

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20230014082

APPLICANT REQUESTS:

- upgrade of his Bad Conduct Discharge (BCD) to Honorable
- his Separation Program Designator (SPD) code and narrative reason for separation be amended to reflect "Secretarial Authority"

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Resume
- Counsel Brief and 9 exhibits (71 pages)

FACTS:

1. The applicant did not file within the 3-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 has deep remorse for his past actions. He began his service in the Army on 16 January 2008. Over the course of a decade, he was the recipient of numerous awards and commendations, including three Army Certificates of Achievement, three Army Commendation Medals, and six Army Achievement Medals, among others. These accolades serve as a testament to his unwavering dedication, commitment, and hard work during his deployments to Iraq and Kuwait.

a. He was raised in a single-parent household and life's lessons instilled in him a robust spirit of hard work and perseverance. Barely six months after graduating from high school, he enlisted in the Army, driven by a profound desire to serve his nation. During his tenure, he had the honor of serving two combat tours in Iraq. While these experiences significantly influenced his growth and understanding, they also exposed him to the harrowing realities of warfare. Upon his return, these experiences manifested as post-traumatic stress disorder (PTSD), which he regrettably tried to suppress through

excessive drinking. He deeply regrets this lapse in judgment which had significant repercussions on his military career and personal life. The magnitude of this mistake weighs heavily on his conscience daily.

b. Since leaving the Army, he has ardently pursued education, obtaining an Associate of Science in Business Administration with a laudable grade point average of 3.8; and a Bachelor of Arts in Business Administration (Marketing), Cum Laude.

c. Beyond academics, he has served as a student assistant at the Veteran Service Office at his college, providing aid and guidance to fellow veterans. This position has allowed him to utilize his experiences and insights to help others in their transitional phases. He also enriched his professional acumen through summer internship as social media marketer for a reputable whole-house fan company. This experience provided him with practical insights into the intricacies of the business world, especially in the domain of digital marketing.

d. Through his involvement with a church, he has mentored youth as part of the Boy Scouts of America. This role has not only been fulfilling but has also reaffirmed his commitment to positive change and community upliftment.

e. To address and cope with the PTSD stemming from his military experiences, he has diligently attended therapy sessions and taken prescribed medications through the Department of Veterans Affairs (VA). This proactive approach has been pivotal in his reintegration into civilian life and his personal healing journey.

f. He presents this statement with utmost humility, not to negate his past actions, but to provide context and to convey his genuine remorse. He sincerely hopes the Board considers his decade-long service, post-deployment challenges, continuous personal growth, and unwavering commitment serving both fellow veterans and his community in the decision-making process.

3. On behalf of the applicant, counsel states he respectfully submits this application to change his characterization of service from "Bad Conduct" to "Honorable," change his narrative reason for separation from "Court-Martial (Other) to "Secretarial Authority" with corresponding SPD code. Counsel's entire brief, including all referenced exhibits, is available in its entirety for the Board's consideration. Counsel contends the applicant's discharge warrants an upgrade based upon the guidance provided in the Kurta Memo which states the Board is required to provide a "liberal review" since the Veteran is service connected for PTSD and was showing signs during his enlistment which led to his BCD. This clearly shows service connection would also excuse the discharge and warrant an upgrade. Also, relief is warranted based upon guidance under the Kurta Memo that expands favorable provisions and answers the following questions:

a. Did the veteran have a condition or experience that may excuse or mitigate the discharge? Answer: Yes, since he was diagnosed with both PTSD and traumatic Brain injury (TBI) by a licensed psychologist.

b. Did that condition exist/experience occur during military service? Answer: Yes, the VA determined his PTSD is, in fact, service related.

c. Does that condition or experience actually excuse or mitigate the discharge? Answer: Yes, the applicant respectfully argues that his untreated PTSD and TBI symptoms mitigate his discharge. As the Kurta Memo states, PTSD and TBI can cause individuals to think and behave differently than is expected. Prior to the incident that led to his discharge, the applicant had been on an 18-hour period of excessive drinking to self-medicate his symptoms and had been on a deadly spiral of alcohol abuse since his first deployment.

d. Does that condition or experience outweigh the discharge? Answer: Yes, the applicant's actions were not pre-meditated, rather, as Kurta states, his behavior was the result of substance seeking behavior and seeking to self-medicate.

e. Counsel concludes the applicant is a decorated combat veteran who, like countless others, suffered in silence following his time in Iraq and Kuwait. His actions, which he regrets deeply, align with the diagnoses of PTSD and TBI. He has worked hard since his separation to overcome the mental health and physical challenges imposed on him by his condition, and has become a remarkable student, co-worker, and volunteer in his community.

f. Counsel provides the following documents in support of the brief, all of which are available in their entirety for the Board's consideration. The majority of these documents will be discussed in detail in the Record of Proceedings that follows.

(1) Exhibit 1 – DD Form 214 (Certificate of Release or Discharge from Active Duty) and DD Form 214C (DD Form 214 Continuation Sheet)

(2) Exhibit 2 – Enlisted Record Brief which depicts a snapshot of the applicant's military achievements and duty assignments.

(3) Exhibit 3 – U.S. Court-Martial - Judgment of the Court consisting of the Statement of Trial Results, action by the convening authority, and action by the appellate review authority.

(4) Exhibit 4 – Office of the Under Secretary of Defense, Memorandum for Secretaries of the Military Departments, Subject: Clarifying Guidance to Military Discharge Review Boards (MRB) and Boards for Correction of Military/Naval

Records (BCM/NR) Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment, dated 25 August 2017.

(5) Exhibit 5 – Initial PTSD Disability Benefits Questionnaire rendered by the VA.

(6) Exhibit 6 – VA Form 21-4138 (Statement in Support of Claim) rendered by the applicant in support of his claim for disability benefits.

(7) Exhibit 7 – DA Forms 2166-8 (Noncommissioned Officer Evaluation Report (NCOER)) (3) and DA Form 2166-9-2 (NCOER (SSG-1SG/MSG) [Staff Sergeant-First Sergeant/Master Sergeant]) rendered for the period from 1 December 2012 through 7 August 2016, which show the applicant's raters and senior raters made favorable comments about his performance and potential.

(8) Exhibit 8 – Civilian education documents (10 pages) which show the applicant was conferred an Associate in Science Degree for Transfer in Business Administration on 9 June 2022 and Bachelor of Arts Degree in Business Administration (Marketing) on 24 May 2024.

(9) Exhibit 9 – Three letters:

(a) A letter from the president of a university congratulating the applicant upon his acceptance for admission.

(b) Letters from two co-workers in the Veterans Services Office who have worked with the applicant for years and made favorable comments about his work ethic, interpersonal skills, and overall desire to help others.

4. On 16 January 2008, the applicant enlisted into the Regular Army for a period of 3 years and 21 weeks in the rank/grade of private first class/E-3. Upon completion of initial entry training, he was awarded military occupational specialty (MOS) 92G (Culinary Specialist) and assigned to a unit at Fort Hood, TX.

5. On 28 October 2011, the applicant reenlisted for a period of 4 years in return for reclassification training in MOS 14G (Air Defense Battle Management) and he was subsequently reassigned to a unit at Fort Bliss, TX. He served in Iraq from 7 February 2009 to 22 January 2010, and in Kuwait from 1 January 2012 to 30 June 2012. He was promoted to sergeant/E-5 on 1 December 2012.

6. On 9 August 2015, the applicant was assigned to a unit in Germany. He was promoted to SSG/E-6 on 1 February 2016.

7. On 13 November 2017, the applicant reenlisted for a period of 6 years.

8. The specific facts and circumstances which led to the applicant facing trial by court-martial are not present in his available personnel record. However, a Statement of Trial Results shows the applicant was tried and convicted by a military judge alone in a General Court-Martial forum.

a. He pled guilty and was found guilty of the following charges and specifications in violation of the Uniform Code of Military Justice (UCMJ).

(1) Charge I, Article 92, UCMJ: Specification: violation of a lawful general regulation by wrongfully spending the night in the barracks room of Specialist (SPC)/ E-4 E____.

(2) Charge II, Article 93, UCMJ: Specification: maltreating a person subject to his orders by making deliberate and offensive comments.

(3) Charge III, Article 120, UCMJ: Specification 1: committing assault consummated by battery by unlawfully touching the lips of SPC E with his lips.

(4) Charge III, Article 120, UCMJ: Specification 2: committing assault consummated by battery by unlawfully touching, through the clothing, the torso of SPC E with his hand.

(5) Charge III, Article 120, UCMJ: Specification 3: committing assault consummated by battery by unlawfully touching the torso of SPC E with his torso.

(6) Charge IV, Article 134, wrongfully communicating to SPC E a threat to injure her by raping her, such conduct being of a nature to bring discredit upon the Armed Forces.

b. The applicant's sentence consisted of reduction to private/E-1, forfeiture of all pay and allowances, confinement for 1 year and 2 months, and a BCD. The sentence was adjudged on 1 May 2019.

9. The applicant's duty status was changed from Present for Duty (PDY) to Confined by Military Authorities on 1 May 2019 when he was placed in confinement.

10. The sentence was approved on 28 May 2019.

11. On 3 June 2020, the appellate review was completed, the sentence was affirmed, and the BCD was ordered to be executed.

12. Orders and the applicant's DD Form 214 show the applicant was discharged on 23 October 2020 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Separations), Chapter 3, as a result of "Court-Martial." He was assigned SPD code "JJD" and Reentry Eligibility (RE) code "4." His service was characterized as "Bad Conduct." He was credited with completion of 11 years, 9 months, and 26 days of net active service. He had lost time due to confinement from 1 May 2019 until 5 April 2020.

a. The Remarks block shows he completed his first full term of service and was credited with continuous honorable service from 16 January 2008 until 12 November 2017.

b. He was awarded or authorized the:

- Army Certificate of Achievement (3rd Award)
- Army Commendation Medal (3rd Award)
- Army Achievement Medal (6th Award)
- Army Good Conduct Medal (3rd Award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Iraq Campaign Medal with two Campaign Stars
- Noncommissioned Officer Professional Development Ribbon (2nd Award)
- Army Service Ribbon
- Overseas service Ribbon (3rd Award)
- Driver and Mechanic Badge with Driver-Wheeled Vehicle(s) Clasp and Mechanic Clasp

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

14. Army Regulation 635-200 provides that a Soldier would be given a BCD pursuant only to an approved sentence of a general or special court-martial and that the appellate review must be completed, and the affirmed sentence ordered duly executed.

15. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

16. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from Bad Conduct Discharge (BCD) to honorable. He contends he experienced PTSD and Traumatic Brain Injury (TBI) that mitigates his misconduct.

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 16 January 2008 and reenlisted on 28 October 2011 and again on 13 November 2017.
- The applicant served in Iraq from 7 February 2009 to 22 January 2010 and in Kuwait from 1 January 2012 to 30 June 2012.
- The specific facts and circumstances, which led to the applicant facing trial by court-martial, are not present in his available personnel record. However, a Statement of Trial Results shows the applicant was tried and convicted by a military judge alone in a General Court-Martial forum. He was convicted of the following: violation of a lawful general regulation by wrongfully spending the night in the barracks room of a Specialist; maltreating a person subject to his orders by making deliberate and offensive comments; committing assault consummated by battery (three charges); and communicating a threat of injury.
- The applicant was discharged on 23 October 2020 and was credited with completion of 11 years, 9 months, and 26 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts PTSD and self-medicating through alcohol use as mitigating factors. The application included an Initial PTSD Disability Benefits Questionnaire (DBQ) dated 5 August 2021, which showed the applicant reported symptoms of depression, anxiety, and PTSD, and he endorsed the requisite number of symptoms to warrant a diagnosis of PTSD, Insomnia Disorder, and Alcohol Use Disorder. He reported involvement in a rollover accident in 2012, which resulted in injury, and being on foot patrol in imminent danger areas as PTSD associated trauma experiences. Notably, he reported pre-military history of childhood abuse and interpersonal difficulties, including verbal altercations, physical fights, and difficulty getting along with others. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed a referral to the Army Substance Abuse Program (ASAP) on 24 May 2010 following an arrest for DWI. He reported increased alcohol consumption and increased tolerance since January 2010, following

return from a deployment. Documentation from 16 July 2010 showed he completed an alcohol education class and had decreased his drinking. He also reported increased stress associated with six negative counselings since his return from deployment. On 3 November 2015 the applicant was command referred to ASAP following a blotter report indicating he was involved in a verbal altercation with a foreign national and his BAC was .236. He was given no diagnosis and completed an alcohol education class. The applicant self-referred to mental health on 7 August 2018 and reported symptoms of depression and anxiety in conjunction with finding out he was the subject of an CID investigation. He was seen by a prescriber and diagnosed with Adjustment Disorder with anxiety and depressed mood, and documentation indicated plans for follow for psychotherapy. However, the next encounter with mental health is on 15 October 2018 and stated that the applicant “returns reporting another ongoing CID investigation” with continued symptoms associated with adjustment difficulty. He was prescribed a medications to help with sleep and mood, placed on a temporary psych profile, and was referred to therapy for sleep problems. At follow up in February 2019, he reported limited adherence to medication and his profile was renewed with a different sleep medication added. In May 2019 he was evaluated for transfer to incarceration, and he was restarted on the same medications, which he had discontinued, and between then and March 2020 he engaged routinely in therapy and medication management with some medication adjustments. At discharge, his diagnosis was Adjustment Disorder with Anxiety.

e. The applicant initially engaged mental health treatment through the VA on 16 July 2020 and medications for mood and sleep were continued, and he was diagnosed with Major Depressive Disorder and Anxiety. He engaged in group therapy focused on psychoeducation, but he did not follow up with attempts to schedule for individual therapy. His mental health care lapsed until March 2021 when he completed another psychiatric intake and was referred for a TBI evaluation, which was conducted in April 2021. He was evaluated by an interdisciplinary team and diagnosed with mild TBI, and he received treatment for headaches. Through 2021 to 2022, he engaged in routine medication management visits, and it was noted that he reported receiving psychotherapy services through the Vet Center. In the Spring of 2023, he initiated psychotherapy through the VA and completed required psychoeducation group sessions, and he engaged in individual therapy focused on anxiety and anger. In 2024 he discontinued individual therapy due to interference with his academic pursuits, but he continued with medication and utilized the VA’s Stellate Ganglion Block treatment for PTSD. The applicant is 100% service connected and is considered 70% disabled for PTSD.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a mental health condition while on active service, but his condition does not mitigate his misconduct. The applicant’s medical records showed evaluation and treatment for

headaches associated with mild TBI, but there was not indication of functional or cognitive impairment.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had PTSD and TBI at the time of the misconduct. While on active service, he was diagnosed with and treated for an Adjustment Disorder and alcohol misuse, and he is service connected through the VA for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service, and he has a history of deployment and combat-related trauma exposure.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Mental health records from the applicant's time in service indicate he was experiencing symptoms of an Adjustment Disorder after learning of a CID investigation, and he had a history of two ASAP referrals, which did not result in a diagnosis. However, he is service-connected through the VA for PTSD, and he has been diagnosed with Alcohol Abuse. His history of treatment for mild TBI has primarily focused on headache management, and there was not indication of significant cognitive impairment. Finally, there is no nexus between PTSD and his misconduct related to making sexually inappropriate comments, physical assault, and communicating a threat of injury: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) his asserted mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right.

h. The applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The evidence shows the applicant was convicted by a court-martial that sentenced him to a bad conduct discharge.

(1) The applicant's trial by a court-martial was warranted by the gravity of the offenses charged (violation of a lawful general regulation, maltreating a person subject to his orders, multiple instances of assault consummated by battery, and communicating a threat). The applicant's conviction and discharge were conducted in accordance with applicable laws and regulations and the discharge appropriately characterizes the misconduct for which he was convicted. He was given a bad conduct discharge pursuant to an approved sentence of a court-martial. The appellate review was completed, and the affirmed sentence was ordered duly executed. All requirements of law and regulation were met with respect to the conduct of the court-martial and the appellate review process, and the rights of the applicant were fully protected. The Board found no error or injustice in his separation processing.

(2) 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 finding sufficient evidence to support that the applicant had a mental health condition while on active service, but his condition does not mitigate his misconduct. Also, the applicant provided evidence of post-service achievements or letters of reference in support of a clemency determination. However, the Board determined his submission does not outweigh the serious misconduct that led to his conviction and discharge. Based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Narrative Reason for Separation: Deny. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of chapter 3 of AR 635-200, due to his court-martial conviction. The narrative reason specified by Army Regulations for a discharge under this chapter for an enlisted Soldier is "Court-Martial" and the separation code is "JJD." AR 635-8, Separation Documents, governs preparation of the DD Form 214 and dictates that entry of the narrative reason for separation, entered in Block 28, and separation code, entered in Block 26, will be entered exactly as listed in AR 635-5-1, Separation Program Designator Codes. The Board found no mitigating factors that would merit a change to the applicant's narrative reason for discharge. In view of the foregoing, the Board determined that the reason for discharge was both proper and equitable and there is no reason to change it.

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.

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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, USC, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or

Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Title 10, USC, Section 1552(b), provides, with respect to courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under the Uniform Code of Military Justice (UCMJ), action to correct any military record of the Secretary's Department may extend only to actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.

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

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

6. Army Regulation 635-200 (Active Duty Enlisted Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

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

b. A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers

whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. A discharge under other than honorable conditions (UOTHC) is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexual conduct, security reasons, or in lieu of trial by court martial in the following circumstances.

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

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

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

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

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

f. Chapter 5, paragraph 5-3 states separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of

the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

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

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

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD JJD is the appropriate code to assign to an enlisted Soldier who is involuntarily separated under the provisions of Army Regulation 635-200, Chapter 3, as a result of trial by court-martial. Additionally, the SPD/RE Code Cross Reference Table established RE code "4" as the proper reentry code to assign to Soldiers separated under this authority and for this reason. JFF is the appropriate SPD to assign to enlisted Soldiers who are voluntarily discharged under Secretarial authority.

8. On 3 September 2014, the Secretary of Defense directed the Service DRBs and Service 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 UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

9. 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; TBI; 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.

10. 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//