

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 August 2024

DOCKET NUMBER: AR20230013569

APPLICANT REQUESTS: Upgrade of his under honorable conditions (general) discharge, and a change to his Reentry Eligibility (RE) code from "4."

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge)
- Certificate of Completion
- Department of Veterans Affairs (VA) Medical Record Progress Notes
- VA Summary of Benefits Letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 states he is applying for a discharge upgrade due to either a misdiagnosed or undiagnosed mental health condition of post-traumatic stress disorder (PTSD), anxiety, and major depressive disorder that he was suffering from during his time in the Army. During his service, he had minimal issues with his command, fellow Soldiers, and leadership.

a. However, during his tour to Iraq things seem to get incredibly difficult for him. It was difficult to think, hear, and even sleep. During a severe breakdown, he was rushed to the emergency room for an attempted suicide; although he did not realize what he was doing at the time. He simply wanted to escape. Managing PTSD, anxiety, and major depressive disorder requires special care, therapy, lifestyle adjustments, and having the required resources to navigate the diagnosis. He did not have access to, nor even the language or understanding, to articulate and express. After coming back from Iraq things became progressively worse.

b. It was difficult to manage, but he loved his military career. His goal was to serve until retirement, and it was during his service where he learned discipline and got to experience other cultures. The structure and schedule still stick with him to this day. He really misses his time in the Army and has even tried to rejoin. Since he was discharged, the Army has made significant advancements in the care of those with mental health conditions, including dismissing the designator under which discharged.

c. He was discharged for not completing an alcohol awareness class, which he did. However, he lost his certificate of completion and was dismissed. He takes responsibility for his actions and is not blaming the Army for his misconduct. However, after years of therapy, building a family, and learning how to navigate his life, he understands that he needed a lot more care in the area of mental health in order for him to be successful. He has completed other drug awareness courses, gone to therapy, gotten an associate degree equivalent, and expanded his family. He is also considering returning to school to help others who struggle with mental health and addiction.

3. On 11 December 2007, the applicant enlisted in the Regular Army for a period of 3 years and 2 weeks. He was assigned to a unit at Fort Hood, TX. He was advanced to the rank/grade of specialist (SPC)/E-4 on 1 November 2009, the highest rank he held.

4. He served in Iraq from 6 April 2008 through 5 July 2009.

5. DA Forms 4856 (General Counseling Form) show the applicant was counseled on eight occasions from 22 September through 28 September 2010. During counseling for disciplinary infractions, he was advised that continued conduct of this nature could result in punishment under the provisions of the Uniform Code of Military Justice (UCMJ) or the initiation of actions to administratively separate him from the Army under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) and the potential impact of such actions. He was counseled regarding:

- failure to report at the time prescribed to his place of duty on numerous occasions
- having multiple arrest warrants with fines totaling \$2,708.10
- informing him it was his duty to appear before the court immediately upon notification and the legal resources that were available to him
- being arrested for outstanding warrants for failing to maintain financial responsibility and violating the city of Killeen, TX, noise ordinance
- failure to report to his appointed place of duty on two occasions
- failure to obey an order

6. On 28 September 2010, the applicant underwent a command directed mental status evaluation. The examining clinical psychologist determined the applicant met regulatory retention standards and had no psychiatric disease or defect which warranted medical

separation. He was mentally responsible, able to distinguish right from wrong and to adhere to the right and had the mental capacity to understand and participate in any administrative proceedings. The applicant was screened for PTSD and traumatic brain injury; neither was evident during the evaluation. Although the applicant attributed changes to his behavior and demeanor to his deployment to Iraq in 2008-2009, there was no indication that it reflected symptoms of PTSD. He was psychiatrically cleared for any administrative action deemed appropriate by command.

7. On 29 September 2010, the applicant was counseled for failing to be at his appointed place of duty. Once again, he was advised that continued conduct of this nature could result in punishment under the provisions of the UCMJ or the initiation of actions to administratively separate him.

8. On 30 September 2010, an administrative flag was imposed upon the applicant to prevent him from receiving favorable personnel actions

9. On 4 October 2010, the applicant was counseled for failing to be at his appointed place of duty. He was reminded that continued conduct of this nature could result in punishment under the provisions of the UCMJ or the initiation of actions to administratively separate him from the Army under the provisions of Army Regulation 635-200 and the potential impact of such actions.

10. On 9 October 2010, the applicant accepted nonjudicial punishment under the provisions of Article 15, of the UCMJ. His punishment consisted of reduction to private/E-1; forfeiture of \$723.00 pay per month for 2 months (suspended, to be automatically remitted if not vacated by 1 January 2011); 45 days of extra duty and restriction. The specific offenses were:

- Article 86, for without proper authority, failing to go at the time prescribed to his appointed place of duty on seven occasions
- Article 92, for violating a lawful general order by possessing "spice"

11. A DA Form 7095 (Army Substance Abuse Program (ASAP) Outpatient Summary), dated 12 October 2010, shows the applicant was a medical referral to ASAP by Social Work because of a domestic incident in which he was drinking. He was diagnosed as Alcohol Dependent on 22 January 2010 and referred to the clinical consultant for evaluation for medication, and he was enrolled in therapy. He attended two group sessions and four individual sessions. He failed to show up for eight group appointments. In August 2010, he was stopped coming through the post gate and was caught possessing drugs. Efforts to get him to return to treatment had failed. On 12 October 2010, the applicant told his case worker and his platoon sergeant that he had completed treatment and had a completion certificate. It was noted that the

applicant refused treatment and his substance abuse had escalated from Alcohol Dependence to a drug charge.

12. A DA Form 4466 (Patient Progress Report), dated 13 October 2010, shows the applicant was released from ASAP, deemed an ASAP failure, and recommended for separation due to misconduct, abuse of illegal drugs.

13. A Police Desk Blotter, dated 12 November 2010, shows the applicant was charged with driving with a suspended license.

14. On 23 November 2010, the applicant's immediate commander notified the applicant that he was initiating action to separate him for Alcohol or Other Drug Abuse Rehabilitation Failure under the provisions of Army Regulation 635-200, Chapter 9, based on him being declared a failure by the Fort Hood Department of Substant Abuse Services. The applicant acknowledged receipt of the notification the same day.

15. The applicant consulted with counsel on 23 November 2010 and was advised of the basis for the contemplated actions to separate him and of the rights available to him. He further acknowledged his understanding and elected to waive consideration of his case by an administrative separation board. He indicated he would submit statement in his own behalf; however, a statement is not available for review.

16. The applicant's commander formally recommended the applicant's separation from service on 23 November 2010, under the provisions of Army Regulation 635-200, Chapter 9.

17. The separation authority approved the recommended discharge on 23 November 2010 and directed the applicant's service be characterized as General, Under Honorable Conditions.

18. Orders and the applicant's DD Form 214 show he was discharged in the grade of E-1 on 12 January 2011, under the provisions of Army Regulation 635-200, Chapter 9, by reason of Drug Rehabilitation Failure. He was assigned Separation Program Designator (SPD) code "JPC" and RE code "4." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 2 years, 11 months, and 7 days of net active service this period. He had lost time from 15 November 2010 to 9 January 2011. He did not complete his first full term of service.

19. The applicant petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge. On 30 November 2016, he was informed that after careful review of his application, military records, and all other available evidence, the ADRB had determined that he was properly and equitably discharged and denied his request.

20. The applicant's case underwent a De Novo records review by the ADRB on 4 April 2023 to determine whether his mental health condition was a mitigating factor for his misconduct. On 31 May 2023, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB had determined that he was properly and equitably discharged and denied his request.

21. The applicant provides the following documents which are available in their entirety for the Board's consideration:

a. A Certificate of Completion shows the applicant successfully completed the Texas Drug Offender Education Program on 14 February 2020.

b. VA medical record Progress Notes show the applicant underwent a mental status examination. In part, he had a history of Major Depressive Disorder, PTSD (per patient), and alcohol abuse, and ongoing depression and anxiety.

c. A VA Summary of Benefits letter, dated 24 May 2022, shows, in part, the applicant received disability compensation for a combined service-connected disability evaluation of 80 percent effective 1 December 2021.

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

23. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under honorable conditions (general) discharge, and a change to his Reentry Eligibility (RE) code from "4." The applicant contends PTSD as related to his request.

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:

- Applicant enlisted in the Regular Army on 11 December 2007.
- Applicant served in Iraq from 6 April 2008 through 5 July 2009.
- DA Forms 4856 (General Counseling Form) show the applicant was counseled on eight occasions from 22 September through 28 September 2010. During counseling for disciplinary infractions, he was advised that continued conduct of this nature could result in punishment under the provisions of the Uniform Code of Military Justice (UCMJ) or the initiation of actions to administratively separate him from the Army under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) and the potential impact of such actions. He was counseled regarding:

- failure to report at the time prescribed to his place of duty on numerous occasions
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- being arrested for outstanding warrants for failing to maintain financial responsibility and violating the city of Killeen, TX, noise ordinance
- failure to report to his appointed place of duty on two occasions
- failure to obey an order
- On 29 September 2010, the applicant was counseled for failing to be at his appointed place of duty. Once again, he was advised that continued conduct of this nature could result in punishment under the provisions of the UCMJ or the initiation of actions to administratively separate him.
- On 30 September 2010, an administrative flag was imposed upon the applicant to prevent him from receiving favorable personnel actions.
- On 4 October 2010, the applicant was counseled for failing to be at his appointed place of duty. He was reminded that continued conduct of this nature could result in punishment under the provisions of the UCMJ or the initiation of actions to administratively separate him from the Army under the provisions of Army Regulation 635-200 and the potential impact of such actions.
- On 9 October 2010, the applicant accepted nonjudicial punishment under the provisions of Article 15, of the UCMJ. The specific offenses were:
- Article 86, for without proper authority, failing to go at the time prescribed to his appointed place of duty on seven occasions
- Article 92, for violating a lawful general order by possessing "spice"
- A DA Form 4466 (Patient Progress Report), dated 13 October 2010, shows the applicant was released from ASAP, deemed an ASAP failure, and recommended for separation due to misconduct, abuse of illegal drugs.
- A Police Desk Blotter, dated 12 November 2010, shows the applicant was charged with driving with a suspended license.
- On 23 November 2010, the applicant's immediate commander notified the applicant that he was initiating action to separate him for Alcohol or Other Drug Abuse Rehabilitation Failure under the provisions of Army Regulation 635-200, Chapter 9, based on him being declared a failure by the Fort Hood Department of Substance Abuse Services. The applicant acknowledged receipt of the notification the same day.
- Orders and the applicant's DD Form 214 show he was discharged in the grade of E-1 on 12 January 2011, under the provisions of Army Regulation 635-200, Chapter 9, by reason of Drug Rehabilitation Failure. He was assigned Separation Program Designator (SPD) code "JPC" and RE code "4." His service was characterized as Under Honorable Conditions (General). He was credited with completion of 2 years, 11 months, and 7 days of net active service this period.

He had lost time from 15 November 2010 to 9 January 2011. He did not complete his first full term of service.

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- Applicant's case underwent a De Novo records review by the ADRB on 4 April 2023 to determine whether his mental health condition was a mitigating factor for his misconduct. On 31 May 2023, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB had determined that he was properly and equitably discharged and denied his request.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he is applying for a discharge upgrade due to either a misdiagnosed or undiagnosed mental health condition of post-traumatic stress disorder (PTSD), anxiety, and major depressive disorder that he was suffering from during his time in the Army. During his service, he had minimal issues with his command, fellow Soldiers, and leadership. However, during his tour to Iraq things seem to get incredibly difficult for him. It was difficult to think, hear, and even sleep. During a severe breakdown, he was rushed to the emergency room for an attempted suicide; although he did not realize what he was doing at the time. He simply wanted to escape. Managing PTSD, anxiety, and major depressive disorder requires special care, therapy, lifestyle adjustments, and having the required resources to navigate the diagnosis. He did not have access to, nor even the language or understanding, to articulate and express. After coming back from Iraq things became progressively worse. It was difficult to manage, but he loved his military career. His goal was to serve until retirement, and it was during his service where he learned discipline and got to experience other cultures. The structure and schedule still stick with him to this day. He really misses his time in the Army and has even tried to rejoin. Since he was discharged, the Army has made significant advancements in the care of those with mental health conditions, including dismissing the designator under which discharged. He was discharged for not completing an alcohol awareness class, which he did. However, he lost his certificate of completion and was dismissed. He takes responsibility for his actions and is not blaming the Army for his misconduct. However, after years of therapy, building a family, and learning how to navigate his life, he understands that he needed a lot more care in the area of mental health in order for him to be successful. He has completed other drug awareness courses, gone to therapy, gotten an associate degree equivalent, and expanded his family. He is also considering returning to school to help others who struggle with mental health and addiction.

d. The active-duty electronic medical record available for review indicates on 12 June 2008, while deployed, the applicant self-referred for mental health services due to reported financial stressors as a result of a demotion. He reported feeling guilty about the demotion since it prevented him from financially supporting his family. On 30 June 2008, he participated in an assessment as part of Chapter 14 proceedings, and reported stress related to deployment and how this culminated in his making a poor decision to smoke marijuana in order to obtain a positive urinalysis on his pre-deployment urine test. He thought this would cause him to be non-deployable, and thereby allow him to stay stateside and take care of his wife, his mother, and unborn child. The applicant was cleared for separation and the clinician opined he fully understood his actions at the time of committing the infraction. The applicant was not diagnosed with any psychiatric condition. On 08 April 2009, he presented due to depressed mood related to familial and financial stressors, divorce, and concern his son was not biologically his due to his wife's infidelity. In addition, he reported frequent arguments with his mother and brother over financial problems. The note indicates the applicant had been prescribed antidepressant medication in January but had stopped taking the medication. On 14 April 2009, the applicant participated in a medication evaluation and was prescribed a different antidepressant medication since he expressed concerns about side effects. He was diagnosed with Adjustment Disorder with Depressed Mood since his mood issues appeared related to familial stressors. Applicant continued receiving ongoing medication management.

e. On 13 August 2009, the applicant participated in a post-deployment examination and his diagnosis of Adjustment Disorder with Depressed Mood was noted. On 16 September 2009, the record indicates a Family Advocacy encounter with the recommended treatment including an Anger/Stress Workshop and a substance abuse evaluation. The applicant was seen on 17 September 2009 and reported ongoing marital stress and shared that he had discontinued his antidepressant medication due to sexual side effects. During an assessment on 20 October 2009, the applicant reported during his deployment he was not involved in combat and had no traumatic experiences. However, he was seen at combat stress due to marital problems. He was not sleeping and was depressed. He was started on Prozac which helped his mood and he took it for one month, but then discontinued due to side effects. He was then switched to Effexor which again helped his mood but caused the same side effects. He stopped the Effexor after two months. However, upon return home he was still unable to perform sexually with his wife which made him feel depressed and damaged his masculine identity. He was convinced his impotence was a persistent side effect caused by the antidepressants despite having stopped them. His inability to perform complicated his marital problems. He was also uncertain about his son's paternity until August 2009, since his wife told him of an affair a month before he deployed; this led to a separation, and he began to self-medicate with alcohol. On return home his wife asked for a divorce which again precipitated increased drinking. However, they reconciled, and the applicant reported he stopped drinking but continued to experience



symptoms of depression and erectile dysfunction. The clinician suggested his erectile dysfunction was psychologically caused by his anger, depression and betrayal caused by his wife's affair. The applicant was unable to accept the clinician's clinical interpretation. He participated in marital therapy via Family Advocacy.

f. On 28 September 2010, the applicant underwent a command directed mental status evaluation. The applicant was found to be mentally responsible with a clear-thinking process. He was screened for PTSD and TBI; neither was evident during this evaluation. Although the applicant attributed changes in his behavior and demeanor to the deployment to Iraq in 2008 to 2009; there was no indication of symptoms of PTSD. The applicant was psychiatrically cleared for any administrative action deemed appropriate by Command. The applicant's history of having been diagnosed with Adjustment Disorder with Depression was noted.

g. A DA Form 7095 (Army Substance Abuse Program (ASAP) Outpatient Summary), dated 12 October 2010, shows the applicant was a medical referral to ASAP by Social Work because of a domestic incident in which he was drinking. An ASAP Outpatient Discharge Summary, dated 12 October 2010, indicates the applicant was diagnosed as Alcohol Dependent during an assessment on 22 January 2010, and referred for a clinical evaluation for Naltrexone. The applicant was enrolled in group therapy but only participated in two group therapy sessions and four individual therapy sessions. He no showed for eight group therapy appointments. In August 2010, the provider received a blotter which indicated the applicant was stopped coming through the post gate possessing drugs. Efforts to get the applicant back into treatment failed; with the case manager engaging in outreach since August 2010. On 12 October 2010, the applicant told his case worker and his platoon sergeant that he had completed treatment and had a completion certificate. However, the provider contacted his command and reported the applicant a treatment failure since he had no-showed to several appointments and was disenrolled. A note dated 12 October 2010, reflects the applicant was released from the program by the ASAP counselor and unit commander for having a poor and unsatisfactory performance. In consistent with the applicant's account that he "was discharged for not completing an alcohol awareness class, which he did. However, he lost his certificate of completion and was dismissed". A DA Form 4466 (Patient Progress Report), dated 13 October 2010, shows the applicant was released from ASAP, deemed an ASAP failure, and recommended for separation due to misconduct, and abuse of illegal drugs.

h. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 80% service connected, including 70% for Major Depressive Disorder with Anxious Distress.

i. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence the applicant had a behavioral health

condition during military service that partially mitigates his discharge. However, a VA letter dated 24 May 2022 indicates the applicant is paid at the 100 percent rate because he is considered unemployable due to his service-connected disabilities. Based on this information, this Advisor opines the applicant's RE code should remain unchanged.

j. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 70% service connected for Major Depressive Disorder with Anxious Distress.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant was discharged due to being an ASAP Failure, substance use and possession, and failure to report at the time prescribed to his place of duty on numerous occasions. Given the nexus between depression and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the applicant's use of substances is mitigated by his condition. In addition, depression is associated with low motivation, avoidance, disengagement, and failure to meet responsibilities, as such, his BH condition mitigates his FTR and his ASAP failure. However, the applicant's disciplinary record contains evidence of multiple outstanding warrants associated with loud noise and speeding, and driving with a suspended license, which were considered as part of the separation process. These offenses are not mitigated by either Major Depression with Anxious Distress or PTSD, as they are not part of the natural history and/or sequelae of either of these conditions, nor do they interfere with the capacity to distinguish right from wrong and act in accordance with the right.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/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 records and medical review, the Board considered the advising official finding sufficient evidence the applicant had a behavioral health condition during military service that partially mitigates his discharge. The opine noted the applicant's RE code should remain unchanged.

2. However, the Board notwithstanding the advising official opine, determined there is insufficient evidence of mitigating factors to overcome the multiple outstanding warrants associated with loud noise and speeding, and driving with a suspended license, which were considered as part of the separation process. Although the opine determined there is a nexus between depression and the use of substances to alleviate/cope with the symptoms of his behavioral health condition. The Board noted the applicant's use of substances is mitigated by his condition according to the advising opine. Nonetheless, the Board determined the applicant's service record exhibits numerous instances of misconduct during his enlistment period for 2 years, 11 months, and 7 days of net active service this period. The applicant had lost time from 15 November 2010 to 9 January 2011 and did not complete his first full term of service.

3. The applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The applicant was discharged for drug rehabilitation failure and was provided an under honorable conditions (General) characterization of service. The Board agreed that the applicant's discharge characterization is warranted as he did not meet the standards of acceptable conduct and performance of duty for Army personnel to receive an Honorable discharge. The Board concluded there was insufficient evidence of an error or injustice which would warrant a change to the applicant's reentry code. As such, the Board denied relief.

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.

[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, 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. Paragraph 2-9 contains guidance on the burden of proof. It states, in pertinent part, that the ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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.

b. Chapter 9 contained the authority and outlined the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who had been referred to the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) for alcohol/drug abuse could be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there was a lack of potential for continued Army service and rehabilitation efforts were no longer practical. Nothing in this chapter prevented separation of a Soldier who had been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings was required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter would be characterized as honorable or under honorable conditions, unless the Soldier was in an entry-level status.

5. Army Regulation 635-5-1 (SPD 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 SPD code "JPC" is an appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 9, by reason of Drug Rehabilitation Failure. Additionally, the SPD/RE Code Cross Reference Table established that RE code "4" was the proper reentry code to assign to Soldiers separated under this authority and for this reason.

6. 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 Discharge Review Boards (DRB) and 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.

7. 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//