

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 December 2024

DOCKET NUMBER: AR20230014914

APPLICANT REQUESTS: reconsideration of his previous request to correct his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 10 February 2016 to show in:

- Block 4a (Grade, Rate, or Rank): Sergeant First Class (SFC) vice Private/E1 (PVT)
- Block 4b (Pay Grade): E7 vice E1
- Block 23 (Type of Separation): Retirement vice Discharge
- Block 28 (Narrative Reason for Separation): to an appropriate less derogatory narrative such as Secretarial Authority vice Misconduct (serious)
- Grant a military disability retirement or be placed in the Integrated Disability Evaluation System (IDES)
- Medical retirement for post traumatic stress disorder (PTSD) of at least 70 percent
- Personal appearance before the Board

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

- Letter from Attorney
- Enclosure 1 - Power of Attorney
- Enclosure 2 - DD Form 149 (Application for Correction of Military Record)
- Enclosure 3 - DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Enclosure 4 - Affidavit of Applicant
- Enclosure 5 - Relevant Medical Records
- Enclosure 6 - Separation Packet
- Enclosure 7 - Army Discharge Review Board (ADRB) Decision
- Enclosure 8 - Statement from Mr. A-
- Enclosure 9 - Kurta/Hagel Guidance
- Enclosure 10 - Army Review Boards Agency (ARBA) Documents

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20190009490 on 13 April 2021.

2. The applicant, through counsel, states:

a. The applicant joined the United States Army in November 1995. In 2015, he was stationed at the Warrior Transition Unit (WTU) pending a medical evaluation board (MEB) for severe PTSD. At this time, he was undergoing administrative separation for four alleged offenses, one of which was being prosecuted by civilian authorities.

b. At the board, he was joined by a witness, Mr. S- A-, who was an attorney and representing him in civilian court. Mr. A-, however, was not representing him as to the other offenses, nor was he acting as his attorney for the separation hearing. The applicant's detailed military counsel had been dismissed and was not present, at the hearing. This arrangement led to confusion amongst the board members and recorder.

c. After attempting to clear up the matter, the applicant requested a delay to secure military counsel. This request, however, was denied due to the presence of Mr. A-, the board ultimately found no preponderance supporting the civilian charge to which Mr. A- testified, but substantiated the other allegations against the applicant. He was separated with an under other than honorable conditions (UOTHC) characterization of service at 19 years and 3 months of service. As a result of his UOTHC discharge, he was also reduced from E7 to E1.

d. He then went to the ADRB in 2017. The ADRB granted partial relief and upgraded his discharge from UOTHC to under honorable conditions (general). The ADRB later granted a discharge upgrade to honorable after a class action lawsuit required another review of his petition. It is clear an error and injustice were made in his case as his discharge was upgraded to honorable, but his records need to reflect the correction of his administrative date. Moreover, he must be able to retire from the service as he was unjustly released without having his medical issues fully reviewed through the IDES process. He now requests a military retirement based on an error and injustice that occurred in his case with his lack of representation at the board and because the command deprived him of his rights and due process.

e. Applicants must file an application for correction of a record within three years after the error or injustice was discovered, or with due diligence, should have been discovered. While he was discharged from the Army in 2016, he immediately appealed to the ADRB. The ADRB took years to decide and now this follow-on appeal is directly related to the ADRB decision. Furthermore, the law allows the ABCMR to waive an

applicant's failure to timely file within the three year statute of limitations if the Board determines it would be in the interest of justice to do so. Based upon the circumstances of this case, he requests that this Board consider his application and grant him the requested relief. Only this Board can review this matter and grant the relief requested herein.

f. The applicant is a former member of the United States Army who enlisted on 8 November 1995. He served primarily as an M-1 Armor Crewman (19K) and deployed five times over the course of his career: to Kuwait for four months in 1999; to Iraq for eight months in 2003; for 11 months in 2004; and for 12 months in 2008. He also deployed to Afghanistan for nine months in 2010. Through his service, he earned the Bronze Star Medal and the Combat Action Badge.

g. After nearly 20 years of honorable service, the applicant suffered a mental health injury in 2015 and was placed in the WTU pending an MEB. It was argued that he met the criteria for a 70 percent Department of Veterans Affairs (VA) rating for PTSD. Specifically, his commander stated:

[The applicant] was diagnosed with severe PTSD that affects his performance of duties. His record of performance reflects issues with certain subject material which affects his capability to do his duties. [The applicant] has demonstrated occasional incapability to complete certain tasks to standard in the past few months that can be attributed to his PTSD. His performance is static but not conducive to a productive environment. Soldier needs more time for each task; Soldier does not complete the duties/tasks; and Soldier [is] unable to complete 8 hour days. On several occasions, [the applicant] has stepped out of briefings because of the content of the discussion and experienced reduced productivity for the remainder of the day.

h. Furthermore his PTSD treatment records express a multitude of concerns relating to his employability including the following statements, "Persistent and recurrent symptoms necessitate limitations of duty and duty in a protected environment. This Soldier continued to have significant symptoms and impairment. He has poor tolerance to stress, anxiety ,and irritability. Reminders of his combat experiences cause a dramatic increase in symptoms." "The servicemember may have difficulty with civilian employment due to his symptoms of PTSD, in particular, his irritability, anger, and difficulty establishing and maintaining relationships."

i. While the MEB was pending, his unit at Fort Carson initiated an administration separation board to investigate four allegations (1) reckless driving and driving under the influence (DUI); (2) driving with a suspended license; (3) wrongful participation in a criminal gang organization; and (4) commission of second degree assault.

j. At the time of this hearing, the assault charge was pending trial in Colorado. The applicant had retained civilian counsel, Mr. S- A-, to represent him in the civil proceedings. The applicant also asked Mr. A- to serve as a witness at the board in order to explain the charge against him. Mr. A- was not representing the applicant at the board.

k. When the applicant's detailed attorney did not appear for the board, the board president asked if Mr. A- was representing the applicant. Mr. A- clarified to the board president that he was only present as a witness and was not representing the applicant at the board. The applicant then requested a delay so he could obtain detailed counsel. The board president denied this request.

l. At the conclusion of the board, the board sustained the first three allegations against him but found no preponderance of evidence to support the charge to which Mr. A- testified. On 14 December 2015, the Assistant Secretary of the Army directed that he be separated in lieu of disability processing. He was officially separated on 26 January 2016.

m. In 2017, he, through the Veterans Advocacy Project, filed with the ADRB. The ADRB granted him an upgrade from UOTHC to under honorable conditions (general).

n. In this petition, Mr. A- has provided a letter summarizing his involvement in the administrative separation hearing. As stated by Mr. A-:

No military or civilian defense counsel appeared on the applicant's behalf. [The applicant] requested the board a reasonable delay of the proceedings such that he could have appointed counsel to represent him, at the discharge board, The board president denied his request and insisted he proceed without counsel. The board insisted [the applicant] had counsel, since I was merely present at the tribunal. Government counsel insisted he board force [the applicant] to go forward and denied his right to representation, since I was present. I explained to the board that I was not retained to represent him at these proceedings, nor did I have a file or notes to go forward. I explained to the board I was merely a witness and could not represent [the applicant].

o. The ABCMR is the highest level of administrative review within the Department of the Army and its mission is to correct errors and remove injustices from Army records. The applicant's present case represents exactly the type of error and injustice the Board was implemented to correct. This error in the separation process is material in nature and thus must be corrected.

p. The applicant was accused of several serious offenses under the Uniform Code of Military Justice that the unit chose to adjudicate at an administrative separation board. Army Regulation 15-6 (Investigation Officer Guidelines) requires that Soldiers facing administrative separation board are afforded the right to designated military counsel. While this right can be waived, there is virtually no reason why a Soldier would knowingly waive his right to counsel especially when facing the circumstances of the applicant's case. He requested military counsel, and his request was denied by the board president. The applicant requested a delay to obtain military counsel, and his request was denied by the board president against the advice of Army Regulation 15-6. The denial of the right to military counsel is considered a "substantial error" that has a material adverse effect on an individual's substantial rights. He was not afforded representation at his hearing. Instead, one of his witnesses, Mr. A-, was called to represent him against the wishes of both the applicant and the witness.

q. The evidence of this case reflects that the applicant was into a separation board, denied basic substantial due process rights, and rushed through the process without complete and thorough representation. The record does not reflect that the unit did their due diligence to ensure that he was fully aware of what his rights would have on his future. Had he had those rights presented to him at the time, and just as importantly, an aggressive counsel that advised him properly, the outcome of the proceeding may have been different.

r. Moreover, as indicated by Mr. A-, the sequence of events in the administrative separation board were severely improper. It defies logic that a government counsel would advocate for this hearing to continue over the objections of not only the applicant but also Mr. A-, a practicing civilian attorney. It is essential to note that the criminal allegations, in civilian court, were eventually dismissed. The fair and just result should have been to hold the board in abeyance until the applicant, who as indicated throughout has severely struggled with PTSD, could find adequate representation. Instead, he was forced to represent himself, and his otherwise honorable career, which should have received an honorable military retirement, was cut short with an unfavorable discharge.

s. On 3 September 2014, Secretary of Defense Hagel signed a memorandum providing supplemental guidance to military boards of correction concerning requests by veterans claiming PTSD. The memorandum provides that the board must "fully and carefully consider every petition based on PTSD brought by each veteran." There is supplemental policy guidance which "details medical consideration, mitigating factors, and procedures for review..." That attachment dictates:

Conditions documented in the 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 PTSD or PTSD-related conditions 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 UOTHC characterization of service.

t. Finally, the memo states that "PTSD-related conditions as a causative factor in misconduct resulting in discharge will be carefully weighed against the severity of the misconduct," and the "time limits to reconsider decisions will be liberally waived for applications covered by this guidance."

u. On 25 August 2017, the Department of Defense (DoD) provided clarifying supplemental guidance to Discharge Review Boards and Boards for Correction of Military Records considering requests by veterans for modification of their discharge due in whole or in part to mental health conditions including traumatic brain injury (TBI). The Kurta Memorandum directed these boards to grant "liberal consideration" for discharge relief. Requests for discharge relief involve four questions:

- Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- Did that condition exist prior to military service?
- Does that condition or experience actually mitigate the discharge?
- Does that condition or experience outweigh the discharge?

v. In order to answer these questions, the Kurta Memorandum noted that supporting evidence providing justification for a favorable decision can come from statements from family members, changes in behavior, deterioration in work performance, inability of the individual to conform their behavior to expectations of a military environment, substance abuse or social behavior changes. Moreover, the DoD further recognizes that his testimony alone may establish the existence of a condition or experience which excuses or mitigates the discharge.

w. While the Kurta Memorandum is specifically directed at requests for discharge upgrade, the guidance is equally relevant in an application to request for restoration of rank, which essentially acts as another form of characterization of service. The applicant's current situation presents as exactly the type of case contemplated by the Kurta Memorandum in its clarifying guidance to the secretaries of military departments and warrants full "liberal" consideration.

x. The first question the Kurta analysis asks is whether he had a condition that may excuse his discharge (administrative reduction). His medical records are clear that he has a significant history of PTSD which was first experienced in 2015. The Kurta Memorandum specifically lists PTSD as one of the primary conditions that may warrant favorable treatment as to his request to retire.

y. The next question asks whether the condition existed prior to service. He spent nearly 20 years in the military. There is no evidence that he suffered from any of these symptoms prior to his service. His condition was clearly aggravated by military service. While in the Army, he deployed multiple times.

z. The third question asks whether his condition mitigates his separation. They contend that it does. It was at least as likely as not that his PTSD contributed to his misconduct DUI to a moderate to severe degree. Moreover, the Kurta Memorandum specifically recognizes a downturn in performance or work difficulties as evidence of a condition that warrants relief. They further submit that it is now well understood that individuals who suffer from TBI and PTSD are prone to make poor decisions that they would otherwise not make. At the time of his misconduct, he had completed nearly 20 years of honorable service. Was it his plan all along to be a law-abiding officer for 18 years of service and then start committing misconduct? They respectfully contend that it makes more sense that there is another explanation for his poor decision making after 19 years of otherwise stellar service: PTSD that he endured, while successfully fighting our Nation's wars.

aa. Finally, the documented significant PTSD trauma outweighs his under honorable conditions (general) discharge. While they recognize the serious nature of his misconduct, his specific wrongful conduct must be viewed in its proper context. The applicant received a DUI. Moreover, prior to the misconduct, he had served honorably for nearly 20 years.

bb. Accordingly, he clearly meets all four factors in the Kurta analysis and his case warrants liberal consideration contemplated by the memorandum. He should be restored to his rightful rank of SFC.

cc. Based on the circumstances of this case, it is clearly an injustice to continue to characterize his service as UOTHC or even under honorable conditions (general). He joined the Army for all of the right reasons. His eventual separation and UOTHC discharge developed from a chain of events in which he was denied his due process rights and ultimately cleared. Unfortunately, he was never given the opportunity to defend himself in this action. However, this honorable Board can provide some relief now.

dd. They ask that the Board find his service, based on a totality of the circumstances including the fact he was deprived representation at his separation board and his civilian case was dropped, warrants correction of his record. The ADRB upgraded his discharge and his administrative date should reflect the correction. Furthermore, he was in the MEB when the process was severed due to the unjust separation. Therefore, they request he receive a military disability retirement based on the ADRB correcting his record and the injustice that ceased the MEB process.

3. The applicant provides:

a. Affidavit of the applicant, states, in effect:

(1) He is a former member of the United States Army. He served on active duty for nearly 20 years prior to his separation in 2016. He served primarily as an M-1 Armor Crewman (19K) and deployed five times over the course of his career: to Kuwait for four months in 1999; to Iraq for eight months in 2003, for 11 months in 2004, and for 12 months in 2008. He deployed to Afghanistan for 9 months in 2010. Through his service he earned the Bronze Star Medal and Combat Action Badge.

(2) After nearly 20 years of honorable service, he suffered a mental health injury in 2015 and was placed in the WTU pending an MEB. He was either going to receive a medical disability retirement or a regular Army retirement. He was very close to getting out before his separation. He even had retirement orders. As his MEB was processing, his unit initiated separation proceedings against him. He requested a separation board and detailed military counsel to represent him.

(3) Prior to his separation hearing, he was detailed military counsel from Fort Carson Trial Defense Services (TDS). He worked with his TDS counsel to prepare the case. Shortly before the hearing, he had a conversation with his TDS counsel where they discussed pushing for a delay for more time to prepare the case. The TDS counsel told him that he would get a delay if he "fired" his counsel because the new TDS counsel would need time to get acquainted with the case. As instructed, he released his TDS counsel with the expectation that new TDS counsel would be assigned. He does not know if this ever happened because he was not contacted by another TDS counsel.

(4) At his separation hearing, he was accused of four offenses. One of the offenses, an assault, was pending trial in Colorado. He asked his civilian attorney, Mr. S- A-, to appear as a witness at the hearing to provide testimony concerning the assault allegation. He did not retain, nor did he ask Mr. A- to represent him at the board. He thought he had detailed military counsel from TDS to represent him.

(5) On the day of his separation board, Mr. A- arrived to testify as a witness. His TDS counsel did not appear. The board president asked if Mr. A- was his attorney and he said no. There was then a discussion regarding what should happen. He requested a delay, but his request was denied by the board president. The board president declared that Mr. A- could be his attorney.

(6) The separation board sustained three of the four charges against him. The board found no preponderance of evidence for the single charge that Mr. A- testified on. He attempted to seek relief from the ADRB, but they only upgraded his discharge from UOTHC to under honorable conditions (general). He needs a fully honorable discharge

to qualify for a retirement. He believes he was denied due process and he requests full relief.

b. A Physical Evaluation Board (PEB) Liaison Disability Compensation Worksheet, shows what his compensation would be if he were medically retired from the Army.

c. Memorandum VA Reconsideration Request, 5 November 2014, states, in pertinent, part:

(1) The applicant, through counsel respectfully requests that the VA Decision Review Officer reconsider the VA's proposed rating. Specifically, the applicant respectfully requests the VA rate his PTSD at 70 percent. He received a VA Disability Evaluation System proposed rating of 50 percent for PTSD.

(2) The VASRD Diagnostic Code 9411 prescribes a 70 percent rating for occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking or mood, due to such symptoms as :suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance or hygiene; difficulty adapting to stressful circumstances (including work or work like setting); inability to establish and maintain effective relationships.

(3) He entered the Army MEB process specifically due to his employability issues. Specifically, the commander stated, "[the applicant] was diagnosed with severe PTSD that affects his performance of duties. His record of performance indicates a high level of capability. His current performance reflects issues with certain subject material which affects his capability to do his duties. [The applicant] has demonstrated occasional incapability to complete certain tasks to standard in the past few months that can be attributed to his PTSD. His performance is static, but not conducive to a productive environment. " He went on to state, "Soldier needs more time for each task; Soldier does not complete the duties/tasks; and Soldier unable to complete 8 hour day." Finally his commander complained that "On several unobserved occasions, [the applicant] has stepped out of briefings because of the content of the discussion, and experienced reduced productivity for the remainder of the day."

(4) His most recent PTSD treatment records were attached. Throughout the records, the main theme expresses a multitude of concerns relating to his employability including the following statements: "Persistent and recurrent symptoms necessitate limitations of duty and duty in a protected environment. This Soldier continues to have significant symptoms and impairment. He has poor tolerance to stress, anxiety, and irritability. Reminders of his combat experiences cause a dramatic increase in

symptoms." "The servicemember may have difficulty with civilian employment due to his symptoms of PTSD, in particular, his irritability, anger and difficulty establishing and maintaining relationships."

(5) Conclusion: In sum, the applicant's long and distinguished military career has resulted in significant PTSD that has significantly influenced his employability, and will continue to substantially do so throughout his civilian career. This PTSD meets the criteria set for by VASRD DC 9411 for a 70 percent rating based on frequent and substantial mental effects, nightmares, impulse control, and difficulty making and maintaining relationships that significantly affect his ability to maintain gainful employment.

d. A letter from Mr. S- A-, 16 May 2022, states:

(1) On 3 February 2015, he attended the separation board of the applicant as a witness to the unfounded allegations of serious misconduct arising out of civilian criminal charges which were ultimately dismissed.

(2) He was of the impression the applicant had retained military appointed counsel from TDS. His understanding of his appearance was merely as a witness to the allegations of serious misconduct and to corroborate the applicant's statement of events. He understood the applicant's counsel absented himself from the proceedings and no substitute military counsel was appointed to represent his interests.

(3) Although he was a former U.S. Air Force Judge Advocate and a civilian practicing attorney, licensed in Colorado and California, he was not retained to represent the applicant in the discharge proceedings, nor was he retained or requested to represent the applicant in the discharge proceedings, nor was he retained or requested to represent the applicant as any type of advisory counsel. He appeared as a guest/witness of the applicant.

(4) The applicant requested the board delay the proceeding such that he could have military appointed counsel, since his original counsel requested termination of his representation. No military or civilian defense counsel appeared on the applicant's behalf. The board president denied his request and insisted he proceed without counsel. The board insisted the applicant had counsel, since Mr. A- was merely present at the tribunal.

(5) Government counsel insisted the board force the applicant to go forward and denied his right to representation, since Mr. A- was present. He explained to the board he was not retained to represent the applicant at the proceedings, nor did he have a file or notes to go forward. He explained to the board he was merely there as a witness and

ethically could not represent the applicant. Government counsel insisted that since he was an attorney that was sufficient for the process due of the applicant's rights.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the Regular Army on 8 November 1995. He remained in the Army through immediate reenlistments.

b. On 29 September 2014, his commander initiated action to involuntary separate him due to commission of a serious offense. The reasons for his proposed action were:

- on or about 7 January 2014, he pled guilty to a charge of DUI that occurred on 26 August 2013 and reckless driving that occurred on 7 June 2013
- on or about 31 March 2014, he drove his vehicle under restraint and in violation of Colorado State Statute, Driver's license-permit Unauthorized Person/Driver and pled guilty on or about 18 July 2014
- between on or about 9 December 2013 and 1 May 2014, he violated a written order by wrongfully participating in the criminal gang organization, Sin City Disciples
- he committed second degree assault for which he was arrested for on 26 August 2014.

The commander was recommending he receive an UOTHC discharge; however, the separation authority would make the final determination in his case. On the same day, the applicant acknowledged receipt of the initiation of separation.

c. On 20 October 2014, he had been advised by his attorney on the basis of the contemplated action to separate him and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights. He requested to have his case heard by an administrative separation board, he requested representation at the administrative separation board, and he elected not to submit statements in his own behalf.

d. The applicant's chain of command recommended his case be referred to an administrative separation board, and that he be separated from the Army with an UOTHC discharge.

e. In an undated memorandum, the applicant was advised that his case was referred to an administrative separation board. The entire administrative separation board is not available for the Board's consideration. The administrative separation board's findings and recommendations show the following:

(1) The allegation of on or about 7 January 2014, the applicant pled guilty to a charge of DUI that occurred on 26 August 2013 and reckless driving that occurred on 7 June 2013 does, by the preponderance of evidence, support he committed the acts.

(2) The allegation of on or about 31 March 2014, he drove his vehicle under restraint in violation of Colorado State Statute, Driver's license-permit Unauthorized Person/Driver and pled guilty on or about 18 July 2014 does, by the preponderance of evidence, support that he committed the acts.

(3) The allegation of between on or about 9 December 2013 and 1 May 2014, he violated a written order by wrongfully participating in the criminal gang organization Sin City Disciples does, by the preponderance of evidence, support that he committed the acts.

(4) The allegation of he committed second degree assault which he was arrested for on 26 August 2014 does not, by the preponderance of evidence, support that he committed the acts.

(5) These findings do warrant the separation of the applicant. The board recommended he be separated from the Army with a characterization of service of UOTHC.

f. A memorandum to U.S. Army Human Resources Command, 11 March 2015, states an administrative separation board was held on 3 February 2015 and recommended the applicant be separated from the Army with an UOTHC discharge. The commanding general had considered the findings and recommendations of the administrative separation board as well as the separation action pertaining to the applicant. In addition, the MEB findings indicate he was diagnosed with chronic PTSD and chronic right shoulder strain. The commanding general found that his medical condition was not a cause or substantial contributing cause of his misconduct and that other circumstances do not warrant disability processing. The commanding general recommended his administrative separation be processed and his characterization of service be UOTHC.

g. The applicant's DD Form 2697 (Report of Medical Assessment), DD Form 2808 (Report of Medical Examination) and DD Form 2807-1 (Report of Medical History) and medical documents are available for the Board's review and will be reviewed by the Army Review Board's Agency (ARBA) medical section who will provide an advisory opinion.

h. On 14 December 2015, the Assistant Secretary of the Army (Manpower and Reserve Affairs) directed the applicant's separation, in the rank of SFC, from the Army.

He directed the applicant be reduced to PVT/E1 and he be issued an UOTHC discharge.

i. DA Form 3822 (Report of Mental Status Evaluation), 26 January 2016, shows:

(1) He was unfit for duty due to a serious mental condition that was not likely to resolve within one year. He could understand and participate in administrative proceedings and could appreciate the difference between right and wrong. He was diagnosed with chronic PTSD.

(2) It was the professional opinion of the doctor that the applicant would not respond to command efforts at rehabilitation or to any behavior health treatment methods available in the military. He denied substance abuse. He has no history of participation in the Army Substance Abuse Program.

(3) He reported some homicidal thoughts; these thoughts are nonspecific and he denied a plan or intent to act on the thoughts. There was no specific precautions at that time. He was screened for TBI, PTSD, and alcohol abuse problems. He screened positive for both PTSD and TBI. These conditions have been evaluated previously per IDES and it has been determined he falls below retention standards for PTSD and does not fall below retention standards for TBI. He was previously evaluated for chapter separation on 2 June 2014 and was not cleared from a behavioral health standpoint. He will continue to engage in behavioral health services as recommended by his treating provider. He was not cleared for administrative separation from a psychiatric perspective.

j. On 10 February 2016, the applicant, in he rank of PVT, was discharged accordingly. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he had completed 19 years, 3 months, and 3 days of net active duty service with 1 month and 29 days of prior active duty service and 5 years, 4 month, and 26 days of prior inactive duty service. He was discharged for misconduct (serious offense). His initial characterization of service was UOTHC; however, his discharge was upgraded to honorable. His separation code was JKQ and his reentry code was 4. He had continuous honorable service from 8 November 1995 through 6 June 2013. He had service in Kuwait from 15 April 1999 through 15 August 1999; service in Iraq from 26 April 2003 through 9 December 2003, 9 October 2004 through 22 September 2005, and from 9 March 2008 through 9 March 2009; and service in Afghanistan from 28 September 2010 through 21 June 2011. His service characterization was upgraded per ADRB Proceedings AR20170005760 on 26 November 2018. He was awarded or authorized the:

- Afghanistan Campaign Medal with two Campaign Stars
- Iraq Campaign Medal with two Campaign Stars

- Bronze Star Medal
- Army Commendation Medal (3rd Award)
- Army Achievement Medal
- Valorous Unit Award
- Army Superior Unit Award
- Army Good Conduct Medal (6th Award)
- National Defense Service Medal (2nd Award)
- Armed Forces Expeditionary Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Armed Forces Service Medal
- Noncommissioned Officer Professional Development Ribbon (3rd Award)
- Army Service Ribbon
- Overseas Service Ribbon (5th Award)
- NATO Medal (2nd Award)
- Combat Action Badge
- Driver and Mechanic Badge- Mechanic

k. On 27 November 2018, the ADRB determined, in ADRB docket number AR20170005760, that the applicant's discharge be upgraded to under honorable conditions (general). The Case Report and Directive is available for the Board's review.

l. On 24 March 2023, the ADRB determined, in ADRB docket number AR20210002406, that the applicant's discharge be upgraded to honorable. The Case Report and Directive is available for the Board's review.

m. The applicant's service record was void of MEB/PEB documentation.

5. On 13 April 2021, the Board made a determination regarding the applicant's request to change his discharge to a medical retirement, change his characterization of service to honorable, and to restore his rank to SFC in ABCMR docket number AR20190009490. The Board stated after reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. Based upon the misconduct involved and the findings and recommendations of the medical advisor, the Board concluded there was insufficient evidence of an error or injustice which would warrant a change in his characterization of service and/or rank reflected on his DD Form 214; however, the Board did find there was sufficient evidence to refer his medical records to IDES for further evaluation for consideration in changing his narrative reason for separation.

6. On 16 May 2022, the Brooke Army Medical Center, sent a memorandum to the Office of the Surgeon General (OTSG) subject Physician Decision Memorandum on Review on ABCMR proceedings, which states, the conclusion and recommendation was the applicant should be referred to an MEB for reevaluation of his behavioral health condition, at his time of separation.

7. A memorandum for the ABCMR from OTSG, 27 June 2022, states in pertinent part, medical evidence based on the review of the applicant's medical records indicate a MEB is warranted. The Joint Base San Antonio MEB office has attempted to contact the applicant to begin the board process. As of the date of the memorandum, all attempts to contact him have been unsuccessful. A memorandum from Brook Army Medical Center, 27 June 2022, details the attempts to contact the applicant and is available for the Board's review.

8. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

9. Soldiers can be discharged for various types of misconduct. The issuance of a discharge 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.

10. Based on the applicant's documentation showing he suffered from PTSD, while in military service and was undergoing an MEB, at the time of his discharge, the ARBA Medical Section provided a medical review for the Board's consideration.

11. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the electronic Disability Evaluation System (eDES); the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant through counsel, had several administrative requests for changes to his DD Form 214. His prior characterization of service designated as Under Other Than Honorable was previously upgraded to Under Honorable Conditions, General (ADRB Proceedings 26Nov2018)

and later to Honorable (ABCMR Proceedings 23Mar2023). He now requests a change in the narrative reason for separation from 'Misconduct (Serious)' to less derogatory reason, 'Secretarial Authority' for example and for restoration of his prior rank and pay grade. He also requests military disability retirement based on his prior MEB results or alternatively, placement in IDES/LDES. His requests are based on the following contentions: He had 19 years in service with multiple combat deployments and was diagnosed with PTSD; he was not cleared for separation by BH services; and he was not represented by his designated counsel at the separation board proceedings.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant was in the Regular Army from 08Nov1995 until 10Feb2016. His MOS was 19K Armor Crewman. He deployed in Kuwait (19990415 to 19990815); had multiple deployments in Iraq (20030426 to 20031209, 20041009 to 20050922, and 20080309 to 20090309); and Afghanistan (20100928 to 20110621). He was discharged under AR 635-200 para 14-12c for Misconduct, (Serious Offense). The offenses for which he was found guilty and led to his discharge (according to the Administrative Elimination Board convened 03Feb2015) were as follows: Driving under the influence on 26Aug2013; reckless driving on 07Jun2013; operating a vehicle under restraint in violation of Colorado State Statute on 31Mar2014; and wrongfully participating in a criminal gang organization between 09Dec2013 and 01May2014.

3. Summary of pertinent records for PTSD and TBI conditions

a. The MEB was initiated in May 2014. According to the 07Jul2014 MEB NARSUM (narrative summary), the applicant reported onset of significant BH symptoms after the second Iraq deployment therefore the MEB used the date of 01Dec2005 for onset of the PTSD condition. Treatment included oral medication and counseling (for example EMDR). The condition had not required psychiatric hospitalization. During his Initial PTSD DBQ, he denied suicide and homicide ideation. There was no psychosis or mania. His insight and judgement were appropriate. His reported stressors included being in the Mosul chow hall in December 2004 when it was bombed and helping evacuate casualties; being involved in a firefight in 2008 during which his vehicle flipped when it rolled over a large berm while evading hostile fire; and being approximately 3 people behind a journalist in Afghanistan when the journalist was killed in a blast. For VA rating purposes, his symptoms included anxiety, suspiciousness, panic attacks occurring weekly or less, chronic sleep impairment, disturbance of motivation and mood and difficulties with relationships. The examiner opined that that the level of occupational and social impairment due to his PTSD was with reduced reliability and productivity (50% level).

b. The applicant was also diagnosed with traumatic brain injury. His reported TBI events were classified as mild: In December 2004 he was in a dining hall approximately 50 meters away when a suicide vest bomb detonated and killed many soldiers; in March

2008 he was in full gear as a passenger in a MRAP rollover incident while evading fire and was hit in the head by a .50 cal ammo can; and in July 2009 while on dismount patrol he was 30 meters from the landmine blast tripped by a reporter in their group. His MoCA score was 27/30 indicating normal cognitive functioning. His TBI residual included headaches only, which were responsive to over-the-counter ibuprofen. The examiner opined "There are no current cognitive or psychological symptoms attributed to his TBI history. Neuropsychological testing is not indicated." Thought processes and communication were not impaired. His judgement was normal, and his social interaction was routinely appropriate. The applicant did not require TBI rehab.

c. Of note, in the 19May2014 Physical DES Commander's Performance and Functional Statement, they wrote that the applicant's PTSD condition impacted performance. They noted that he had moderate difficulty completing tasks and occasionally he could not complete certain tasks to standard. Command indicated that the applicant was not included in the unit decision making process; however, based on their observations of his performance, the applicant made reasonable decisions, including complex or unfamiliar ones. He was rated by the senior rater as 'among the best' in the 3 most recent NCO Evaluation Report assessment periods from 20101130 thru 201310310.

d. The 08Jul2014 MEB Proceedings (DA Form 3947) indicated that the applicant's Chronic PTSD condition was the sole condition not meeting retention standards of AR 40-501 chapter 3. *It should be noted that on 16Jul2014, the applicant non concurred with this MEB decision and filed an appeal through counsel contending that he met medical retention standards. The PTSD condition was reviewed by the MEB, and their position was unchanged.* The MEB determined that the TBI condition did meet retention standards.

e. 14Aug2014 VA Proposed Rating evaluated the PTSD condition at 50%. This was equivalent to the level of disability opined by the VA Initial PTSD DBQ examiner. On 05Nov2014, the applicant through counsel requested for reconsideration of his VA rating. He wanted the rating for PTSD to be increased from 50% to 70%. In the VA memorandum from the Decision Review Officer dated 06Dec2014, the proposed 50% evaluation for PTSD was confirmed.

4. Summary of pertinent records for the right shoulder condition(s)

a. 02Jul2014 Shoulder and Arms Conditions DBQ. The date of the right shoulder injury was listed as October 1997 after PT. The condition was exacerbated during the MRAP rollover incident in 2008 (described above). The applicant is right hand dominant. The right shoulder range of motion exam showed shoulder flexion to 165 degrees with pain onset at 100 degrees; and abduction to 160 degrees with pain onset at 100 degrees. *Normal flexion and abduction are to 180 degrees each.*

b. 14Aug2014 VA Proposed Rating. Right Shoulder Strain was evaluated at 10%.

c. 14Aug2014 right shoulder MRI revealed significant pathology: Large full thickness incomplete width tear of the supraspinous tendon with mild supraspinatus muscle atrophy; partial thickness tear of the subscapularis tendon; mild subluxation of biceps tendon; SLAP type labral tear; and acromioclavicular joint arthrosis.

d. 24Oct2014 Formal PEB (DA Form 199-1) added Chronic Right Shoulder Strain as an unfitting condition based on the new medical evidence presented after the MEB proceedings (the August 2014 MRI findings and his resultant candidacy for surgical repair of the various shoulder impairments proposed by orthopedics in early October 2014). It was likely he would be unable to perform certain responsibilities required of his MOS even with repair, for example, move 40 lbs. while wearing usual protective gear at least 100 yards. Therefore, the right shoulder condition was found unfitting for continued service.

e. 05Nov2014, the applicant through counsel requested permission to undergo surgery (and resultant required rehab) for the right shoulder condition during the MEB/PEB process due to reported persistent significant pain and functional impact. The applicant underwent right shoulder surgical repair on 31Dec2014.

5. 31Dec2014 US Army Physical Disability Agency Revised PEB Proceedings (DA Form 199-2) again found the following: The PTSD condition was medically unfitting for continued service with VA 50% rating under code 9411; the Chronic Right Shoulder Strain was medically unfitting with VA 10% rating under 5201-5019; both conditions were designated as V1/V3 injuries consistent with combat incurred disabilities; in addition, the CAB award was applied to the PTSD condition; and finally, placement on TDRL at 60% total disability was recommended with reexamination in July 2015. The USAPDA revision included specifying that the right shoulder condition was stable for permanent rating—stating that the preponderance of evidence indicated that the current 10% rating would likely remain the same over the next 5 years.

6. The 26Jan2016 Report of Mental Status Evaluation was notable for behavior regarded as hostile and for the presence of non-specific homicidal thoughts. The applicant was deemed able to understand and participate in administrative proceedings. He could appreciate the difference between right and wrong. He was diagnosed with Chronic PTSD and the screening was positive for PTSD as well as mild TBI. Screening for substance abuse was negative. It had already been determined during IDES processing, that his PTSD did not meet medical retention standards of AR 40-501 chapter 3 for the PTSD condition. His TBI did not fail medical retention standards. He was not cleared for administrative separation from a psychiatric perspective. It was also noted that he had been previously evaluated for administrative separation on

02Jun2014 and he had not been cleared for administrative separation at that time. He was to continue in BH treatment as recommended by the treating provider.

7. Memorandum from the US Army PDA dated 29Feb2016 indicated that the PEB Proceedings were voided due to the IDES case being administratively cancelled as the applicant was administratively separated from the Army IAW AR 635-200 para 14-12c for misconduct.

8. Summary. The applicant was diagnosed with PTSD and TBI. The PTSD condition was determined to have failed medical retention standards by the MEB and was found unfitting by the PEB. The TBI condition was not determined to fail retention standards, nor was the condition found unfitting for continued service. Under Liberal Consideration, both PTSD and TBI can be mitigating for certain misconduct. In addition to the Chronic PTSD condition, the Chronic Right Shoulder Strain (dominant) condition was found unfitting for continued service by the IDES. In the ARBA Medical Reviewer's opinion, the Chronic PTSD and Chronic Right Shoulder Strain conditions are both unfitting for continued service.

9. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant's diagnoses include both PTSD and TBI.

(2) Did the condition exist, or did the experience occur during military service? Yes. The applicant was diagnosed with PTSD and TBI due to combat events.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes, in part. The applicant was diagnosed with PTSD and TBI; however, it was opined that based on the known natural history of mild TBI, there were no current cognitive or psychological symptoms attributed to his TBI. PTSD can be associated with the use of alcohol to self-medicate; therefore, there is a nexus between driving under the influence offense and his PTSD condition. There is no nexus between the applicant's PTSD (or TBI) and reckless driving, operating a vehicle under restraint violation or wrongful participation in a criminal gang organization. In the ARBA Reviewer's opinion, although mental health distress/symptoms can be associated with poor decision making; the weight of the evidence from multiple assessments and review of the record in general, showed that the applicant exhibited the ability to distinguish right from wrong and adhere to the right. In addition, Command also did not indicate that that there was a demonstrated deficit in his performance due to impaired decision-making skills even for complex decisions. However, under Liberal Consideration, the applicant's contentions are sufficient to merit consideration by the Board.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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. The evidence shows the applicant committed various misconduct and was issued an under other than honorable conditions discharge. However, the Army Discharge Review Board upgrade his character of service to honorable. He completed 19 years, 3 months, and 3 days of net active duty service with 1 month and 29 days of prior active duty service and 5 years, 4 month, and 26 days of prior inactive duty service.

b. The Board thoroughly reviewed his case and determined that while a medical retirement and change to his reason for separation and reinstatement of his grade is premature, his referral to the integrated disability system is warranted for the following reasons. Additionally, although the applicant exhibited the ability to distinguish right from wrong and adhere to the right and his command did not indicate that that there was a demonstrated deficit in his performance due to impaired decision-making skills even for complex decisions, the Board determined referral to IDES is warranted:

(1) Length of service of 19 years, 5 months, and 3 days and multiple deployments that clearly show he suffered from a potentially mental health condition.

(2) Diagnosis of PTSD. The Board agreed with the medical reviewer's determination that based on the known natural history of mild TBI, there were no current cognitive or psychological symptoms attributed to his TBI. PTSD can be associated with the use of alcohol to self-medicate; therefore, there is a nexus between driving under the influence offense and his PTSD condition. However, there is no nexus between the applicant's PTSD (or TBI) and reckless driving, operating a vehicle under restraint violation or wrongful participation in a criminal gang organization.

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 that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by directing the applicant be entered into the Disability Evaluation System (DES) and a Medical Evaluation Board (MEB) convened to determine whether the applicant's condition(s), to include PTSD, met medical retention standards at the time of service separation.

a. In the event that a formal physical evaluation board (PEB) becomes necessary, the individual concerned will be issued invitational travel orders to prepare for and participate in consideration of their case by a formal PEB. All required reviews and approvals will be made subsequent to completion of the formal PEB.

b. Should a determination be made that the applicant should have been separated or retired under the DES, these proceedings will serve as the authority to void their administrative separation and to issue them the appropriate separation retroactive to their original separation date, with entitlement to all back pay and allowances and/or retired pay, less any entitlements already received

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.

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. 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. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Army Regulation 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. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct.

d. 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.

e. 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. Army Regulation 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 JKQ is used for discharge for misconduct.

4. Army Regulation 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 waivable.

c. RE-4: Applies to: Person separated from last period of service with a nonwaivable 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. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) states:

a. The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. An enlisted Soldier may not be referred for, or continue, physical disability processing when action has been started under any regulatory provision which authorizes a characterization of service of under other than honorable conditions.

c. Exceptions to paragraph b above are if the case comes within the limitations above, the commander exercising general court-martial jurisdiction over the Soldier may abate the administrative separation. This authority may not be delegated. A copy of the decision, signed by the General Court Martial Convening Authority (GCMCA), must be forwarded with the disability case file to the PEB. A case file may be referred in this way if the GCMCA finds the following:

(1) The disability is the cause, or a substantial contributing cause, of the misconduct that might result in a discharge under other than honorable conditions.

(2) Other circumstances warrant disability processing instead of alternate administrative separation.

9. Title 38, USC, section 1110 (General - Basic Entitlement): For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

10. Title 38, USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement): For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated,

compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

11. Army Regulation 600-8-19 (Enlisted Promotions and Reductions) prescribes policies and procedures governing promotion and reduction. Section VII (Other Reasons for Reduction) states when the separation authority determines that a Soldier is to be discharged from the service UOTHC, the Soldier will be reduced to the lowest enlisted grade. Further board action is not required for this reduction.

12. 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//