea have continued until this day. He continues to struggle with mental health and behavioral symptoms, including mood swings and invasive thoughts. For more than ten years, the applicant has been treated by the Sanford Neuroscience Clinic in Fargo, North Dakota, for various conditions, including a seizure disorder, tremors, dizziness, and headaches.

g. It was only after the death of the applicant's brother and a subsequent TBI that the misconduct occurred. Prior to these mitigating events, the applicant served in Germany and Korea where he earned several awards and decorations.

h. Considering the facts and circumstances provided herein, it is in the interest of justice that the applicant should be granted the requested relief.

i. Counsel provides the following documents in support of this petition, all of which are available in their entirety for the Board's consideration. Most of these documents will be discussed in detail in the Record of Proceedings that follows.

(1) Exhibit A - DD Form 214 (Certificate of Release or Discharge from Active Duty) provides an overview of the applicant's service, training, awards and decorations, and discharge information

(2) Exhibit B - Standard Form (SF) 502 (Clinical Record - Narrative Summary), dated 29 June 1982, shows the applicant was admitted to U.S. Army Community Hospital in Seoul, Korea on 21 June 1982 for treatment following his involvement in a physical altercation at his unit. After the fight, he fell and fractured his right temporal bone. He was brought to the emergency room approximately 18 hours after the injury with some increased lethargy and questionable loss of consciousness. He was treated and subsequently discharged on 29 June 1982 with a final diagnosis of right temporal skull fracture with brain contusion.

(3) Exhibit C - SF 600 (Health Record - Chronological Record of Medical Care) provides some details of the applicant's treatment while hospitalized.

(4) Exhibit D - SF 600, dated June 1982, provides some details of the applicant's treatment while hospitalized.

(5) Exhibit E - SF 600, dated 9 July 1982, provides some details of a follow-up visit during which the applicant reported not having the ability to taste, dizziness when he had sudden upright motion, and a delay in focusing on foreign objects.

(6) Exhibit F - SF 513 (Medical Record - Consultation Sheet), dated 30 August 1982, provides some details of a follow-up visit.

(7) Exhibit G - SF 600, dated 30 August 1982, provides some details of a follow-up visit.

(8) Exhibit H - SF 600, dated 9 February 1983, provides some details of a follow-up visit with focus on the applicant's loss of the ability to taste and smell.

(9) Exhibit I - Record of Acute Medical Care, dated 9 February 1983, provides some details of a follow-up visit with focus on the applicant's loss of the ability to taste and smell.

(10) Exhibit J - Record of Acute Medical Care, dated 17 October 1983, shows the applicant had been AWOL and was being processed for separation. He felt fine at the time except for coping with stress ever since the incident during which he was injured, and it was very easy for him to get hot tempered. His examination was normal and there was no follow-up required and he was cleared for full duty/activity.

(11) Exhibit K - Commander's Information/Summary Sheet (Page 2), dated 11 October 1983, rendered during the panel review when the applicant was being considered for administrative separation upon his return from being AWOL.

(12) Exhibit L - Applicant's Personal Statement in Support of Request for Discharge for the Good of the Service, dated 12 October 1983

(13) Exhibit M - DA Form 2496 (Disposition Form), dated 14 October 1983, rendered to obtain the Commanding General's approval of the applicant under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 following his return from being AWOL from 31 May 1983 to 11 October 1983 (133 days).

(14) Exhibit N - Clinical Record (Page 128), dated 23 April 2013, shows the applicant was seen at a neuroscience clinic for a routine follow-up appointment for seizures. It was noted that he had a known TBI and seizure disorder.

(15) Exhibit O - Letter from PR, Advanced Practice Registered Nurse-Certified Nurse Practitioner (APRN-CNP), dated 9 November 2021, shows the applicant has a history of TBI suffered while in the military. He has an abnormal Magnetic Resonance Imaging (MRI) of his brain consistent with the remote TBI. He has localization related epilepsy that is very likely caused by the changes in his brain from the TBI as this is his main risk factor for having developed epilepsy. PR and another doctor are confident the cause of his epilepsy is from the changes in his brain from the remote TBI he suffered in the military when hit in the head by a tailgate as the applicant had reported to them.

(16) Exhibit P - Letter from PR, APRN-CNP, dated 26 August 2021, shows the applicant is followed in a neurology clinic for seizure disorder and headache. He reported a history of head injuries which are likely the cause of his encephalomalacia, and gliosis seen on MRI of his brain. These areas of encephalomalacia and gliosis are also likely the cause of his seizure disorder.

(17) Exhibit Q - Personal Statement of the applicant in support of his application for discharge upgrade, dated 12 June 2023, was discussed in paragraph 2 above.

4. On 5 March 1979, the applicant enlisted in the Regular Army.
5. On 8 September 1981, the applicant reenlisted for a period of 6 years under the Overseas Assignment reenlistment option for Korea. He was assigned to a unit in Korea on 9 January 1982. He was promoted to the rank/pay grade of sergeant (SGT)/E-5 on 5 July 1982 and that was the highest rank he held while serving.
6. On 23 December 1982, the applicant received nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for wrongfully having in his possession and using some amount of marijuana. His punishment included reduction to specialist(SP4)/E-4.
7. The applicant's unit changed his duty status from Present for Duty (PDY) to AWOL on 31 May 1983.
8. On 30 June 1983, his duty status was changed from AWOL to Dropped from Rolls (DFR) and he was reported to law enforcement agencies as a deserter.
9. On 11 October 1983, the applicant's duty status was changed from DFR to PDY following his surrender to military authorities at Fort Carson, CO.
10. The applicant's available record is void of the specific facts and circumstances surrounding the applicant's separation, to include his voluntarily request for discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, in lieu of trial by court-martial, and the recommendations of his chain of command. However, counsel provides the following documents:
  - a. Exhibit K - Commander's Information/Summary Sheet (Page 2), dated 11 October 1983, rendered during the panel review when the applicant was being considered for administrative separation upon his return from being AWOL. The applicant stated he wanted to kill another service member, so he left. He also stated that due to a skull fracture he received in Korea, he was unable to cope with day-to-day pressure and went AWOL to get away. He believed the Army was destroying his marriage and that he had been improperly charged with the possession and use of marijuana. The applicant's commander concurred with the recommendation for administrative separation under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service in lieu of trial by court-martial.
  - b. Exhibit L - Applicant's Personal Statement in Support of Request for Discharge for the Good of the Service, dated 12 October 1983, shows the applicant wanted to

leave the Army because he was unable to withstand the pressure and confusion the Army creates in its surroundings. He would not have gone AWOL if he were not in an atmosphere with unnecessary demands that provoked a totally undesirable life for himself and his family. He would not consider remaining in the Army because his reasons for leaving could never be corrected, even if he stayed in the Army for 20 years.

c. Exhibit M - DA Form 2496, dated 14 October 1983, rendered to obtain the Commanding General's approval of the applicant under the provisions of Army Regulation 635-200, Chapter 10 following his return from being AWOL from 31 May 1983 to 11 October 1983 (133 days). It was noted the applicant's retention was not in the best interest of the Army and both his company commander and battalion commander recommended the applicant be tried by a Special Court-Martial empowered to adjudge a bad conduct discharge. The applicant stated he could no longer cope with the military pressures and requirements. He also felt he was improperly charged with possession and use for marijuana. The combination of events resulted in a negative attitude. It was opined that he was not motivated to return to duty and lacked the potential for continued productive service. It was recommended the applicant's request for discharge be approved with issuance of a UOTHC discharge certificate.

11. He was discharged on 8 November 1983 under the provisions of Army Regulation 635-200, Chapter 10 with an under other than honorable conditions characterization of service. His DD Form 214 shows he was discharged "For the good of the service- in lieu of Court-Martial" with SPD code "KFS" and RE code "4." He completed 4 years, 3 months, and 20 days of active service. He had time lost from 31 May 1983 to 11 October 1983.

12. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

13. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

14. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System

(iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 8 November 1983 under other than honorable conditions discharge. He states through counsel:

“Specialist Four [Applicant] ("Mr. [Applicant]") received an Other Than Honorable discharge for conduct directly related to a traumatic brain injury ("TBI") that he suffered during service. Mr. [Applicant] sustained a severe head injury in 1982 while serving in Korea. As a result of this injury, he noticed dramatic changes in his speech, his ability to taste and smell, his disposition, his mental state, his ability to get along with others, and his ability to conform to the expectations of the military environment.

Mr. [Applicant] 's TBI symptoms began immediately after his injury in 1982 and persist to this day. From the time of his injury until the present, he has been treated for symptoms relating to his injury, including chronic headaches, seizure disorder, tremors, and dizziness. He also continues to experience devastating behavioral symptoms, including irritability, mood swings, depression, and self-destructive thoughts. As a result of his TBI, Mr. [Applicant] was unable to cope with the pressures of the military environment and went AWOL for 133 days in 1983. Mr. [Applicant] had no infractions during his three years of service prior to his TBI.”

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows he entered the regular Army on 5 March 1979 and was discharged on 8 November 1983 under the separation authority provided by chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 May 1982): Discharge for the Good of the Service. It does not contain a period of service in a hazardous duty pay area. The DD 214 shows one period of time lost under 10 USC § 972 from 31 May 1983 thru 11 October 1983.

d. A contemporaneous medical narrative summary shows the applicant was admitted 21-19 June 1982 for evaluation and treatment of a closed head injury (CHI).

“This active duty 22-year-old male was admitted after becoming involved in an altercation at his unit, and after fighting, fell and fractured right temporal bone. The patient was brought to the ER approximately 18 hours after the injury with some increased lethargy and questionable loss of consciousness.

The patient was observed in the ICU [intensive care unit] with maintenance of vital signs, however, because of continued lethargy a CAT scan of the skull was obtained which showed some increased brain swelling and a small amount of right epidural hematoma.



The patient was observed for 1 week post injury with complete return of all vital functions and return to normal coherency, level of consciousness, and activity.”

e. The applicant was subsequently evaluated as an outpatient for loss of smell and taste, which a 9 February 1983 clinical encounter shows had not returned.

f. Non-cotemporaneous documentation from 2013 shows the applicant to have developed a seizure disorder thought likely due to his CHI while in the Army

g. The applicant received an Article 15 on 2 December 1982 for possession of marijuana.

h. The applicant went absent without leave from 31 May thru 11 October 1983 when he surrendered to authorities.

i. The only probative document from his separation packet in the supporting documents is his commander's request the applicant be discharged under provisions in chapter 10 of AR 635-200:

“SM [service member] states he can no longer cope with the military pressures and requirements. SM also felt he was improperly charged with possession and use of marijuana. The combination of events has resulted in a negative attitude. SM in not motivated to return to duty and lacks the potential for continued productive service.

j. JLV shows he is not registered with the VA.

k. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes: CHI with TBI

(2) Did the condition exist or experience occur during military service? Yes:

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. As TBI is associated with avoidance behaviors, poor judgment, and the desires to self-medicate with alcohol and/or illicit drugs, the condition fully mitigates his period of absence without leave and possession of marijuana.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for

separation. The applicant was charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board noted the applicant's contention of sustaining a traumatic brain injury (TBI) and determined his statement and the evidence of record was sufficient to warrant a change to the applicant's characterization of service to honorable, authority for separation, narrative reason for separation to Secretarial Authority, and corresponding re-entry code. Additionally, the Board reviewed and concurred with the medical advisor's review finding the applicant's contention of TBI to be associated with avoidance behaviors and poor judgement.

BOARD VOTE:

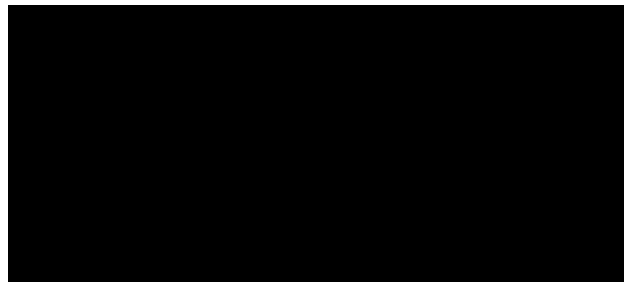
Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 8 November 1983, to show:

- item 24 (Character of Service): Honorable
- item 25 (Separation Authority): Army Regulation 635-200
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 1
- item 28 (Narrative Reason for Separation): Secretarial Authority



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 three 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 three-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. 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.
4. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.
  - a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.
  - b. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

c. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

5. Army Regulation 635-5-1 (SPD Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD "KFS" is the appropriate code to assign to an enlisted Soldier who is voluntarily separated under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial.

6. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which

DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

7. 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 the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. 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.

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.

//NOTHING FOLLOWS//