

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20230013158

APPLICANT REQUESTS: through counsel, reconsideration of his previous request to reverse the Army Grade Determination Review Board (AGDRB) decision to retire him in the rank/grade of major (MAJ)/O-4 vice lieutenant colonel (LTC)/O-5. A personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's statement
- Applicant's declaration
- Veterans Affairs (VA) decision
- Medical notes
- Spouse letter to the AGDRB
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Counsel letter to the Army Board for Correction of Military Records (ABCMR)
- Character letters
- Recommendation letters for continuation on active duty
- Memorandum, Subject: Memorandum of Reprimand Issued Pursuant to Article 15, Uniform Code of Military Justice (UCMJ)
- Memorandum, Subject: Grade Determination Board for the applicant
- General Officer (GO) Congratulatory Letters
- Officer Record Brief (ORB)
- DA Forms 67-10-2 (Field Grade Plate Officer Evaluation Report (OER))
- DA Forms 67-9 (OER)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR) in Docket Number AR20170007738 on 5 June 2019.

2. The applicant states, through counsel, in pertinent part:

a. At the time of the previous filing, mental health issues and diagnosis were not presented. Since then, the applicant has received a diagnosis of Post-Traumatic Stress Disorder (PTSD) and a VA Rating of 50 percent. This new and relevant information should be considered in regard to his behavior and the subsequent General Officer Memorandum of Record (GOMOR) which led to the AGDRB reduction in rank for retirement purposes. He was on active duty for 25 years and seven years since he has retired. He requests his grade to for retirement purposes, be restored to O-5.

b. The applicant has a VA Rating for PTSD, 50 percent. "On your VA examination conducted 26 April 2023, the examiner opined that your PTSD was at least as likely as not (likelihood is at least approximately balanced or nearly equal, if not higher) incurred in or caused by the event where he was t-boned by a fugitive evading justice, at which point the fugitive was later killed by police in front of the Veteran. The examiner's rationale: The available documentation clearly indicated that the Veteran has been treated for PTSD and that the event was substantiated by a police report. All of the Veteran's claimed symptoms are subsumed under this diagnosis and no other diagnosis is warranted at this time. Therefore, service connection PTSD is established."

c. In addition, a letter from his therapist states in part, "The applicant has been a client of mine since 2020. He has been working on managing his anger, frustration, and past PTSD with me. He had shared his military situations, and his struggles in the military. I had introduced the following tools for him in session: Taking a pause, journaling, ice in the hand, vacation mediation, breathing techniques, taking a walk, stepping outside, and using the stop sign."

d. The applicant's GOMOR, in part was for violating a no-contact order with the alleged victim. The "contact" was seeing each other in the parking lot. He was in the parking lot because he was waiting to see his friend because he was in a mental health spiral at the moment. Now, with mental health training and learning how to mentally regulate himself and his impulses, a situation for which he was reprimanded would not happen again. He was walking around undiagnosed and with no tools. Sadly, this is also the reason he could mentally not work through that leaving a manuscript with explicit details with a co-worker for input. None of these actions represent the man he is today. All of this attributable to his mental health diagnosis of PTSD

e. The previous decisions by the ABCMR did not have valuable mental health information regarding the applicant which was the cause and/or impacted his decision making regarding his actions and behavior. He has through the help of his mental health team, learned only now, how to regulate his emotions and actions. His chain of command, AGDRB and ABCMR did not have this critical information when making a decision.

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

- a. On 13 June 1991, the applicant was appointed as a Reserve commissioned officer and executed an oath of office with a subsequent call to active duty.
- b. On 30 April 2004, Orders Number 121-001 issued by the U.S. Army Human Resources Command (HRC), promoted the applicant to the rank/grade of MAJ/O-4, effective on with a Date of Rank (DOR) of 1 October 2003.
- c. On 28 July 2004, the applicant was appointed as a Regular Army commissioned officer in the Engineer Corps and executed an oath of office.
- d. On 18 September 2009, Orders Number 261-010 issued by HRC, promoted the applicant to the rank/grade of LTC/O-5, effective on with a DOR of 1 October 2009.
- e. On 28 October 2015, the applicant requested a voluntary retirement.
- f. On 22 December 2015, the applicant's voluntary retirement was sent to HRC.
- g. On 2 February 2016, Orders Number 033-0003 issued by the U.S. Army Support Activity, Joint Base Langley-Eustis, released the applicant from active duty and on 1 November 2016 placed him on the Retired list in the rank/grade of LTC/O-5.
- h. On 23 May 2016:

(1) The applicant accepted non-judicial punishment under the provisions of Article 15, UCMJ, for violating Article 90 (Willfully disobeying a superior commissioned officer) to have no contact with Ms. S- S-and speaking with her in the Center for Initial Military Training parking lot. Also, for leaving a sexually explicit letter under Ms. [REDACTED] work keyboard in violation of Article 133 (Conduct unbecoming of an officer and a gentleman). His punishment was forfeiture of pay (suspended) and a written reprimand. He did not appeal the punishment.

(2) The Senior Commander Center for Initial Military Training issued the applicant a GOMOR which states, according to a criminal investigation, on 4 February 2016, while married to another individual, you left a sexually explicit letter detailing a work place sexual encounter, under the keyboard of one of your former female civilian subordinates. The letter was grotesquely inappropriate in its subject matter and content, and ended with a proposal to have an affair with you. Your battalion commander counseled you in writing to have no further contact with the female. Within days of receiving that order, you approached her and asked to speak with her. Not only were your actions contrary to the Army Sexual Harassment/Assault Response and Prevention (SHARP) program, they created a hostile working environment. Additionally, you completely disregarded the countless hours of SHARP training you received as a leader and the orders of a superior commissioned officer.

i. On 19 September 2016, The Deputy Assistant Secretary of the Army (DASA) (Review Boards (RB)) notified HRC that the AGDRB reviewed the applicant's voluntary retirement and the request for a grade determination submitted by HRC. The DASA-RB directed he be placed on the Retired list in the rank/grade of MAJ/O-4 because his service in the grade of O-5 was not satisfactory.

j. On 5 October 2016, Orders Number 279-0004 issued by issued by the U.S. Army Support Activity, Joint Base Langley-Eustis, amended Orders Number 033-0003 to change his retired grade/rank from LTC/O-5 to MAJ/O-4.

k. On 31 October 2016, the applicant was honorably released from active duty and assigned to the U.S. Army Reserve Control Group (Retired Reserve). DD Form 214 shows in items:

- 4a (Grade, Rate or Rank) LTC
- 4b (Pay Grade) O05
- 12i (Effective Date of Pay Grade) 1 October 2009
- 18 (Remarks) served in an designated imminent danger pay area/Service in Saudi Arabia 2 October 1994 through 1 November 1994; in accordance with Army Regulation (AR) 15-80 (AGDRB), retired list grade "MAJ"

l. On 5 June 2019, in ABMCR Docket Number AR20170007738, the Board denied the applicant's petition to reverse the AGDRB decision to retire him in the rank/grade of MAJ/O-4." The Board determined he received all due process and there was no error or injustice in this case. The Board also found that justifying some of the outcome on bad advice from trial defense service counsel not convincing, because the decision to follow such advice, regardless how viewed now, remained with the applicant. The Board concluded that the appropriate authorities reviewed the applicant's case, and he was denied relief based upon a fair and equitable evaluation of the evidence."

4. The applicant provides:

a. Applicant's declaration wherein he states, he has learned that for several years; he had been steadily spiraling out of control with PTSD and sleep deprivation. He experienced the worst symptoms during his last few years of military service, and that his PTSD and sleep deprivation manifested in a number of ways:

- Anxiety - Any stressful situation or time crunch, he experienced anxiety sometimes to the point of panic attacks. When he received a task with a short deadline, he became confused and overwhelmed. It felt as though he could not put his thoughts in order. During one trip to the commissary for groceries, he became so confused by the task at hand, he wandered up and down the aisles aimlessly for hours

- Memory loss - he would often forget assignments that needed to be accomplished at work, and he would forget conversations he had with people. His short-term memory failed him on a regular basis
- Anger - he had a quick temper that even the smallest of things would set him off. He often would get very angry at people who he perceived as doing him or his family wrong. He held grudges and could not let things go like he used to do
- Emotional - he became more emotional and would tear up at things that normally would not elicit a response like that
- Nightmares - he often had nightmares that would make him jump out of bed and caused sleep deprivation
- Depression - he struggled with bouts of depression where he cannot get out of bed, go to work or even be productive around the house. He also struggled with suicidal ideations
- Difficulty with relationships – he found that in group settings he often does not say anything which he has been told makes him appear aloof, but the fact is he does not always connect with people, and he struggles to find commonalities
- Communication issues - When he is talking to someone, he struggles with clearly communicating what is in his head. He can see the images in his mind but when he goes to speak, there is a disconnect between his mind and his mouth. To help him communicate, he sometimes points to the object or tries to use another way to identify it
- Poor decision making/judgment - In the last year of his career, he would often make poor decisions or have questionable judgment when it came to simple things. On one occasion, he did not concur on a packet by a two-star general that was staffed through his office. He was called in to not only the Assistant Chief of Staff for Operations (G-3), but also asked about this decision by the Deputy Chief of Staff, his immediate supervisor. He was then offered a chance to change his concurrence but not before his leadership abilities were called into question. He also got into an argument with the Special Assistant for the Deputy Commanding General, an O-6, over personnel assignments. None of these situations would rise to the level of being demoted, getting a letter of reprimand or worse, but they do show a trend of him losing focus and spiraling out of control

(1) What do you now know that you did not know at the time of the GOMOR or Grade Determination Board? He was afraid to admit that he had a problem. He felt admitting to his mental health issues would negatively impact his career, and because of that, he did not seek the proper care. He wishes that he had. He thinks that mental health counseling is important for anyone who is not living with a normal quality of life and if he could go back, he would get that counseling long before he got to his last military assignment. He would also like this Board to know that part of the reason for the

GOMOR was because of the perception that he had intentionally violated a no-contact order when he was seen in the parking lot by the alleged victim -the truth is that he was in a panicked state as he learned that he was "in trouble" and he went over to his old unit to find his best friend to talk to him. He was not in control of his emotions at the time, he had not dealt with his issues, it was never his intent to see her, they just happened to see each other in the parking lot. Today, he would have the tools and techniques to self-regulate, he did not have them at the time.

(2) What do you do now to stay mentally healthy? To stay mentally healthy, he sees his mental health counselor regularly to discuss his stressors, dreams, and the impact of each of those on his life. He also finds comfort in journaling. Writing has always been an escape for him, and he is now using it for productive means. Additionally, he walks with his wife where they discuss things openly and honestly. Walking helps him to focus on what is important and communicating openly provides a healthy outlet for him. One of the techniques his mental health counselor taught him was to take a pause. He has used that several times successfully before he embarks on something.

(3) What do you wish you had known then? What he wishes he had known back then was recognizing that he had a problem and how big that problem was. He knew something was wrong when he could not remember things (He had always had a great memory) or when he could no longer do simple things around the house. Putting up a picture, putting in a lightbulb, doing small repairs around the house all seemed to take longer than necessary. He always said he was fine, and he tried to hide his failings, but if he had known how effective mental health counseling could be, he would have done that long ago.

(4) Did you have a clue/idea that maybe you had an issue? He did not fully recognize his issues while he was on active duty. He gave in to the stigma that mental health screening was a weakness. He tried to be a good officer in all his assignments and not let anyone see his shortcomings. He talked with his peers about how they did not ever want to show weakness and that doing so meant you were less of an officer. Working at HRC in a select group, being assigned to the Center for Initial Military Training as the first military officer in his career field, and then being assigned in an O-6 billet as an O-5 in a Four-Star headquarters put a lot of pressure on him to perform at his peak. At the same time, he did see that he could not do simple tasks at home without some sort of assistance. He put that out of his mind and tried to carry on like nothing was wrong. He did not realize the extent of his issues until he started talking to mental health counselors who asked him the right questions to help him with his issues.

(5) In detail, current treatment? When he was getting normal care from the VA, he decided to seek additional treatment. He went to see the Neurologist and told him what he was experiencing. He had him do a CT scan and an MRI. He has completed a

neuro-psych test as part of the consult put in by the neurologist. He is currently in mental health counseling. He previously had a different counselor, but when COVID started, he stopped seeing that person and was assigned a new one that he thinks was a better fit for his situation. That is the extent of treatment to date and there is nothing new on the horizon. He is going to request a SPECT scan through the VA for possible identification of Traumatic Brain Injury (TBI).

(6) List any meds. He is currently not taking any mental health medications. He was prescribed Prozac, but was unable to work while taking the medication, so he stopped.

(7) Do you think your VA rating is accurate? He has been given a VA rating for several issues but two he has to still be evaluated for. TBI and Sleep Apnea.

(8) Why do you think your rank/retirement should be restored? He knows he let his family and friends down, and he is deeply sorry for that. What he did not realize then was how bad his mental health was. As evidenced from the rating for PTSD, this was not a minor case. Add to that the sleep deprivation he was going through; he needed help. He did not get the help when he needed it. He served for 25 honorable years, this was a single incident that was not indicative of him as a person or a reflection of his career as an officer. He requests the Board look at the totality of his career and understand that this was a mental health issue, not a pattern of misconduct. He has sought to better himself and live up to the values that the military ingrained in him. He thinks after years of treatment, he is at that level and respectfully requests to be reinstated to the rank of LTC.

b. VA decision which is void of a rating for PTSD.

c. Medical notes which show the applicant was seen for concerns with memory, increased headaches, and irritability. He was involved in a motor vehicle accident in 2004. He reported neck and body pain and was seen in an emergency room and released.

d. Spouse letter to the ADRB wherein she discusses the applicant's mental health changes that began around 2010.

e. Counsel letter to the ABCMR provided in support of ABMCR Docket Number AR20170007738.

f. Character letters provided in support of ABCMR Docket Number AR2070007738 which attest to the applicant's work ethic, dedication to duty, and professionalism.

g. Recommendation letters provided in support of the applicant's retention on active duty during his Physical Evaluation Board.

h. Memorandum, Subject: Grade Determination Board for the applicant wherein the applicant appeals to the AGDRB to retire him in the rank/grade of LTC based on his overall service and accomplishments.

i. GO congratulatory notes commending him for his support during the change of command and other events.

j. ORB showing the applicant's assignments, awards, military education and other pertinent personnel information.

k. DA Forms 67-10-2 and DA Forms 67-9 showing the applicant's rated performance from April 2009 through February 2016. The OER's are available in the supporting documents for the Boards review.

5. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of his previous request to reverse the Army Grade Determination Review Board (AGDRB) decision to retire him in the rank/grade of major (MAJ)/O-4 vice lieutenant colonel (LTC)/O-5.

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

- On 13 June 1991, the applicant was appointed as a Reserve commissioned officer with a subsequent call to active duty, and 28 July 2004, the applicant was appointed as a Regular Army commissioned officer.
- On 28 October 2015, the applicant requested a voluntary retirement, and he was released from active duty on 31 October 2016 as a LTC/O-5.
- On 23 May 2016, the applicant accepted NJP for violating a no contact order and for leaving a sexually explicit letter under the keyboard of the subordinate employee.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts PTSD and a number of mental health related symptoms as mitigating factors in his reduction in rank at retirement. The applicant specifically addresses anxiety, memory loss, anger, increased emotionality, nightmares, depression, interpersonal problems, communication difficulties, and poor decision-making/judgment. A VA rating decision document with a statement date of 27 January 2017 was included

in the application and showed that the applicant is 60% service connected for various physical health conditions. A VA neurology consult report dated 29 January 2020 indicated complaints of memory problems, irritability, and headaches, and he discussed difficulty with concentrating/focusing, anger while driving, and “not feeling like himself.” He attributed these symptoms to a traumatic motor vehicle accident in 2004 where he was hit by a suspect who was running from the police, and the police shot and killed the suspect. The applicant was a direct witness to this. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The VA’s Joint Legacy Viewer (JLV) was also reviewed and showed that the applicant has a service-connected disability rating of 50% for PTSD and a combined rating of 80%. A DoD note dated 17 September 2012 showed a negative depression screening when the applicant presented to primary care.

e. VA records showed the applicant initially engaged mental health through primary care on 27 September 2019, and he reported anxiety and panic attacks when he is “in the grocery store and I am looking for certain items, I can’t find them, I get really panicky and short of breath.” He also reported getting lost while driving and having a short attention span. His score on a PTSD screening was in the moderate range of severity, and scores on depression and anxiety screeners were in the mild range. At follow up the next month, a cognitive screening was conducted, and he was diagnosed with Anxiety. He had four follow up session where the focus was on anxiety, and he was taught stress management interventions. A neuropsychological evaluation from December 2020 was reviewed and showed evidence of some deficits in attention and working memory, but overall, the test results were inconclusive for a neurocognitive disorder. Documentation discussed the possibility of sleep apnea and mood as contributing to the applicant’s deficits. In 2021, the applicant’s mental health treatment was referred to community care, and documentation from May 2021 showed diagnoses of Generalized Anxiety Disorder and PTSD. The symptom presentation arriving at these diagnoses is unclear, and the focus of treatment in 2021 appeared to be primarily management of daily work and life stressors. Through consult management notes, it is evident that the applicant has continued to engage with community care for mental health treatment through July 2024, but the specific documentation is not viewable in JLV.

f. The Initial PTSD Disability Benefits Questionnaire (DBQ) dated 26 April 2023 was also reviewed. The evaluation consisted of detailed pre-military and childhood history, which were unremarkable, and the applicant’s report of being engaged in bi-weekly counseling for the previous three years, noting that initial symptoms were related to confusion and having memory lapses while driving. He endorsed the requisite number of symptoms for a PTSD diagnosis, and he noted his career concerns and stigma as reason for not seeking treatment while on active service. He discussed his primary

symptom at that time as nightmares associated with the 2004 car crash and subsequent events.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

h. Kurta Questions

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed PTSD at the time of the misconduct. VA documentation indicates he is service connected for PTSD and has been engaged in psychotherapy for the past four years.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. There is sufficient evidence of diagnosis and treatment of PTSD by the VA. He attributes memory problems, anxiety, sleep deprivation, interpersonal problems, anger, and increased emotionality to his mental status at the time of the misconduct, and he associated these symptoms with the 2004 traumatic car accident and his diagnosis of PTSD. However, there is no nexus between PTSD and his misconduct related to leaving a sexually explicit letter on a subordinate's keyboard and violating a no contact order: 1) these types of misconduct are not part of the natural history or sequelae of PTSD; 2) his asserted mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right.

i. However, the applicant contends he was experiencing PTSD that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for 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. found. The Board through counsel 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. Upon review through counsel of the applicant's petition, available military records and medical review, the Board concurred with the

advising official finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. The opine noted, there is no nexus between PTSD and his misconduct related to leaving a sexually explicit letter on a subordinate’s keyboard and violating a no contact order.

2. The Board noted, the applicant’s character letters of support attesting to his character, work ethic, professionalism and his dedication. The Board found the applicant and his counsel did not demonstrate that an error or injustice occurred. The Board found the applicant’s last rank held honorably was that of major and based on the preponderance of evidence and medical review. The Board determined, the reversal of the previous Board decision is without merit and relief is denied.

3. 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 Board found the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20170007738 on 5 June 2019.

9/25/2024

X [REDACTED]

CHAIRPERSON
[REDACTED]

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, United States Code (USC), section 3964 states, each retired member of the Army covered by subsection (b) (enlisted members of the Regular Army) who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the Army..
2. Title 10, USC, section 3961 states, unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Army who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement.
3. Title 10, USC, section 1370 (Regular commissioned officers) states, unless entitled to a different retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, Marine Corps, or Space Force who retires under any provision of law other than chapter 61 or 1223 of this title shall be retired in the highest permanent grade in which such officer is determined to have served on active duty satisfactorily. If the Secretary of a military department or the Secretary of Defense, as applicable, determines that an officer committed misconduct in a lower grade than the retirement grade otherwise provided for the officer by this section—(A)such Secretary may deem the officer to have not served satisfactorily in any grade equal to or higher than such lower grade for purposes of determining the retirement grade of the officer under this section.

4. Army Regulation (AR) 15-80 (Army Grade Determination Review Board and Grade Determinations) governs the actions of Army Grade Determination Review Board (AGDRB). The AGDRB determines or recommends the highest grade satisfactorily held for service/physical disability retirement, retirement pay, and separation for physical disability.

a. Paragraph 1-8 states, in pertinent part, that the Deputy Assistant Secretary of the Army (Review Boards) (DASA)(RB)) will make discretionary grade determinations for the Secretary of the Army (SA) for officers below the grade of brigadier general involving service retirement, physical disability retirement, computation of retired pay, or separation for physical disability.

b. Paragraph 2-1 states, in pertinent part, that the AGDRB operates within the Office of the Secretary of the Army under the supervision of and as a component board of the Army Review Boards Agency. The AGDRB consists of military officers senior in rank to and in at least a grade equal to the highest grade held by the individual whose grade is being considered. Additionally, at least one member of the AGDRB will be at least one grade higher than the highest grade held by the individual whose grade is being considered.

c. Paragraph 2-4 states, in pertinent part, that a grade determination is an administrative decision to determine appropriate retirement grade. Although a lower grade determination may affect an individual adversely, it is not punitive. The AGDRB will consider each case on its own merits. Generally, the determination will be based on the soldier's overall service in the grade in question. Circumstances pertinent to whether service is found satisfactory include: medical reasons which may have been a contributing factor in the misconduct; compassionate circumstances; length of time in grade; performance level; nature and severity of misconduct, if any; and, the grade at which the misconduct was committed.

d. Paragraph 2-5 states, in pertinent part, that service in the highest grade will be considered to have been unsatisfactory when there is sufficient unfavorable information to establish that the soldier's service in the grade in question was unsatisfactory. One specific act of misconduct may or may not form the basis for a determination that the overall service in that grade was unsatisfactory, regardless of the period of time served in the grade.

e. Paragraph 2-8 states, in pertinent part, that the soldier whose case is being considered is not entitled to appear before the AGDRB. Before the AGDRB considers a case, the individual will be advised that his grade will be considered by the AGDRB, of the evidence that will be considered, of the right to consult with a Judge Advocate or seek private counsel at no expense to the

Government, and of the right within a reasonable time (normally 30 days) to submit matters for consideration by the AGDRB.

f. Paragraph 4-1 states, in pertinent part, that an officer is not automatically entitled to retire in the highest grade served on active duty. For officers below the grade of brigadier general, the AGDRB will recommend to the DASA (RB) for final determination, the highest grade in which an officer has served satisfactorily. The AGDRB recommendation is purely advisory, and the SA or the SA's designee is not bound by that recommendation. Officer grade determinations will result in either a decision to retain the individual's current grade as the retired grade or change the retired grade to a grade lower than that currently held. All retirements, except for disability separations, involving officers who, since their last promotion, have been the subject of any substantiated adverse finding or conclusion from an officially documented proceeding will be forwarded for a grade determination.

5. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; sexual harassment. Boards were directed to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge. The veteran's testimony alone, oral or written, may establish the existence of a condition or experience, that the condition or experience existed during or was aggravated by military service, and that the condition or experience excuses or mitigates the discharge.

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

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

7. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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//