

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2024

DOCKET NUMBER: AR20230013679

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge
- amendment to the narrative reason of separation and corresponding blocks to reflect secretarial authority

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Letter from Veterans Advocacy Clinic, 24 February 2024
- Affidavit of Applicant
- Memorandum, subject: Release of Arrest Information, 8 October 1998
- Enlistment Documents
- DA Form 2-1 (Personnel Qualification Record, 4 April 2001
- Servicemen's Group Life Insurance Election and Certificate, 6 April 2001
- DD Form 93 (Record of Emergency Data), 6 April 2001
- DA Form 2627 (Record of Proceedings Under Article 15 Uniform Code of Military Justice (UCMJ)), 27 June 2002
- DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)), 27 June 2002
- Synopsis Letter, 1 July 2022
- DA Form 3822 (Report of Mental Status Evaluation), 2 July 2002
- Enlisted Record Brief, 12 July 2002
- Debt Information, 15 July 2002
- DA Forms 4856 (Development Counseling Form), 17 July 2002, 12 November 2002, and 14 November 2002
- DA Form 2808 (Report of Medical Examination), 6 August 2002
- DD Form 2648 (Preseparation Counseling Checklist), 22 October 2002
- Initiation of Separation, 2 December 2002
- Acknowledgement of Initiation of Separation, 2 December 2002
- Election of Rights with Self-Authored Letter, 13 December 2002
- Conditional Waiver, 13 December 2002

- Commander's Report, 2 December 2002
- Chain of Command Recommendations
- Approved Separation, 29 January 2003
- Orders 031-002 Discharge from Regular Army, 31 January 2003
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 6 February 2003
- Department of Veterans Affairs (VA) Medical Documents
- VA Rating Decision, 5 January 2022
- Letter from VA Clinical Resource Hub, 9 February 2022
- Letters of support
- Army Regulation (AR) 600-85 (The Army Substance Abuse Program (ASAP)), 1 October 2001
- AR 635-200 (Active Duty Enlisted Administrative Separations) 19 December 2003
- AR 635-200 (Active Duty Enlisted Administrative Separations) 28 June 2021

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant annotates post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and sexual assault/harassment are issues/conditions related to his request. He states:
  - a. At the time of his misconduct, he was suffering from the symptoms of a TBI and PTSD related to physical and sexual assault. He was self-medicating and he asked to be put into in-patient or other intensive treatment related to his symptoms and use of marijuana and alcohol to reduce or manage those symptoms. His command denied his request to be put into in patient or other treatment program.
  - b. While he was in the basic alcohol and drug abuse prevention program assigned by command, he was unable to discontinue use of marijuana and alcohol completely, though he was making efforts to recover. His command used a positive urinalysis, during the program to administratively separate him with a less than fully honorable discharge instead of helping him access the treatment he needed.
  - c. In the fall of 2021, he was counseled by a therapist to reconsider the fairness of his military discharge in light of the traumatic assaults he experienced during service and the trauma of losing his wife to his fellow Soldier. He did not get other supportive care from command, at the time of his discharge.

3. In an additional statement, the applicant states:

a. Issues/Contentions: his misconduct leading to an under honorable conditions (General) discharge is outweighed and mitigated by evidence that he was experiencing increasing symptoms of TBI and PTSD caused by physical and sexual assaults against him, during military service.

b. His discharge is inequitable in light of changes to relevant regulations and policies that would have been benefitted him as he sought treatment in ASAP for symptoms caused by TBI and PTSD, due to sexual assault.

c. Because the Army exercised its discretion against him - despite his self-enrollment in an Army substance use program - and targeted misconduct that has since been identified as less severe in Department of Defense (DoD) guidance memoranda to this Board, upgrading his discharge characterization to honorable is equitable.

d. Facts: The applicant is a U.S. Army veteran who was sexually assaulted and suffered a severe TBI, during service. He experienced these things along with other significant personal traumas, while he was on Active Duty (AD). The overall impact of multiple traumatic events caused a significant shift in his behavior that led to misuse of substances and a less than fully honorable characterization of his service.

e. Today, he is a devoted father and husband, a veterans' advocate, and an active product member of his community. He remains thankful for the opportunity to serve as a Cavalry Scout in a foreign theatre of operation and is proud of the proficiency he attained in his role and his contribution to the service and his country. He has worked to live with the traumas of his military service in the most productive way possible. He is now asking the Board to upgrade the characterization of his service to reflect the full picture of facts and circumstances surrounding his discharge.

f. He had a difficult childhood due to his parents' addiction and related issues. He spent many years in and out of the foster care system, and in his teen years, he was tempted into criminal behavior as a means of escaping poverty, abuse, and neglect. Against the odds, he resisted these temptations. He found a way out of the trouble and away from his toxic home environment via the Job Corps program. The Job Corps taught him discipline, and it gave him a sense of purpose and self-value. The Job Corps also led him to enlist in the U.S. Army.

g. After enlistment, he displayed promise as a Soldier and later as a Cavalry Scout. As he recounted in his discharge proceedings, he had received multiple trainings beyond those required and was on a crew recognized for distinguished service. (Note the Official Military Personnel File seems to be missing documentation related to anything except his enlistment and discharge process; for a Soldier who served over

2 years, the file seems incomplete). He excelled in his military occupational specialty because of his dedication to fellow Soldiers. He recalls, while being transported back to his barracks after Scout school graduation, he cried tears of joy because he felt he had found a new family.

h. After completing basic training and position training, he was deployed to Schweinfurt, Germany. His record changed after his then-spouse joined him in Schweinfurt.

i. His ex-wife arrived in Germany and soon began an extramarital sexual affair with a fellow Soldier from his unit. This Soldier was someone he knew on a personal basis, and someone he interacted with every day. Upon discovering the affair, he properly requested some separation from the other Soldier - a transfer of one or both individuals - to avoid interpersonal conflict. His leadership, however, did not act on this request, and did not provide him with reasoning for their denial. As a result, he was required to continue working with his wife's lover every day.

j. Soon after this event, he visited a bar where he was physically assaulted by other U.S. Soldiers in a case of mistaken identity. During the course of the evening, several Soldiers from the same base in Schweinfurt engaged in a physical altercation with security staff at the bar. The applicant was enjoying a peaceful evening on leave away from the barracks; he was not involved in the altercation. He was, however, wearing a green and black t-shirt, at the time, and the security staff's uniforms were also green and black. Apparently mistaking the applicant for a member of the security staff, another U.S. Soldier struck him in the skull with a large, heavy beer stein. He remembers the initial blow to the head, but thereafter his memory of events became fuzzy and unintelligible. Eventually, bar staff or patrons apparently arranged for transportation to a local hospital.

k. He spent the next two days in a German civilian hospital receiving treatment for a TBI. He was ultimately discharged from the local hospital back to his unit, though the damage to his brain was underdiagnosed for many years. While still in Germany, he began to experience migraines, confusion, forgetfulness, difficulty focusing, difficulty processing information, and irritability. He has since developed postural orthostatic tachycardic syndrome, a dangerous condition arising from the impact to his brain.

l. Roughly 2-month after he sustained the blow to his skull, he was sexually assaulted by several men after apparently being drugged. He recalls drinking a beer at a bar in the early evening with several men of Turkish nationality, and suddenly waking up the next day in a strange house with other people he did not know. He was naked himself, yet had no memory of undressing. He had dried blood caked on his inner thighs, and he felt intense pain in his buttocks. He is able to recall starting a drink, going to the bathroom, and then returning to finish his drink; he does not recall any other detail of the

encounter. He escaped the situation as quickly as he could and he returned to the barracks. As a heterosexual man, he had no intention of sexual activity that night, particularly with other men, and he was humiliated by the assault and its aftermath.

m. This instance of military sexual trauma (MST) left him with profound, lasting psychological damage. The characteristic symptoms of PTSD began to develop in his mind, tormenting his thoughts and clouding his judgment.

n. Because of the physical assault, the sexual assault, the disastrous end to his marriage, and the lack of assistance with these issues, he began to use mind altering substances, namely alcohol and marijuana products, to help him sleep. His requests for separation from his wife's lover had been refused without stated reasoning. He had sustained a head injury that clouded his mind, causing him insufferable migraines, cognitive processing issues, anxiety, and depression. He had been drugged, kidnapped, and raped by multiple men, causing him shame, humiliation, embarrassment, and debilitating PTSD. He was twenty-three years old, living in a foreign country, and feeling trapped by his mental state and his circumstances. Given the complexity and sensitivity of his traumatic experiences, he felt he had nowhere, other than inward, to turn for help.

o. Initially, using substances made him feel more functional. He used alcohol or marijuana to get into a deep sleep at night, and he felt more functional, during the day. When he realized the substances were not addressing the underlying reasons for his symptoms, and that he was losing control of them, he sought assistance from his command. He requested inpatient treatment because he was struggling to process his trauma in the context of his duties and was still operating in a unit with daily reminders of his wife's betrayal, which exacerbated his mental health symptoms.

p. His commanding officers were initially supportive of his counseling and rehabilitation, but he was required to continue fulfilling his military duties and therefore unable to continuously engage in treatment or find any separation from his circumstances. After self reporting his issues with substance use and enrolling in ASAP, he failed two urinalysis tests administered as a required part of ASAP. He was not hiding his continued need for self-medication, and he warned his command that his urinalysis would like fail immediately before the second test.

q. At roughly the same time, several other Soldiers from his unit were caught smuggling large quantities of illicit drugs from the Netherlands into Germany. He observed a shift in how his substance use disorder was perceived, and he believed then and still believes that was related to the drug smuggling incident. In his view, his command and those at higher ranks shifted to impose harsh punishments related to all substance use so they had a "head on a pike" to warn other Soldiers.

r. His commanding officers, at that time, were aware of the situation with his estranged wife and his TBI, but they were unaware of the sexual trauma and the full extent of his growing PTSD symptoms. He did not disclose these facts to his superiors due to his sense of shame and humility. While he had a "mental status examination" in July of 2002, after the first positive urinalysis, and he was found mentally sound for purposes of both retention and administrative action, the examination report gives no detail about the length of the meeting or depth and type of questioning. Medical personnel responsible for his discharge review performed the required examinations and heard his answers regarding PTSD symptoms (primarily difficult sleeping) and his head injury, and they noted physical evidence related to sexual activity however, they did not discuss these issues in dept with the applicant, and he did not offer additional information about the sexual assault. Neither the commanding officers nor the medical personnel appear to have considered a connection between his TBI and PTSD symptoms and his inability to fully abstain from substance use - none of the administrative documentation leading to discharge mentions this as a consideration, and his letter to the discharging officers does not mention TBI, PTSD, or sexual trauma.

s. He attempted to remain in the Army, and he did not waive any rights to representation or a hearing. He wanted the opportunity to continue rehabilitation efforts, correct course, and continue to serve, but his efforts were not successful.

t. When he returned to Missoula, Montana, after being discharged with a less than fully honorable characterization, he began the slow process of recovering from his experiences, in the military, and his service caused mental and physical injuries. His recovery was made more difficult by oppressive feelings of shame and guilt.

u. Years after discharge, he suffered a severe panic attack, during a cross-country road trip with his wife. The severity of the attack and the disruption to his family life caused by the attack prompted him to finally seek the medical and psychiatric care he needed. Doctors soon acknowledged and began treating his TBI and PTSD including symptoms related to his sexual trauma. The VA granted him service-connected disability compensation for mental and physical conditions, and he worked with therapists to begin healing. As a result, he has learned coping skills that are helping him live with the residuals of his TBI and sexual trauma.

v. His life was forever changed by his experiences in the military, and he has dedicated his post discharge life to giving back to the veterans in his community. Retired Air Force Brigadier General (BG) S- wrote a letter of support that recounts his service to the community of veterans through the American Legion and other veterans' groups. Second Lieutenant (2LT) C- A. R- wrote a note to say the applicant is "very active in the local Missoula veteran community," acting in the Color Guard and serving as a mentor to the Reserve Officer Training Corps (ROTC) cadets.

w. He is also an artist, and he uses his art to honor veterans and their families. He assists a local jeweler in making "Charlies" Angels" to distribute to survivors of the 28th Special Forces Association. He paints pictures for veterans and of fallen Soldiers and veterans. A U.S. Marine Corps veteran, S- W-, wrote a letter supporting him that described and attached the painting her had requested from the applicant. To honor his father, a veteran who was in the U.S. Navy Sea Bees, during World War II; the silver photo was of S- W-'s mother and father shortly after their marriage, and the applicant created a painting that added color. S- W- stated "the give from [the applicant] to my family has meant more to me on [a] personal level than I can ever express gratitude for."

x. Supporters consistently describe the applicant as a man with a heart for veterans who constantly gives of his time and talent to the community. U.S. Marine Corps veteran R- W. E- wrote that the applicant "has a big heart for helping veterans and their needs." R- H-, American Legion Lolo Post 135 wrote with his wife D- to say that the applicant's "character is above reproach" and he is "always willing to come to a person's aid no matter the situation." Another veteran J- R- described the applicant as "one of the most genuine and decent human beings [he has] known in [his] life."

y. A Missoula Veterans Treatment Court Mentor and combat veteran of Vietnam, L- A- provided a helpful list of "Recovery Activities the had observed the applicant engaging in over the years of their friendship:

- Obtaining a college education
- Holding a job for over thirteen years, including promotions for performance and competence
- Maintaining stable family relationships with his wife, his son, and his adoptive parents and siblings
- Joining veterans' groups and participating in activities with other veterans
- Attending church regularly
- Giving back to the community of veterans, including helping other veterans experiencing isolation
- Seeking PTSD and TBI treatment

z. As the Board can see, the applicant has held himself to the promises he made to "improve, to forgive and seek forgiveness and to strive to be a good an compassionate person; to see those who are in need as I was, and to make sure veterans who are in my position know that they are not alone."

aa. Discussion: This Board has the authority to upgrade his discharge characterization. The authority of the Board to upgrade Army discharges derives from AR 15-185 (ABCMR) paragraph 18(a) through (c) and Title 10 U.S. Code (USC) 1552,

which provide broad discretion to upgrade a discharge characterization where equity and propriety permit or require.

bb. This Board considers applications that are made pursuant to the discovery of an error or injustice, provided that the application is made "within three years from the date of discovery of the error or injustice." The Board also has the discretion to waive the statute of limitations "in the interest of justice." For veterans like the applicant who have experienced TBI and PTSD, the Carson Memorandum instructs the Board to waive the statute of limitations in the interest of fairness and equity.

cc. While he has long suspected his discharge process was unfair, he was held back from fully participating in a discharge upgrade process by the debilitating symptoms of his service-connected conditions. In September 2021, his therapist encouraged him to pursue a discharge upgrade, and he finally decided to ask for a fully honorable discharge in recognition of his service and acknowledgment of the mitigating circumstances leading to his discharge. Consideration of this application is proper despite the lapse of time since his discharge because of the delay his service connected conditions caused, which places his filing within the three-year limitation period, and because of the DoD instruction to the Board regarding fairness and equity in a case involving TBI and PTSD related to sexual trauma.

dd. His misconduct leading to an under honorable conditions (general) discharge is outweighed and mitigated by evidence that he was experiencing increasing symptoms of TBI and PTSD caused by physical and sexual assaults against him, during military service.

ee. If a veteran files an application "based in whole or in part on matters relating to PTSD or TBI...and whose PTSD or TBI is related to combat or MST, as determined by the Secretary concerned," this Board must review the application with "liberal consideration," focusing on the question of whether the PTSD or TBI "potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the claimant's discharge or dismissal."

ff. The Kurta Memorandum instructs the Board to consider four questions related to discharge relief:

- (1) Did the veteran have a condition that could excuse or mitigate the discharge?
- (2) Did that condition exist/experience occur, during military service?
- (3) Does that condition or experience actually excuse or mitigate the misconduct?



(4) did that condition or experience actually outweigh the discharge?

Each of these questions should be resolved in favor of granting him discharge relief.

gg. The applicant had multiple conditions. He suffered a TBI at the hands of drunken, violent servicemembers engaged in a bar fight when he was not a participant in the bar fight. Within months, he was drugged, kidnapped, and violently raped, causing him profound psychological damage and symptoms of PTSD.

hh. His conditions were caused by experiences he had, during military service, and his conditions manifested before he was discharged. His discharge medical paperwork shows the head injury was known, at the time of discharge, and he reported his difficulty sleeping, which was the major symptom of his PTSD, at the time. The VA has confirmed diagnoses for these conditions and found them connected to his military service.

ii. His conditions actually explain and mitigate his misconduct. After his assaults, he was desperately trying to stay functional by using marijuana to sleep. Given the extent of his physical and psychological injuries, his attempts to fall and stay asleep were understandable and also speak to his hope of staying in the military - if he was able to sleep, he was able to wake up and function in his MOS.

jj. His "substance-seeking behavior and efforts to self-medicate symptoms of a mental health condition" led to his misconduct. While his use of marijuana was a violation of regulations, his failed urinalysis tests came after his self-report regarding substance use struggles and while he was enrolled in ASAP, and his marijuana use had not caused him to fail in his military duties. His misconduct was thus not so severe as to outweigh his conditions causing the misconduct. When his individual attempts to cope with his mental and psychological damage were unsuccessful, he sought help, self-reporting his struggles to command and enrolling in ASAP. At that time and in that location, his command was also balancing multiple circumstances that may have influenced treatment of his situation and weighed discretion against his rehabilitation and retention, despite policies designed to encourage self-reporting. This was the time period directly before the invasion into Iraq, and Soldiers in his unit had been caught smuggling drugs. Given these considerations and his hesitance to fully report details of his personal assaults, command's treatment of his use of marijuana may be explained by the climate and pressures of that time. However, when viewed liberally in hindsight from the perspective of a non-adversarial Board, with full information about his assaults and service-connected conditions, the record supports a conclusion that his conditions mitigate his misconduct and warrant discharge relief.

kk. His discharge is inequitable in light of changes to relevant regulations and policies that would have benefitted him as he sought treatment in ASAP for symptoms caused by TBI and PTSD due to sexual assault.

ll. The current version of AR 635-200 (2021) paragraphs 1-33 and 1-34, the regulation governing administrative separations from the Army, substantially expands the rights of Soldier with certain mental and psychological conditions facing administrative separations from the service. Title 10 USC 1177 was first passed in 2009, after his discharge, and provides detailed instruction regarding medical examinations to evaluate PTSD and TBI after a sexual assault. AR 635-200 (2021) paragraph 1-33(2) prohibits the Secretary from discharging a Soldier with mental or psychological injuries and illnesses related to sexual assault under less than fully honorable characterization without a medical examination. While he did not disclose the details of his sexual assault, had these regulations been in place, while he was serving in the military, he may have made a different choice about reporting the assault. He was devastated by the impact of his conditions, his need to be in rehabilitation, and his ultimate discharge - he desperately wanted to recover and remain in the military, perhaps enough to have reported the assault to so command would allow him a more thorough medical evaluation and potentially consider rehabilitation and retention.

mm. Although Army regulations did not require a thorough screening for TBI, PTSD, and MST at the time of his discharge in 2003, AR 635-200 was rewritten to include more process for Soldiers experiencing the types of conditions he had. In the 2021 version of the regulation, command has a heightened duty to consider the existence of these conditions, and specifically "whether PTSD, TBI, depression, sexual assault, and other behavioral health conditions may be contributing factors to the basis for administrative separation." AR 635-200 (2021) paragraph 5-14(d)(1) provides that Soldiers will not be processed for administrative separation if PTSD or TBI are "significant contributing factors to the basis for separation" - they will instead be evaluated for a medical/disability discharge. The 2003 version of AR 635-200 paragraph 5-14 does not contain these or any similar provisions. In fact the term "post traumatic stress," "PTSD," or "TBI" appear nowhere in the 2003 version of AR 635-200. This substantive change from the 2003 regulation would have likely resulted in a more thorough medical evaluation of the applicant and potentially revealed more details about his assaults and the resulting disabling symptoms he was experiencing and self-medicating.

nn. Liberally considering this record in light of the Kurta Memorandum - which reminds the Board that "mental heal conditions, including PTSD; TBI; sexual assault; and sexual harassment impact veterans in many intimate ways, are often undiagnosed or diagnosed years afterward, and are frequently unreported" - supports a conclusion that discharge relief is warranted in this case in the interest of fairness and equity.

oo. Because the Army exercised its discretion against the applicant - despite his self-enrollment in ASAP - and targeted misconduct that has since been identified as less severe in DoD guidance memoranda to the Board, upgrading his discharge characterization to honorable is equitable.

pp. The Wilke memorandum explains that some misconduct will be seen as less severe in hindsight; it specifically identifies personal use of marijuana as this type of misconduct. As recognized in the Wilke memorandum, state legislatures have legalized both medical and recreational marijuana, and his home state of Montana is one of those states.

qq. AR 600-85, both today and in February of 2003, treats evidence of substance use differently under the "Limited Use Policy" when a Soldier is enrolled in a substance abuse program; the provision was designed to encourage self-reporting and rehabilitation, and thus remove mandatory administrative separation procedures in light of those goals. Command has the discretion to discharge Soldiers for marijuana use, but it also has discretion to continue assisting the Soldier in rehabilitation efforts per AR 600-85 (2020) paragraph 6-4. In AR 600-85 (2020) paragraph 10-12(a)(7) and AR 600-85 (2001) paragraph 6-4(1)(7), limited use includes a urinalysis test administered "solely as required part of a DoD or Army substance use disorder treatment program." Other provisions indicate that when separation proceedings introduce evidence that would fall under the "limited use Policy," an honorable discharge is mandated.

rr. Command used its discretion to initiate discharge proceedings against him, while he was engaged in rehabilitative efforts. The record is clear that at least the first use of marijuana, while he was enrolled in ASAP, after which his command purports to have declared him a "rehabilitation failure" after on failed urinalysis. While the command notes, failure to attend treatment, all but one of those references required military duties or convalescence after surgery. He told command, at the time and through a letter regarding his discharge that he did not miss treatment activities unless he was engaged in required military duties.

ss. Even if the Board assumes the second failed urinalysis happened when he was outside the ASAP or other rehabilitation program framework, his discharge proceedings introduced evidence that would have fallen under the "Limited Use Policy" - the paperwork appears to rely on his first failed urinalysis, which unquestionably occurred, while he was still enrolled, and had been self-enrolled, in ASAP. Arguably, an honorable discharge is mandated on this basis and his discharge was improper. At least his discharge was inequitable in light of all the evidence.

tt. The applicant continued to fulfill his military duties, after his wife had an extramarital affair with a fellow Soldier in his unit, after he was attacked by fellow servicemembers and suffered a severe TBI, and even after he was drugged, kidnapped, and raped by a group of men. He was suffering severely and trying to cope, but he fortunately saw his way to requesting help. Asking for help was not an immediate fix, as it rarely is - he continued to use substances to cope with his severe symptoms, and that led to his discharge.

uu. The record shows, by a preponderance of evidence, that he should receive discharge relief. His misconduct occurred after more than one traumatic experience that would have caused the strongest person to suffer. The record shows he was isolated and alone, scarred by the events causing a TBI and PTSD, at a time he believed it was imperative to maintain good standing with his unit. He was struggling internally with little to no help, when he made the mistake of using marijuana, a substance that is now legal in many states, including his home state of Montana. He self-enrolled in substance abuse counseling, and the Army could have applied the Limited Use Policy to his misconduct under AR 600-85.

vv. He has lived with the stigma of a less than fully honorable discharge for many years, but he has dedicated his life to recovery and serving other veterans, during that time. As the Board can see in the submitted documentation, he uses his time and talents to honor those who are serving, who have served, and who have fallen, all of which he considers his duty as a veteran of the U.S. Army.

4. The applicant provides:

a. VA Medical documents, which include his personal information report, appointments, allergies, and adverse reactions, medication history, VA problem list, admissions and discharges, notes, vitals and readings, radiology reports, electrocardiogram historical exam dates, and military service information.

b. VA rating decision, 5 January 2022, shows he received service-connected disability for the following conditions:

- PTSD with TBI 50 percent
- Migraines 50 percent
- Scar, adherent to underlying tissue/contour of scar depressed on palpation, left parietal area associated with PTSD with TBI 30 percent
- Scar painful/tender/unstable, left parietal area associated with PTSD with TBI 20 percent
- Right knee osteoarthritis with medial collateral tendinitis 10 percent
- Tinnitus 10 percent
- Painful scars (penile scarring) associated with genital warts-HPV, 10 percent
- Scar, nasal bridge from fractured nose, 10 percent
- Deviated nasal septum 10 percent
- Scar, S/P pilonidal cyst removal 10 percent
- Loss of sense of smell 10 percent
- Left palate cranial nerve neuropathy 10 percent

c. Letter from VA Clinical Resource Hub, dated 9 February 2022, which states he was diagnosed with PTSD. This was a recognized condition in the Diagnostic and Statistical Manual of Mental Disorders, fourth and Fifth Editions.

d. Letter from BG (retired) who has known the applicant for over fifteen years. The applicant had a difficult childhood and was adopted by the BG's friend and his wife. The applicant worked through hardships and has become a productive member of society. He became an excellent Soldier but when his wife took his son and left him after becoming pregnant with another Soldier's child, it led to his drug and alcohol abuse. Later he was assaulted and ended up in a German hospital with a TBI that was not diagnosed until after his discharge from the Army with an under honorable conditions (general) discharge. He has pulled himself together and continues to get treatment and therapy for TBI and PTSD. He has earned an associate degree, married, and reunited with his 18 year old son, who now lives with him. He has held steady employment for thirteen years and has been active in the American Legion. The final step is DoD changing his DD Form 214 to an honorable discharge.

e. Letter from 2LT C- A. R- states the applicant is active in the local Missoula veteran community. He is in the color guard and serves as a reliable resource for all veterans. He served as a mentor for the 2LT and other cadets of the ROTC program. He gifted the 2LT and his wife a hand crafted painting.

f. Letter from J- E. R- who met the applicant through an online Veteran's videogaming organization. For Mr. R-'s wedding anniversary the applicant painted a picture of he and his wife, he gave Mr. R a knife he had made as a holiday gift. He regularly volunteers to provide military honors at Veteran Memorial Services. He has made paintings for other veterans, including veteran organizations.

g. Letter from R- and D- H- who have known the applicant for nine to ten years through the American Legion. He was assigned as a post mentor. He donated two art pieces to be raffled off at the State Convention. He has a genuine concern for the welfare and support of veterans. His character is above reproach and they are proud to call him a friend. The letter included pictures of the applicant's artwork and are available for the Board's review.

h. Letter from J- M-, states the applicant served as the American Legion Post 1010 in 2017 and 2018 as the Junior Youth Sporting Association Director. He later moved posts and was on the color guard for funerals of veterans. In his spare time he does paintings for Gold Star families and other veterans. Mr. M- has known him for seven years and he is a man of great character with compassion for veterans and others.

i. Letter from R- W. E- states the applicant is a good man and a great friend. Mr. E- met him at the American Legion four years ago. He has a big heart and did much for the

Legion. He has gone out of his way to serve others and has been wonderful to watch. Mr. E- is thankful for his service, his friendship, and what he has done for Mr. E- personally.

j. Letter from S- W- who met the applicant a few years ago. In that time they garnered a great friendship. The applicant has tremendous respect for veterans, which shows in his dedication to community work with the color guard and his phenomenal talent as an artist. He painted a picture of Mr. W-'s mom and dad from a picture taken a week within their marriage. The gift from the applicant to Mr. W-'s family has meant more to Mr. W- on a personal level than he could ever express gratitude for.

k. Letter from W- H- who owns a jewelry store and donates the angels called "Charlies Angels" for the god star families. When the applicant found this out, he offered to help them make the jewelry. The applicant has a very strong patriotic admiration for all veterans. The letter includes a picture of the jewelry they make.

l. Letter from L- A- who has known the applicant for nearly twenty years. In spite of his difficult childhood, he has become a productive member of society and Mr. A- supports the upgrade of his military discharge to honorable. The applicant has service-connected injuries including PTSD and TBI. He has continued to demonstrate the outstanding qualities of readjusting to civilian life. Mr. A- is extremely proud to write this reference letter for the applicant. H urges anyone who read the letter to support him in his efforts to upgrade his military discharge status to honorable. He has earned his VA benefits many times over.

5. The applicant's service record shows:

a. He enlisted in the Regular Army on 25 October 2000.

b. DA Form 2627, shows he accepted nonjudicial punishment, in the rank of private first class (PFC), for wrongfully using marijuana between on or about 2 May 2002 and on or about 2 June 2022. His punishment included reduction to private/E1 (PVT).

c. DA Form 268, shows he was flagged for adverse action on 27 June 2002.

d. Memorandum synopsis letter, 1 July 2002, states:

(1) On 1 July 2002, he, in the rank of private (PV2)/E2, was declared a rehabilitation failure from ASAP by his chain of command. He tested positive for marijuana, while enrolled in ASAP.

(2) On 23 July 2001, he self-referred to ASAP for a possible alcohol problem. He was triaged and screened on 24 July 2001.

(3) On 27 July 2001, a rehabilitation team meeting was conducted with the chain of command, the applicant and the author of the letter. Alcohol and Drug Abuse Prevention Training and outpatient treatment were recommended and supported by the chain of command. As part of the treatment plan, the applicant was to abstain from alcohol and illicit drugs, while enrolled in ASAP.

(4) Several attempts were made at getting him into treatment. He was either on convalescence leave from a back surgery in November 2001; a no show for December 2001 group session; on guard duty with his unit from 11 December to 15 January 2002; in the field from February to March 2002; and on leave during the month of April 2002.

(5) He attended six group counseling sessions in addition to sixteen hours of Army Substance Abuse Training. Initially, he appeared motivated for treatment and his prognosis was fair.

e. DA Form 3822 (Report of Mental Status Evaluation), 2 July 2002 shows there was no evidence of a mental disease or defect of any psychiatric significance that would cause him to be considered for further psychiatric evaluation. He had been cleared for any administrative action deemed appropriate by command.

f. DA Form 2808 (Report of Medical Examination), 5 August 2002, shows he had no medical conditions. His DA Form 2807-1 (Report of Medical History), 3 July 2002 shows he had painful shoulder, elbow or wrist; recurrent back pain or any back problem; he was in good health; he had frequent or severe headache; a head injury, memory loss, or amnesia; frequent trouble sleeping; and used illegal drugs or abused prescription drugs.

g. DA Forms 4856 (Developmental Counseling Form) shows he was counseled on:

(1) 17 July 2002 for initiation of separation for commission of a serious offense. He agreed with the counseling and signed the form.

(2) 12 November 2002, for initiation of chapter processing. He agreed with the counseling and signed the form.

(3) 14 November 2002, for testing positive for the use of marijuana on the 7 November 2002 urinalysis. The specimen custody documents are attached to the counseling statement. He agreed with the counseling and signed the form.

h. On 2 December 2002, the applicant's commander advised him that he was initiating separation action against the applicant, under paragraph 14-12c (Commission of a Serious Offense), Army Regulation (AR) 635-200 (Personnel Separations). The commander indicated the basis for this action was wrongfully using a controlled substance. His commander was recommending an under other than honorable

conditions discharge but the separation authority would make the final decision in his case. On the same day, the applicant acknowledged receipt of notification.

i. On 13 December 2002, after consulting with counsel, the applicant acknowledged counsel had advised him of the basis for the separation action, the rights available to him, and the effect of waiving those rights. He requested consideration of his case by an administrative separation board, personal appearance before an administrative separation board, statements in his behalf were submitted, and he requested consulting counsel. He submitted a written statement, which states:

(1) He had served in the U.S. Army for 2 years and 3 months. He had received Combat Lifesaver Training, OSTF training, and had been a member of the ALRP team during a unit field training in conjunction with Blackhawks. At his own discretion, he had completed land navigation, chemical warfare, and urban combat courses. He participated in a crew recognized for distinguished Calvary Fighting Vehicle performance. Up until 6 months prior, he had been an active and productive member of his unit.

(2) The year prior, he made the decision to seek the assistance of the Alcohol and Durga office of the Community Counseling Center. He was self-enrolled for approximately seven months. During this time, he was tasked out to various duties as assigned by his unit. He attended ASAP classes whenever possible with the exception of the months he was deployed to the field. He was not able to receive continuous counseling services because of the unit mission. While enrolled in the program, he failed an unannounced urinalysis test based on individual selection, not random unit-wide selection. The urinalysis resulted in his first non-punitive action recommended by his chain of command.

(3) He accepted full responsibility for his action. He had complied with every request to submit information and urine samples to the date of the letter. He requested to be admitted into the in patient treatment at Landstuhl. This request was denied by his chain of command. He requested a rehabilitation assignment to a different unit. This request was denied by his chain of command. He was requesting that his discharge be upgraded from under other than honorable conditions to under honorable conditions (general). He was aware that a majority of Soldiers who failed a urinalysis, during enrollment in a treatment program received honorable discharges. He was also aware that it was at the discretion of the unit commander. Up to that point and time, he had received zero support from his unit commander. It was his opinion that the regulations concerning ASAP failures were not upheld evenly cross the board within his unit.

(4) His concerns were in regard to his future as a productive citizen. It was his belief that a discharge of under other than honorable conditions would be a hinderance to the likelihood of him becoming a productive and stable member of society.



Throughout his military career, he had retained the goal of completing his education and securing a respected position within his community. The stigma of this type of discharge would taint all educational and employment opportunities for many years. For example, he would never be able to work for Federal or State Government or civic agencies. He would not be able to provide the level of comfort he would like to for his family.

(5) He firmly believed in the principle of accountability. He understood he made a grave mistake and he should pay for his actions. Reduction of rank, 45 days extra duty, 45 days of restriction and confinement to the barracks, and the termination of his military career had been a consequences of his rash behavior. He accepted the consequence of discharge with a heavy heart. He adamantly requested an upgrade of his discharge from under other than honorable conditions to under honorable conditions (general).

j. On 13 December 2002, the applicant completed a condition waiver stating he would voluntarily waive consideration of his case by an administrative separation board contingent upon him receiving a characterization of service no less favorable than under honorable conditions (general).

k. The applicant's immediate commander recommended disapproval of the conditional waiver and his squadron commander recommended approval of the conditional waiver. His squadron commander recommended he receive an under honorable conditions (general) discharge.

l. On 29 January 2003, the appropriate approval authority directed the applicant's discharge from the Army with an under honorable conditions (General) discharge.

m. On 6 February 2003, he was discharged accordingly. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 14-12c. He completed 2 years, 3 months, and 12 days of active service. He was separated for misconduct and issued an under honorable conditions (General) characterization of service. His separation code was JKK and his reentry code was 3. He was awarded or authorized the National Defense Service Medal, Army Service Ribbon, and Overseas Service Ribbon.

6. On 29 January 2024, the Criminal Investigation Division (CID) responded to a request for a redacted CID/Military Police Reports for the applicant regarding his sexual assault. The states a search of the Army criminal file indexes revealed no sexual assault records pertaining to the applicant.

7. Based on the applicant's assertion he suffered from PTSD, TBI, and MST as well as his VA medical documents, the Army Review Boards Agency medical staff provided a medical review.

MEDICAL REVIEW:

a. Background: The applicant is requesting upgrade of his under honorable conditions (General) discharge and amendment to the narrative reason of separation and corresponding blocks to reflect secretarial authority. The applicant annotates post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and sexual assault/harassment as issues/conditions 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:

- The applicant enlisted into the Regular Army on 25 October 2000.
- DA Form 2627 shows he accepted nonjudicial punishment, in the rank of PFC, for wrongfully using marijuana between on or about 2 May 2002 and on or about 2 June 2002. His punishment included reduction to private/E1 (PVT).
- DA Form 268 shows he was flagged for adverse action on 27 June 2002.
- On 27 July 2001, a rehabilitation team meeting was conducted with the chain of command, the applicant, and the author of the letter. Alcohol and Drug Abuse Prevention Training and outpatient treatment were recommended and supported by the chain of command. As part of the treatment plan, the applicant was to abstain from alcohol and illicit drugs, while enrolled in ASAP.
- On 1 July 2002, the applicant was declared a rehabilitation failure from ASAP by his chain of command. He tested positive for marijuana, while enrolled in ASAP.
- On 14 November 2002, he was counseled for testing positive for the use of marijuana on a 7 November 2002 urinalysis.
- On 2 December 2002, the applicant's commander advised him that he was initiating separation action against the applicant, under paragraph 14-12c (Commission of a Serious Offense), AR 635-200. The commander indicated the basis for this action was wrongfully using a controlled substance. His commander was recommending an under other than honorable conditions discharge, but the separation authority would make the final decision in his case. On the same day, the applicant acknowledged receipt of notification.
- On 13 December 2002, after consulting with counsel, the applicant acknowledged counsel had advised him of the basis for the separation action, the rights available to him, and the effect of waiving those rights. He requested consideration of his case by an administrative separation board, personal appearance before an administrative separation board, statements in his behalf were submitted, and he requested consulting counsel. He submitted a written statement.
- On 6 February 2003, he was discharged. His DD Form 214 shows he completed 2 years, 3 months, and 12 days of active service. He was separated for misconduct and issued an under honorable conditions (General) characterization of service. His separation code was JKK and his reentry code was 3.

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, "at the time of his misconduct, he was suffering from the symptoms of a TBI and PTSD related to physical and sexual assault. He was self-medicating, and he asked to be put into inpatient or other intensive treatment related to his symptoms and use of marijuana and alcohol to reduce or manage those symptoms. His command denied his request to be put into inpatient or other treatment program. While in alcohol and drug abuse prevention program assigned by command, he was unable to discontinue use of marijuana and alcohol completely, though he was making efforts to recover. His command used a positive urinalysis, during the program to administratively separate him with a less than fully honorable discharge instead of helping him access the treatment he needed". The applicant further states, "after completing basic training and position training, he was deployed to Schweinfurt, Germany. His record changed after his then-spouse joined him in Schweinfurt. His ex-wife arrived in Germany and soon began an extramarital sexual affair with a fellow Soldier from his unit. This Soldier was someone he knew on a personal basis, and someone he interacted with every day. Upon discovering the affair, he properly requested some separation from the other Soldier - a transfer of one or both individuals - to avoid interpersonal conflict. His leadership, however, did not act on this request, and did not provide him with reasoning for their denial. As a result, he was required to continue working with his wife's lover every day. Soon after this event, he visited a bar where he was physically assaulted by other U.S. Soldiers in a case of mistaken identity. During the course of the evening, several Soldiers from the same base in Schweinfurt engaged in a physical altercation with security staff at the bar. The applicant was enjoying a peaceful evening on leave away from the barracks; he was not involved in the altercation. He was, however, wearing a green and black t-shirt, at the time, and the security staff's uniforms were also green and black. Apparently mistaking the applicant for a member of the security staff, another U.S. Soldier struck him in the skull with a large, heavy beer stein. He remembers the initial blow to the head, but thereafter his memory of events became fuzzy and unintelligible. Eventually, bar staff or patrons apparently arranged for transportation to a local hospital." "Roughly 2-month after he sustained the blow to his skull, he was sexually assaulted by several men after apparently being drugged. He recalls drinking a beer at a bar in the early evening with several men of Turkish nationality, and suddenly waking up the next day in a strange house with other people he did not know. He was naked himself yet had no memory of undressing. He had dried blood caked on his inner thighs, and he felt intense pain in his buttocks. He is able to recall starting a drink, going to the bathroom, and then returning to finish his drink; he does not recall any other details of the encounter. He escaped the situation as quickly as he could, and he returned to the barracks. As a heterosexual man, he had no intention of sexual activity that night, particularly with other men, and he was humiliated by the assault and its aftermath. This instance of military sexual trauma (MST) left him with profound, lasting psychological damage."

d. Due to the period of service no active-duty electronic medical records were available for review. However, the applicant submitted hardcopy medical documentation showing he was self-referred to ASAP for a possible alcohol problem. He was triaged and screened on 24 July 2001. On 27 July 2001, a rehabilitation team meeting was conducted with the chain of command, the applicant, and the author of the letter. Alcohol and Drug Abuse Prevention Training and outpatient treatment were recommended and supported by the chain of command. As part of the treatment plan, the applicant was to abstain from alcohol and illicit drugs, while enrolled in ASAP. He attended six group counseling sessions in addition to sixteen hours of Army Substance Abuse Training. Initially, he appeared motivated for treatment and his prognosis was fair, but the applicant was later found to engage in continued substance abuse. A medical examination dated 5 August 2002, for the purpose of separation, shows the applicant endorsed pain in his shoulder, elbow or wrist, and back pain; had frequent or severe headaches; a head injury, memory loss, or amnesia; frequent trouble sleeping; and used illegal drugs.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected, including 70% for PTSD and 50% for TBI related migraines.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had an experience, MST, and subsequent mental health condition that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts a mitigating experience, MST, and subsequent behavioral health condition, PTSD. In addition, the applicant asserts a TBI.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service-connected, including 70% for PTSD and 50% for TBI related migraines.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to repeated positive urinalyses while in military service. Given the nexus between MST-related PTSD and the use of substances to alleviate/cope with the symptoms of his behavioral health condition, the reason for his discharge is fully mitigated. In accordance with the ARBA policy regarding MST and liberal consideration, it is recommended the applicant's character of service be upgraded in accordance with the applicant's request.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Grant. The applicant was separated for misconduct – commission of a serious offense, wrongfully using an illegal drug. He first received NJP for wrongfully using marijuana and he later tested positive during a urinalysis. Accordingly, his chain of command initiated separation against him. He was separated with a general discharge. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's determination finding sufficient evidence to support the applicant had an experience, MST, and subsequent mental health condition that mitigates his misconduct. Therefore, the Board determined an honorable characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board further determined that such upgrade did not change the underlying reason for his separation and thus the narrative reason for separation and corresponding codes should not change.

b. Narrative Reason and corresponding codes: Deny. The Board noted that the applicant's narrative reason for separation was assigned based on the fact that after he committed misconduct – serious offense. Absent his misconduct, there was no reason to initiate separation action against him. The underlying reason for his discharge was his commission misconduct in the form of a serious offense. The only valid narrative reason for separation permitted under chapter 14-12c is "Misconduct" and the appropriate separation code associated with this discharge is JKK which at the time had a corresponding RE Code of 3. An RE-3 still gives him an opportunity to reenter the military, with waiver and if otherwise qualified.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:                :                :                GRANT FULL RELIEF

█                █                █                GRANT PARTIAL RELIEF

:                :                :                GRANT FORMAL HEARING

:                :                :                DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 6 February 2003 as follows: Character of Service: Honorable.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

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

2. AR 635-200 (Active Duty Enlisted Administrative Separations) prescribed the policy for enlisted separations.

a. An honorable discharge is a separation with honor and entitles a Soldier to full Federal rights and benefits provided by law. The honorable characterization is appropriate when the quality of the Soldier'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. 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.

c. Chapter 5 establishes policy and prescribes procedures for separating members for Secretarial authority convenience of the government. Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

d. Chapter 14 of the regulation dealt with separation for various types of misconduct. The issuance of a discharge under other than honorable conditions (UOTHC) was normally considered appropriate for separations under the provisions of chapter 14. In a case in which an UOTHC is authorized by regulation, a member may be awarded an honorable or general discharge, if during the current enlistment period of obligated service, he has been awarded a personal decoration or if warranted by the particular circumstances of a specific case. Paragraph 14-12c provided for the separation of a Soldier due to commission of a serious military or civil offense if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense under the Manual for Court-Martial.

3. AR 635-5-1 (Personnel Separations – Separation Program Designator (SPD) Codes), in effect at the time, prescribes the specific authorities, reasons for separating

Soldiers from active duty, and the SPD codes to be entered on DD Form 214. It shows code JKK is used for discharge for misconduct.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) table 3-1 (U.S. Army reentry eligibility codes) states:

a. RE-1: Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army.

b. RE-3: Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation or disqualification is waiverable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaiverable disqualification.

d. RE-4R: Applies to: A person who retired for length of service with 15 or more years active federal service.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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 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 (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are 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 misconduct that led to the discharge.

7. 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.

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.

8. Title 10, U.S. Code, section 1556 requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//