

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 October 2024

DOCKET NUMBER: AR20230014342

APPLICANT REQUESTS: in effect:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:
 - item 4a (Grade, Rate or Rank): specialist (SPC)
 - item 4b (Pay Grade): E-4
 - item 12i (Effective Date of Pay Grade): 11 November 2017
 - item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Good Conduct Medal
 - item 26 (Separation Code): a more favorable code
 - item 27 (Reentry (RE) Code): a more favorable code
 - item 28 (Narrative Reason for Separation): a more favorable reason
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214, for the period ending 9 July 2018
- Army Discharge Review Board (ADRB) Docket Number AR20220011449 Record of Proceedings and supporting documents
- Department of Veteran Affairs (VA) medical records
- U.S. Army Medical Records
- DA Form 1559 (Inspector General (IG) Action Request) with inquiry documents
- Alcanse Militar Ministry Certificate of Appreciation
- DA Form 87 (Certificate of Training) for Army Traffic Safety Program, Accident Avoidance Course
- DA Form 2442 (Certificate of Achievement)
- DA Form 638 (Recommendation for Award)
- Army Achievement Medal Certificate
- DA Form 87 (Sexual Harassment/Assault Response and Prevention Standing Strong Training)

- DA Form 4187 (Personnel Action)
- DA Form 705 (Army Physical Fitness Test Scorecard)
- DA Form 87 for Structured Self-Development Level 1
- Two Enlisted Record Briefs (ERB), 20 March 2018 and 5 Apr 18
- Defense Travel Management Office training certificate
- Geneva Conventions Identification Card
- Medical Protection System (MEDPROS) – Individual Medical Readiness screenshot
- Automotive Crafts Shop Equipment card

FACTS:

1. The applicant did not file within the three-year time frame provided in Title 10, United States 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 despite the ADRB upgrading his characterization of service from under honorable conditions (General) to honorable along with changing the narrative reason for separation, his DD Form 214 still is incorrect. He finished his service in the rank/grade of SPC/E-4 until he received an unjustified disciplinary action due to retaliation. He asks for these corrections and the Army Good Conduct Medal because he deserves it for his good moral character which he demonstrated during and after serving in the Army and for other reasons related to his mental health conditions.

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

a. The applicant enlisted in the Regular Army on 11 May 2015 in the rank/grade of private (PVT)/E-1.

b. The applicant's service record is void of any DA Forms 4187 showing his advancements in rank from PVT/E-1 through SPC/E-4.

c. On 19 December 2017, the applicant was counseled by the senior mechanic for failure to follow instructions and disrespect towards a noncommissioned officer (NCO). When the applicant was told by a NCO to assist his peers, the applicant told them "no." The applicant disagreed with the counseling by stating "because I have been trying to help my battle buddies under my limitations." The DA Form 4856 (Developmental Counseling Form) shows his rank was SPC/E-4.

d. On 27 December 2017, the applicant was counseled by the senior mechanic for failure to follow instructions. On 26 December 2017, during the physical readiness

training platoon run the applicant refused to run as instructed on numerous occasions until he was threatened with a counseling statement.

e. On 5 January 2018, the applicant received his monthly performance counseling where his performance was below standards, he watches his peers work without attempting to assist them. He needed to increase the number of correspondence course hours he completes monthly.

f. On 1 February 2018, the applicant was counseled by his squad leader for insubordinate conduct towards an NCO. The applicant gave a false statement to two NCOs regarding his dental appointment time and the status of his cellular telephone. The applicant disagreed with the counseling stating he plead not guilty to the accusations. The applicant was also counseled by his squad leader for failure to report to his appointed place of duty at the Fort Sill rail head for accountability formation. He contacted his squad leader to inform him he was not feeling well and was going to the fires clinic. He was advised to call and make an appointment as the sick call hours had concluded for the day instead of going to the clinic to make an appointment to expedite the process. The applicant failed to follow those instructions. The applicant disagreed with the counseling stating he had an immediate health issue.

g. On 12 February 2018, the applicant was counseled by the motor sergeant for failure to return to physical readiness training after sick call. The applicant went to sick call for nausea and the medical provider made an assessment and directed that he return to physical readiness training with a follow-up appointment later that morning. He did not report to physical readiness training and when asked why he failed to follow the directive of the medical provider, he stated he did not want to fall out during training. The applicant disagreed with the counseling stating he was not capable of doing physical training due to his illness and therefore was not able to comply with the instructions.

h. On 23 February 2018, the applicant was counseled by the motor sergeant for failure to completed Structured Self-Development Level 1. The applicant was given the suspense of 20 February 2018 to complete the course which he failed to do though he was given time during the workday to do so. When asked on 23 February if he completed the course, he stated he did not because no NCO would help him. The applicant disagreed with the counseling stating the system had been experiencing technical issues. He was also counseled by the Motor Sergeant for failure to provide requested information. When questioned he stated he provided the information to his first line leader and did not think he needed to provide it to the Motor Sergeant. The applicant disagreed with the counseling stating he plead not guilty to the accusations.

i. On 9 March 2018, the applicant was counseled by the motor sergeant for failure to report to the accountability formation. The applicant stated he was not aware the formation was in the motor pool though he had the training schedule which shows the location of the formation. The applicant disagreed with the counseling stating he thought the formation was in the company area versus the motor pool.

j. On 12 March 2018, the applicant was counseled for lacking MOS proficiency. Due to his lack of proficiency, he was no longer allowed to verify faults on equipment or to work on it as he failed to correct any faults that he found on equipment. These actions have placed other Soldiers lives at risk.

k. On 13 March 2018, the applicant was counseled by the commander in order to notify him disciplinary corrective action was going to be taken against him and he would be flagged for adverse action.

l. On 13 March 2018, the applicant was flagged for adverse action effective immediately.

m. The applicant's ERB, dated 5 April 2018 shows the applicant was advanced to the rank of:

- private (PV2)/E-2, effective 11 November 2015
- private first class (PFC)/E-3, effective 11 May 2016
- SPC/E-4, effective 11 November 2017

n. On 8 June 2018, DA Form 3822 (Report of Mental Status Evaluation) was completed, which shows the applicant was screened for post-traumatic stress disorder (PTSD), depression, traumatic brain injury, substance abuse, and sexual trauma. He had normal cognition, normal behavior, normal perceptions, normal impulsivity. He was diagnosed with adjustment disorder. He could participate in administrative proceedings and appreciate the difference between right and wrong.

o. On 17 April 2018, the applicant accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for failure to report to his appointed place of duty and intent to deceive an NCO by making a false statement. His punishment included reduction to the rank/grade of PFC/E-3. The applicant initially requested to appeal the nonjudicial punishment which he retracted on 3 May 2018.

p. On 26 June 2018, the applicant's commander initiated separation on the grounds of unsatisfactory performance. It was the commander's recommendation the applicant be separated before his expiration term of service with an under honorable conditions (General) discharge for failure to report to appointed places of duty, lying to NCOs,

failure to accomplish basic tasks of his MOS. He was relieved of the duties of his MOS for lack of attention to detail which has caused a safety risk to himself and others.

q. On 26 June 2018, after consultation with counsel the applicant acknowledged:

- he was not entitled to a administrative separation board
- he did not submit statements on his own behalf
- waived his right to counsel
- may expect to encounter substantial prejudice in civilian life
- may be ineligible for many or all benefits as a veteran under both Federal and State laws
- may apply to the ADRB or the Army Board for Correction of Military Records for discharge upgrading
- consideration by either board did not imply it would be upgraded

r. On 26 June 2018, the separation authority directed the applicant be separated prior to the expiration of his term of service for unsatisfactory performance and he be issued a general under honorable conditions discharge. The separation did not appear to be in retaliation for the applicant and did not involve a medical condition that was related to PTSD.

s. On 9 July 2018, the applicant was discharged from active duty under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 13 (Unsatisfactory performance). DD Form 214 shows the applicant completed 3 years, 1 month, and 29 days of active service. It also shows in:

- item 4a: PFC
- item 4b: E3
- item 12i: 24 April 2018
- item 13:
 - Army Achievement Medal
 - National Defense Service Medal
 - Global War on Terrorism Service Medal
 - Korea Defense Service Medal
 - Army Service Ribbon
 - Overseas Service Ribbon
 - Certificate of Achievement
- item 24 (Character of Service): General Under Honorable Conditions
- item 25 (Separation Authority): AR 635-200, chapter 13
- item 26: JHJ

- item 27: 3
- item 28: Unsatisfactory Performance

t. On 4 April 2023, the ADRB determined the applicant's discharge was inequitable based on his PTSD and Other Behavioral Health outweighed the accepted basis for the separation of unsatisfactory performance. The medical advisor opined the applicant's condition mitigated some of his misconduct. As there was an association between major depressive disorder with psychotic feature and occupational impairment, there was a nexus between the applicant's behavioral health condition and failure to accomplish basic military occupational specialty tasks and the applicant's overall unsatisfactory performance. The major depressive disorder does not mitigate the offense of lying to an NCO as it does not affect one's ability to tell right from wrong and act in accordance with the right. Therefore, the Board granted the applicant relief in the form of an upgrade of characterization of service to honorable and changed the separation authority to Army Regulation (AR) 635-200, paragraph 14-12a (Misconduct, minor infraction) with the corresponding separation code of JKN.

u. Twenty-three pages of the applicant's medical records available for further review.

4. The applicant provides:

a. Two hundred seventy-six pages of medical records from the Department of Veterans Affairs for the Board's review.

b. One hundred seventy-five pages of military medical records for the Board's review.

c. DA Form 1559 which shows on 21 March 2018 the applicant filed a complaint with the IG regarding his chain of command refusing his attendance to the Ryder Diesel Technician School and that his flag for adverse action was unfair. The applicant stated he was being discriminated against and his unit was retaliating against him because he complained to the IG office, Equal Opportunity (EO) representatives and spoke with the brigade chaplain. His chain of command was oppressing him and made his life miserable. They would not allow him to progress nor supported his transition to the civilian world. His first line leaders failed to provide him with proper guidance. In response to the applicant's complaint, the Command IG responded to the applicant stating a thorough inquiry was conducted and it was determined his commander flagged him in accordance with the regulation and as such was prohibited from attending any military or civilian schools. He was directed to the EO representative regarding his complaint of discrimination.

d. Alcance Militar Ministry Certificate of Appreciation presented to the applicant on 19 July 2015 for his services to God, Alcance Militar Ministry and the U.S. Army.

e. DA Form 87 which shows the applicant successfully completed the Army Traffic Safety Program, Accident Avoidance course for Army Motor Vehicle Drivers on 23 November 2015.

f. DA Form 2442 which shows on 16 May 2016, the applicant was awarded the Certificate of Achievement of his exceptional performance during the Fiscal Year 2016 Champion Thunder Exercise.

g. DA Form 638 shows that on 28 June 2016, the applicant was recommended for the Army Achievement Medal for his exceptional meritorious service while assigned as the Utilities Equipment Repairer for his unit which was approved by his battalion commander.

h. DA Form 87 which shows on 30 March 2017, the applicant successfully completed the Sexual Harassment/Assault Response and Prevention Standing Strong Training.

i. DA Form 4187 which shows on 11 November 2017 the applicant was approved for advancement to the rank of SPC.

j. DA Form 705 which shows on 4 January 2018 the applicant passed his record Army Physical Fitness Test.

k. DA Form 87 which shows on 25 February 2018, the applicant successfully completed the Structured Self-Development Level 1 course.

l. ERB dated 20 March 2018 which shows in section:

- I – Assignment Information: flagged for adverse action on 13 March 2018
- III – Service Data: eligible for Army Good Conduct Medal on 10 May 2018
- VI – Military Education: none listed

m. ERB dated 5 April 2018 which shows the same information as the ERB dated 20 March 2018.

n. Defense Travel Management Office certificate which shows on 10 April 2018 the applicant successfully completed the Program and Policies – Trave Card Program (Travel Card 101) training.

o. U. S. Government Geneva Conventions Identification Card which expired on

1 November 2018 that shows the applicant with the rank/grade of SPC/E-4.

p. MEDPROS – Individual Medical Readiness which shows the applicant's medical readiness.

q. Automotive crafts shop equipment card showing he was authorized competence to operate the equipment indicated.

5. MEDICAL REVIEW:

a. Background: The applicant's discharge was previously upgraded to honorable by the ADRB. The applicant is now requesting multiple corrections of his DD Form 214. This opine will narrowly address his request for a correction of his reentry code and defer the remainder of his requests to the Board.

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 11 May 2015.
- On 19 December 2017, the applicant was counseled by the Senior Mechanic for failure to follow instructions and disrespect towards a Noncommissioned Officer (NCO). When the applicant was told by a NCO to assist his peers, the applicant told them "no." The applicant disagreed with the counseling by stating "because I have been trying to help my battle buddies under my limitations."
- On 27 December 2017, the applicant was counseled by the Senior Mechanic for failure to follow instructions. On 26 December 2017, during the physical readiness training platoon run the applicant refused to run as instructed on numerous occasions until he was threatened with a counseling statement.
- On 9 January 2018, the applicant received his initial counseling from his squad leader which outlines what was expected of him from accountability, daily duties, physical and military appearance and on and off duty conduct.
- On 1 February 2018, the applicant was counseled by his squad leader for insubordinate conduct towards an NCO. The applicant gave a false statement to two NCOs regarding his dental appointment time and the status of his cellular telephone. The applicant disagreed with the counseling stating he plead not guilty to the accusations. The applicant was also counseled by his squad leader for failure to report to his appointed place of duty at the Fort Sill rail head for accountability formation. He contacted his squad leader to inform him he was not feeling well and was going to the Fires Clinic. He was advised to call and make an appointment as the sick call hours had concluded for the day instead of going to the clinic to make an appointment to expedite the process. The applicant failed to follow those instructions. The applicant disagreed with the counseling stating he had an immediate health issue.

- On 13 March 2018, the applicant was counseled by the commander in order to notify him disciplinary corrective action was going to be taken against him and he would be flagged for adverse action. The applicant was counseled repeatedly on prior occasions.
- On 17 April 2018, the applicant accepted non-judicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for failure to report to his appointed place of duty and intent to deceive an NCO by making a false statement. His punishment included reduction to the rank/grade of PFC/E-3; forfeiture of pay suspended if not vacated before 24 October 2018; extra duty; and restriction suspended if not vacated before 24 October 2018. The applicant initially requested to appeal the non-judicial punishment which he retracted on 3 May 2018.
- On 11 June 2018, the applicant was counseled by the Motor Sergeant for failure to follow instructions. The applicant was instructed to secure his cellular telephone and to sit in the shop office until he was told by the Motor Sergeant he could leave. The Motor Sergeant left the room and when he returned the applicant departed the area. When the Motor Sergeant contacted him, he stated that he was told by another NCO he could go to lunch. He played one NCO against another which was unprofessional behavior. The applicant did not agree with the counseling stating he followed the instructions of an NCO when he was told he was released for lunch. He was also counseled for lacking motivation during physical training. The unit was divided into ability groups for a group run and the applicant stopped running and was barely jogging faster than the fastest walker. Since the separation process had begun the applicant has projected a do not care attitude. The applicant disagreed with the counseling stating he had been running and jogging continuously and doing his best.
- On 26 June 2018, the applicant's commander initiated separation on the grounds of unsatisfactory performance. It was the commander's recommendation the applicant be separated before his expiration term of service with a general under honorable conditions discharge for failure to report to appointed places of duty, lying to NCOs, failure to accomplish basic tasks of his MOS. He was relieved of the duties of his MOS for lack of attention to detail which caused a safety risk to himself and others.
- On 9 July 2018, the applicant was discharged from active duty under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), chapter 13 (Unsatisfactory performance), separation code JHJ, and RE-code 3. DD Form 214 shows the applicant completed 3-years, 1-month, and 29-days of active service.
- On 4 April 2023, the ADRB determined the applicant's discharge was inequitable and granted the applicant relief in the form of an upgrade of characterization of service to honorable and changed the separation authority to Army Regulation (AR) 635-200, paragraph 14-12a (Misconduct, minor infraction) with the corresponding separation code of JKN.

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, "despite the ADRB upgrading his character of service from general under honorable conditions to honorable along with changing the narrative reason for separation, his DD Form 214 is still incorrect. He requests his DD Form 214 reflect he was separated from active duty in the rank/grade of SPC/E-4 with the date of rank/effective date of 11 November 2017, awarded the Army Good Conduct Medal, and change the narrative reason for separation, separation code and the RE code to reflect something favorable. He finished his service in the rank/grade of SPC/E-4 until he received an unjustified disciplinary action due to retaliation. He asks for these corrections and the Army Good Conduct Medal because he deserves it for his good moral character which he demonstrated during and after serving in the Army and for other reasons related to his mental health conditions".

d. The active-duty electronic medical record available for review indicates the applicant was initially diagnosed with a behavioral health condition on 18 November 2015, when he was seen by a medical provider and shared symptoms consistent with a diagnosis of Adjustment Disorder with depressed mood. He was evaluated on 20 November 2015 and started on medication for his symptoms of depression. The applicant was referred to behavioral health services and a note dated 16 December 2015 indicates he was screened and recommended for ongoing services. The applicant participated in therapy with a focus on being deployed to Korea and away from family; feelings of anxiety and irritability; as well as occupational and financial stressors. Once he returned from his deployment the applicant did not reengage with behavioral health services. On 26 January 2017, the applicant was command referred to behavioral health services due to odd behaviors. The applicant was assessed; diagnosed with Major Depressive Disorder, single episode, severe with psychotic features; and recommended for psychiatric hospitalization. He was hospitalized from 26 January until 28 February 2017, upon discharged he was diagnosed with Schizotypal Personality. The applicant received ongoing therapy and medication management following his hospitalization. However, on 13 May 2018 he was once again hospitalized due to suicidal ideation. He was discharged from the hospital on 29 May 2018 and diagnosed with Major Depressive Disorder. On 5 June 2018, the applicant participated in an assessment for the purpose of separation, and, despite his psychiatric hospitalization, he was cleared for administrative action and diagnosed with Adjustment Disorder. Given the applicant's hospitalizations, prior diagnosis with a psychotic disorder, and the fact that he was relieved of the duties of his MOS for lack of attention to detail which caused a safety risk to himself and others; it is unusual the applicant was not referred to the IDES process.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 40% service connected for medical issues including migraine headaches, tinnitus, thigh

injury, and hernia. He is not service-connected for any behavioral health condition despite his extensive mental health history. Following his discharge from military service, the applicant experienced homelessness and presented to the VA Homeless Program seeking assistance on 18 July 2018. He was provided with ongoing support in securing housing resources and ongoing behavioral health services. On 28 February 2022, the applicant shared with his provider he was seeking opportunities to enlist in the National Guard. At that point, he was housed via the VA assistance program and his diagnosis remained Major Depressive Disorder, mild.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that the applicant has a disqualifying mental health condition, and his reentry code should remain unchanged.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct with the commander receiving a company grade Article 15 for failing to report to his place of duty and for lying to a noncommissioned officer and failing to accomplish basic tasks within his military occupational specialty between 27 December 2017 and 11 June 2018. The Board found no error or injustice in the separation proceedings and corresponding narrative reason for separation, separation code, and reentry code associated with his separation proceedings and denied relief.

2. The Board considered the applicant's request for amendment of his DD Form 214 to reflect the rank/grade of specialist (SPC)/E-4. The evidence of record shows the

applicant was reduced as a result of nonjudicial punishment on 24 April 2018 to private first class (PFC)/E-3, with an effective date of rank as 24 April 2018. The Board found no evidence and the applicant did not provide evidence he was recommended for, promoted to, or served as a SPC/E-4 after his date of reduction on 24 April 2018 through his date of separation of 9 July 2018 and denied relief.

3. The Board considered the applicant's request for award of the Army Good Conduct Medal. The evidence of record shows the applicant enlisted in the Regular Army on 11 May 2015; however, started receiving negative counseling statements reflecting poor performance, disrespect, failure to follow orders, insubordination, etc, prior to serving three honorable years of service for a qualifying period for award of the Army Good Conduct Medal. The Board determined the applicant did not meet the eligibility criteria for award of the Army Good Conduct Medal and denied relief.

4. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The 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 1553 (Review of discharge or dismissal), A review by a board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs. In the case of a former member of the armed forces who was diagnosed while serving in the armed forces as experiencing a mental health disorder, a board to review the former member's discharge or dismissal shall include a member who is a clinical psychologist or psychiatrist, or a physician with special training on mental health disorders.

3. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(a) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at

the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(b) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

4. AR 635-200 (Active Duty Enlisted Administrative Separations) in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Paragraph 5-3 (Secretarial plenary authority), 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.

a. Chapter 14, establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave. Action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort is unlikely to succeed. Rehabilitation is impracticable or the Soldier is not amenable to rehabilitation as indicated by the medical or personal history record.

b. Paragraph 14-3 (Characterization of service or description of separation), a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general

discharge if such is merited by the Soldier's overall record. When the sole basis for separation is a serious offense resulting in a conviction by court-martial that did not impose a punitive discharge, the Soldier's service may not be characterized as under other than honorable conditions unless approved by HQDA. When a Soldier has completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate. A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction, or higher authority, unless authority is delegated. An honorable characterization of service is generally required when the Government initially introduces limited- use evidence.

c. Paragraph 14-12 (Conditions that subject Soldiers to discharge), Soldiers are subject to action per this section for the following: a. Minor disciplinary infractions. A pattern of misconduct consisting solely of minor military disciplinary infractions.

d. Paragraph 14-17 (Action by the separation authority), on receiving a recommendation for separation for misconduct, the separation authority may take the following actions; disapprove the recommendation relating to misconduct and take action himself/herself. (1) The case can be referred to the appropriate separation authority to determine whether the Soldier should be separated for unsatisfactory performance if the reason for separation is based substantially on any of the conditions described in paragraph 13-2a, and the misconduct is not so serious that a discharge under other than honorable conditions appears appropriate. (2) Unless unsatisfactory performance was stated as a basis for separation in the initial memorandum of notification, new proceedings per chapter 13 must be initiated to accomplish such separation.

5. AR 635-5-1 (Separation Program Designator (SPD) Codes) in effect at the time, provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214.

a. Paragraph 2-1, 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.

b. Paragraph 2-3 (Rules for SPD code control and usage), the regulatory or other authority for separation will be entered in block 26 of DD Form 214 in accordance with AR 635-5 and this regulation. When tables 2-2 and 2-3 provide an option for the regulatory citation the most appropriate specific regulatory authority will be entered in block 25, based on the circumstances of the case as documented in the Soldier's personnel record. The SPD code will be entered in block 26 of the DD Form 214. The narrative reason for separation will be entered in block 28 of the DD Form 214 exactly as listed in tables 2-2 or 2-3 of this regulation. No deviation is authorized. SPD codes

are not intended to stigmatize an individual in any manner. The SPD code of a former Soldier will be explained to him/her only upon receipt of a written request.

c. Paragraph 2-6 (SPD applicable to enlisted personnel), table 2-3 (SPD Codes applicable to enlisted personnel), it identifies the SPD code of "JHJ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of AR 635-200, Chapter 13, unsatisfactory performance. It also identifies the SPD code of "JKN" as appropriate for enlisted Soldiers who are discharged for Misconduct (Minor Infractions) AR 635–200, para 14–12a.

6. AR 601-210 (Regular Army and Reserve Components Enlistment Program) in effect at the time, prescribes eligibility criteria governing the enlistment of persons, with or without prior service (PS), into the Regular Army (RA), the U.S. Army Reserve (USAR), and the Army National Guard (ARNG). Regardless of RE code, applicant may require a waiver for the reason and authority for separation release, discharge, or transfer.

a. Paragraph 3-18 (2), disqualification of applicants due to previous characterization of separation. Inform applicant that a RE code is not upgraded unless it was administratively incorrect when originally issued. Depending on the disqualification (RE code, SPD code, lost time, narrative reason or character of service), a waiver may or may not be authorized. Depending on the needs of the Army, waivers may not be considered even though the disqualification could be waived. In these cases, applicants should be informed to contact recruiters periodically to see if waiver applications are being considered. Advise applicants whose previous separation may require a 2-year waiting period.

b. Paragraph 3-20 (U. S. Army RE codes), the following RE codes are used for administrative purposes only. Applicants should be advised that these codes are not to be considered derogatory in nature; they simply are codes used for identification of an enlistment processing procedure:

- RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met
- RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted
- RE-1A, 1B, 1C, 2, 2B, 2C, and 4A Applies to: Soldier separated prior to the effective date of this regulation. These codes will not be used. Eligibility: Qualified for enlistment, provided reason and authority does not preclude enlistment or require a waiver

- RE-2A, 3A, 3B, 3C, 3D, 3E, 3S, and 3V Applies to: Soldiers separated prior to the effective date of this regulation but who did not meet reentry criteria at time of separation. Eligibility: Ineligible unless a waiver is granted

c. Paragraph 3-23 (Correction of Army RE codes), Army PS personnel will be advised that RE codes may be changed only if they are determined to be administratively incorrect. Applicants who have corrected RE codes will be processed for a waiver at their request if otherwise qualified and waiver is authorized. No requirement to change RE code exists to qualify for enlistment. Only when there is evidence to support an incorrect RE code or when there is an administrative error will an applicant be advised to request a correction. Do not advise applicants to contact the Discharge Review Board or the Army Board for Correction of Military Records when applicant is eligible to request a waiver.

7. AR 600-8-19 (Enlisted Promotions and Reductions), in effect at the time, prescribes the enlisted promotions and reductions function of the military personnel system.

a. Paragraph 1-13 (Date of rank and effective date), j. Date of rank for Soldiers restored to higher rank is the date of rank before the reduction for: (1) Successful appeal of reduction or (2) Successful appeal, setting aside administrative nonjudicial actions, mitigation, or suspension of punishment under the UCMJ or criminal conviction.

b. Paragraph 10-14 (Restoration to former rank), Rank restoration may result from;
a. Action under table 10–2. DOR for Soldiers restored to former rank will be the same as the original DOR for that rank. Effective date of restoration will be the date the reduction authority is notified of the sentence or change in sentence.

8. AR 27-10 (Military Justice), prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial, United States, 2012, hereafter referred to as the MCM, and the rules for courts-martial (RCMs) contained in the MCM.

a. Paragraph 3-19 (Rules and Limitations), b(6) (6) (Reduction in grade), the grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this regulation, the imposing commander or any subordinate commander has "promotion authority" within the meaning of UCMJ, Article 15(b) if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade. (Date of rank), when a person is reduced in grade as a result of an unsuspended reduction, the date of rank in the grade to which reduced is the date the punishment of reduction was imposed. If the reduction is suspended either on or after the punishment was imposed, or is set aside or mitigated to forfeiture, the offender's date of rank in the grade held before the punishment was imposed remains unchanged. If a suspension of

the reduction is vacated, the offender's date of rank in the grade to which reduced as a result of the vacation action is the date the punishment was originally imposed, regardless of the date the punishment was suspended or vacated. (d) Void reduction. Any portion of a reduction under UCMJ, Art. 15 beyond the imposing commander's authority to reduce is void and must be set aside.

b. Paragraph 3-28 (Setting aside and restoration) is an action whereby the punishment or any part or amount, whether executed or unexecuted, is set aside and any rights, privileges, or property affected by the portion of the punishment set aside are restored. Non-judicial punishment is "wholly set aside" when the commander who imposed the punishment, a successor-in-command, or a superior authority sets aside all punishment imposed upon an individual under UCMJ, Article 15. In addition, the imposing commander or successor in command may set aside some or all of the findings in a particular case. If all findings are set aside, then the UCMJ, Art. 15 itself is set aside and removed from the Soldier's records. The basis for any set-aside action is a determination that, under all the circumstances of the case, the imposition of the UCMJ, Article 15 or punishment has resulted in a clear injustice. The power to set aside an executed punishment and to mitigate a reduction in grade to a forfeiture of pay, absent unusual circumstances, will be exercised only within 4-months after the punishment has been executed. When a commander sets aside any portion of the punishment; the commander will record the basis for this action on DA Form 2627-2. When a commander sets aside any portion of the punishment after 4-months from the date punishment has been executed, a detailed addendum of the unusual circumstances found to exist will be attached to the form containing the set-aside action.

9. AR 600-8-22 (Military Awards) in effect at the time, prescribes Department of the Army (DA) policy, criteria, and administrative instructions concerning individual and unit military awards. Chapter 4, the Army Good Conduct Medal is awarded on a selective basis to each Soldier who distinguishes himself from among his fellow Soldiers by exemplary conduct, efficiency, and fidelity throughout a specified period of continuous enlisted service. The immediate unit commander's decision to award the Army Good Conduct Medal will be based on his personal knowledge of, and the individual's official records for, periods of service under previous commanders during the period for which the award was to be made. The period of service is for 3-years of continuous enlisted active Federal military service. Throughout a qualifying period, each enlisted Soldier must meet all of the following criteria for an award: a. The immediate commander evaluates the Soldier's character as above reproach. b. The record of service indicates that the Soldier has:

- willingly complied with the demands of the military environment
- been loyal and obedient to his or her superiors
- faithfully supported the goals of his or her organization and the Army

- conducted himself or herself in an exemplary manner as to distinguish him or her from fellow Soldiers

While any record of non-judicial punishment could be in conflict with recognizing the Soldier's service as exemplary, such record should not be viewed as automatically disqualifying. The commander will analyze the record, considering the nature of the infraction, the circumstances under which it occurred and when. Conviction by court-martial terminates a period of qualifying service; a new period begins following the completion of sentence imposed by court-martial. In terms of job performance, the Soldier's efficiency must be evaluated and must meet all requirements and expectations for that Soldier's grade, MOS, and experience. Individuals whose retention is not warranted or for whom a bar to reenlistment has been approved are not eligible for award of the AGCM. In instances of disqualification as determined by the unit commander, the commander will prepare a memorandum stating the rationale for his or her decision. This memorandum will include the period of disqualification. The unit commander will consider the affected individual's statement. If the commander's decision remains the same, the records manager will Web upload the memorandum and the individual statement for filing in the Soldier's AMHRR. Disqualification for an award of the AGCM can occur at any time during a qualifying period (for example, when manner of performance or efficiency declines).

10. AR 635-8 (Separation Processing and Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. Source documents will consist of the ERB, separation approval documents, separation order, and any other document authorized for filing in the Army Military Human Resources Record. Block 4; verify that active duty grade or rank and pay grade are accurate at time of separation. Block 25; obtain correct entry from regulatory directives authorizing the separation. Block 26; obtain the correct entry from AR 635-5-1, which provides the corresponding SPD code for the regulatory authority and reason for separation. Block 27; AR 601-210 determines reentry eligibility and provides regulatory guidance on RE codes. Block 28; this is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1.

11. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//