

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 August 2024

DOCKET NUMBER: AR20230014996

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 4 March 2008 to show:

- an upgrade of his under other than honorable conditions (UOTHC) character of service to honorable
- appropriate corrections to the related narrative reason, separation code, and reenlistment code, presumably to something more favorable
- annotate award of the Combat Action Badge

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

- DD Form 149 (Application for Correction of Military Record)
- Cover letter, [REDACTED] dated 12 October 2023
- Legal Brief, dated 9 October 2023
- List of Exhibits
- Exhibit A, DD Form 214, for the period ending 4 March 2008
- Exhibit A1, excerpt, Security Clearance Application
- Exhibit B, [REDACTED] Psychiatric Records, dated 23 February 2001
- Exhibit C, [REDACTED] Medical Records, dated 18 March 2020
- Exhibit C1, Physician Biography, Dr. [REDACTED]
- Exhibit D, DD Form 2808 (Report of Medical Examination), dated 11 June 2005
- Exhibit D1, [REDACTED] Medical Records, dated 21 January 2020
- Exhibit D2, Physician Biography, Dr. [REDACTED]
- Exhibit E, three statements of support, dated 18 January and 22 January 2021
- Exhibit F, self-authored declaration
- Exhibit G, Summary Court-martial Documents, dated 20 December 2006
- Exhibit H, DA Form 4126-R (Bar to Reenlistment Certificate), dated 2 January 2008
- Exhibit I, memorandum, Command Directed Behavioral Health Referral, dated 6 January 2008
- Exhibit J to Exhibit L, three DA Forms 4856 (Developmental Counseling Form), dated 12 September 2006 to 10 April 2007
- Exhibit M, essay, "Respect"

- Exhibit N, DA Form 2627 (Record of Proceedings Under Article 15, UCMJ), dated 30 October 2006
- Exhibit O to Exhibit U, nine DA Forms 4856, dated 24 October 2006 to 17 December 2007

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. While deployed in Iraq, he was awarded the Combat Action Badge after his convoy was hit by a rocket-propelled grenade (RPG). However, the Army failed to annotate it on his DD Form 214. He was also recognized by the 3rd Infantry Division Command Sergeant Major who presented him with a coin.

b. Prior to his enlistment, he was never hospitalized for mental health, imprisoned, or charged with a criminal offense. When he enlisted, he was assigned duties and responsibilities without receiving proper training. This caused a lot of stress. He began feeling depressed and angry. He requested a mental health evaluation, but it was denied by his supervisors. Following a verbal altercation with his roommate, where he "blacked out," his chain of command did not refer him for a mental health evaluation or treatment. Nor was he counseled for the incident.

c. Eventually, he deployed to Iraq. He repeatedly drove a cargo hauler through the improvised explosive device laden roads. It was stressful and unnerving. He believed his chain of command lacked interest in his well-being. On one occasion, he was ordered to retrieve tools from the back of the convoy after their vehicle had been hit by an RPG. He had no "battle buddy." He was terrified, anxious, and angry because he had no backup and could potentially be hit by hostile fire. He requested to speak with a mental health professional but was denied.

d. He continued to perform convoy missions and received the Drivers/Mechanics Badge. Although he met the time in service and time in grade requirements, he was not promoted to E-4. His supervisor said he was not ready but failed to counsel him on the needed improvements. He was extremely angry because he worked so hard the whole tour. It further enhanced his speculation that his superiors did not care. He began acting out, stopped shaving, and stopped showing up on time. His supervisor was concerned he would become a danger to himself and others. The bolt carrier group was removed

from his weapon, and he was made to carry a “guttled weapon.” He did not send him to mental health, and he was still required to perform guard duty with a “guttled weapon.”

e. He was not given a proper mental health evaluation when out-processing. Since his discharge, he has been diagnosed with bipolar disorder, schizoaffective disorder, and post-traumatic stress disorder (PTSD). He has suffered homelessness, involuntary mental health hospitalizations, and legal issues.

3. Counsel states, in effect:

a. The Army acted improperly by failing to refer the applicant for mental health evaluations or treatment when he exhibited signs of need before and after deployment, which violated Department of Defense (DoD) policy and Army procedure. Additionally, the Army deployed the applicant to Iraq even though his behavior and mental state indicated he was unfit for deployment. His supervisors chose leadership counseling over treatment. It is irrelevant that they did not know of his specific mental health condition. Continual misbehavior and acts of anger or aggression were obvious indications of an underlying issue.

b. The stressors of enlistment and deployment accelerated the applicant’s bipolar/schizoaffective disorder and caused his PTSD. The applicant’s mental health condition prevented him from capably serving, conforming to the expected standards, and caused the misconduct which led to his discharge. His discharge is inequitable when considering the quality of his service outside of his mental health related misconduct.

c. Since his discharge, his mental health has continued to deteriorate. He was admitted to the hospital for suicidal thoughts, depression, and anxiety, and was involuntarily committed to a psychiatric center after episodes of “mania with severe psychotic features.”

4. The applicant enlisted in the Regular Army on 6 July 2005, for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 89B (Ammunition Specialist). The highest rank he attained was private first class (PFC)/E-3.

5. The applicant was formally counseled on nine occasions from 19 April to 17 October 2006. Areas of emphasis covered in the counseling included:

- being “out of ranks,” on two occasions
- dereliction of duty, on two occasions
- failure to report for work
- disobeying a direct order; failure to obey order or regulation
- missing movement

- non-compliance with procedural rules
- pattern of misconduct
- failure to show up for extra duty
- disrespect to noncommissioned officers (NCOs)

6. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 17 October 2006, for five specifications of failure to go at the time prescribed to his appointed place of duty, between on or about 19 April 2006 and 8 September 2006, and two specifications of willfully disobeying an NCO, on or about 18 August 2006 and 12 September 2006. His punishment consisted of reduction to private/E-2 and extra duty for 14 days.

7. The applicant was formally counseled on 24 October 2006, for failure to report for extra duty on 22 October 2006. His squad leader noted this was the third time he missed extra duty and informed him it was not the time to think he could get out of the Army because he did not want to deploy. The squad leader further stated the applicant would go to Iraq, conduct himself as a Soldier, and not put any Soldiers' lives in harm's way.

8. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ, on 30 October 2006, for two specifications of failure to go at the time prescribed to his appointed place of duty, on or about 14 October and 15 October 2006, and two specifications of being disrespectful in language to an NCO, on or about 17 October 2006. His punishment consisted of reduction to private/E-1, forfeiture of \$636.00 pay per month for two months, 45 days of extra duty, and 45 days restriction.

9. Before a summary court-martial on 20 December 2006, at Fort Stewart, GA, contrary to his pleas of not guilty, the applicant was found guilty of five specifications of failure to report to his appointed place of duty, disobeying a commissioned officer, and three specifications of breaking restriction. He was sentenced to confinement for 30 days and forfeiture of \$849.00 pay. The sentence was adjudged on 3 January 2007.

10. The applicant served in Iraq from 15 January 2007 to 25 February 2008.

11. The applicant was formally counseled on eight occasions from 9 April 2007 to 4 January 2008.

a. Areas of emphasis covered in the counseling include:

- disobeying a direct order, on two occasions
- dereliction of duty
- disrespect to an NCO, on three occasions
- failure to report

- failure to complete corrective training
- disorderly conduct
- promotion eligibility requirements for specialist (SPC)/E-4
- disrespect and failure to follow a lawful order
- being late for duty/not shaving

b. During the same time period, the applicant received six additional monthly counselings focused on performance and professional growth, wherein his team leader noted he maintained his bearing better; there was improvement in his performance and attitude in the month of June; he was capable of maintaining his assigned vehicle; he completed all missions on time and without incident; he was promoted to PFC and was being looked at for SPC/E-4; his job performance was becoming less consistent; he had several instances of being late, showing up for work unshaven, and disrespecting NCOs; he was expected to act like a SPC.

c. On 4 January 2008, he was formally counseled that his continuous substandard performance resulted in the initiation of a Bar to Reenlistment. The applicant acknowledged notification and elected not to submit a statement in his own behalf. The bar was approved on the same date.

12. The applicant underwent a mental status evaluation, which consisted of a clinical interview and medical records evaluation, on 5 January 2008. The examining provider noted the applicant received counseling on one other occasion but declined further counseling "at this time." The provider determined he was mentally responsible, understood right from wrong, and was capable of adhering to the right. He was psychiatrically cleared for any administrative action(s) deemed appropriate by the command.

13. The applicant's service record includes a Non-Discretionary Command Directed Referral for Behavioral Health Evaluation, dated 6 January 2008, which was acknowledged by the applicant on 7 January 2008.

14. The applicant underwent a medical examination on 12 January 2008. The relevant DA Form 2807-1 (Report of Medical History) and corresponding DA Form 2808 shows the applicant reported being in good health with no significant medical history. The examining provider determined the applicant was physically qualified for separation.

15. On 19 January 2008, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 14-12c, by reason of serious misconduct. As the specific reason, his commander stated the applicant repeatedly failed to report to his appointed place of duty, disobeyed the orders of NCOs, broke restriction, and was disrespectful towards NCOs.

16. On the same date, the applicant's immediate commander formally recommended the applicant's separation from service prior to his expiration term of service, under the provisions of AR 635-200, paragraph 14-12c, by reason of serious misconduct. The commander further recommended a UOTHC characterization of service.

17. On 20 January 2008, the applicant acknowledged receipt of the notification and consulted with counsel. He was advised of the basis for the contemplated actions to separate him and its effects; of the rights available to him; and the effect of any action taken by him to waive his rights. He waived consideration of his case by an administrative separation board.

a. He acknowledged understanding that he may expect to encounter substantial prejudice in civilian life if issued an under honorable conditions (general) discharge and may be ineligible for many or all benefits as a Veteran under both State and Federal laws if issued an UOTHC discharge.

b. He was advised he could submit any statements he desired in his own behalf. A statement is not available for review in the applicant's service record.

18. The applicant's intermediate commanders concurred with the recommended discharge, further recommending a waiver of the rehabilitative requirements.

19. The separation authority approved the recommended separation action on 3 February 2008, directed the applicant be reduced to private/E-1, and the issuance of a UOTHC characterization of service.

20. The applicant was discharged on 4 March 2008, under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct (serious offense). His DD Form 214 confirms his service was characterized as UOTHC, with separation code JKQ and reentry code RE-3. He was credited with 2 years, 7 months, and 29 days of net active service. He was awarded or authorized the:

- Global War on Terrorism Service Medal
- Iraq Campaign Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Driver and Mechanic Badge with Driver-Wheeled Vehicle clasp

21. The applicant provides:

a. A cover letter and legal brief, from [REDACTED], dated 9 October and 12 October 2023.

b. An excerpt from the applicant's Security Clearance Application (Exhibit A1) was provided to show the applicant did not experience legal issues, mental health issues, or homelessness until after he was exposed to the high-stress environment of enlistment and deployment.

c. Medical documents from [REDACTED] Psychiatric Center (Exhibit B), [REDACTED] (Exhibit C), and [REDACTED] Hospital (Exhibit D1), dated 21 January 2020 to 23 February 2021.

d. Two Physician Biographies (Exhibits C1 and D2) show the credentials of Dr. [REDACTED] and Dr. [REDACTED] who have both treated the applicant.

e. In two statements of support (Exhibit E), dated 18 January and 22 January 2021, the applicant's mother and father attest to the change in his behavior following his deployment to Iraq. He showed signs of PTSD, delusions of reference, psychosis, and depression. He started using alcohol and drugs. His mother is unable to have a relationship with him due to his aggressive behavior and delusions. His father believes his severe mental health challenges were aggravated by or a direct result of his combat service.

f. The remaining exhibits are documents from the applicant's service, which are summarized, in pertinent part, above. Counsel notes in the legal brief, in effect, these documents provide a nexus between the applicant's misconduct and his deteriorating mental health, which should have been an indication to his chain of command that he required behavioral health treatment before and after deployment.

22. The applicant's service record does not contain, nor does he provide any evidence confirming he was awarded the Combat Action Badge.

23. The Combat Action Badge is intended to serve as a companion to the Combat Infantryman Badge and Combat Medical Badge to recognize the greatly expanded role of non-infantry Soldiers in active, ground combat. A Soldier must be personally present and under hostile fire while performing satisfactorily in accordance with the prescribed rules of engagement; and he/she must not be assigned or attached to a unit that would qualify the Soldier for the Combat Infantryman Badge or Combat Medical Badge.

24. Regulatory guidance provides:

a. When an individual is discharged under the provisions of AR 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. 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.

b. When an individual is discharged under the provisions of AR 635-200, paragraph 14-12c, by reason of misconduct – commission of a serious offense, "JKQ" is the appropriate separation code.

25. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

26. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his discharge of under other than honorable conditions (UOTHC) and presumably more favorable corrections to his narrative reason for separation, separation code, and reenlistment code. He contends he experienced mental health conditions including PTSD that mitigates his misconduct. 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: 1) The applicant enlisted in the Regular Army on 6 July 2005; 2) The applicant was formally counseled on nine occasions from 19 April to 17 October 2006 for various incidents of minor misconduct; 3) The applicant accepted nonjudicial punishment (NJP) on 17 October 2006 for five specifications of failure to go at the time prescribed to his appointed place of duty and two specifications of willfully disobeying an NCO; 4) The applicant accepted NJP on 30 October 2006, for two specifications of failure to go at the time prescribed to his appointed place of duty and two specifications of being disrespectful in language to an NCO; 5) Before a summary court-martial on 20 December 2006, the applicant was found guilty of five specifications of failure to report to his appointed place of duty, disobeying a commissioned officer, and three specifications of breaking restriction; 6) The applicant served in Iraq from 15 January 2007- 25 February 2008; 7) The applicant was formally counseled on eight occasions from 9 April 2007-4 January 2008 again for various incidents of minor misconduct; 8) On 4 January 2008, he was formally counseled that his continuous substandard performance resulted in the initiation of a Bar to Reenlistment; 9) The applicant was discharged on 4 March 2008, Chapter 14-12c, by reason of misconduct (serious offense). His service was characterized as UOTHC.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) and civilian medical records were also examined.

c. The applicant asserts he experienced mental health conditions including PTSD, which mitigate his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a significant mental health condition including PTSD while on active service. He was seen by behavioral health services on 21 November 2006. He was referred by his Command for a safety evaluation due to his comments that "he would



die if he was sent to prison.” The applicant was facing a court martial for failing to comply with two Article 15s, which he felt were unjust. He understood that he was not following the rules, but he felt he did not have to follow them. He was not endorsing any mental health symptoms beyond stress related to legal and occupational problems. He was recommended for follow-up therapy and diagnosed with an Adjustment problem. The applicant did not follow-up with therapy as recommended. He was seen again for a Command Directed Mental Status Evaluation as part of his Chapter proceedings on 05 January 2008. There was also a Commander’s request form for this evaluation. There was also a question, if the applicant met criteria for a mental health condition or a Personality Disorder. He was evaluated by a military Licensed Clinical Social Worker, who conducted a clinical interview with the applicant and a review of the available medical records. The military social worker stated the applicant had attended one previous therapy session, but he had declined further treatment. At that time, the applicant did not meet criteria for a mental health condition, had the mental health capacity to understand and participate in the proceedings, was mentally responsible, and met the retention requirements of Chapter 3, AR 40-501. There is insufficient evidence the applicant attended any additional therapy while on active service

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a mental health condition including PTSD by the VA. He has received assistance for homelessness. The applicant does not receive any service-connected disability. He did provide civilian medical documentation of receiving behavioral health treatment. There was evidence he required inpatient psychiatric treatment at [REDACTED] starting in February 2021 for Schizoaffective Disorder. He also reported previous psychiatric inpatient treatment two years previously. He also described having a history of being diagnosed with Bipolar Disorder. The applicant also provided an after summary medical form, dated March 2020, from a psychiatrist [REDACTED]. The applicant was prescribed psychiatric medication for the issues of “Mood problem and PTSD.” There was no information provided on the reported onset of these conditions, the relevant symptomatology, or treatment history.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced a mental health condition including PTSD while on active service that mitigates his misconduct. After the applicant’s discharge, he provided evidence that he has been treated for PTSD, Bipolar Disorder, and Schizoaffective Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD while on active service that mitigates his misconduct.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant experiencing a mental health condition including PTSD, while on active service. There is evidence the applicant was evaluated on two occasions by licensed behavioral health providers while on active service. He was not determined on both occasions to fit criteria for a mental health condition beyond an Adjustment Disorder, at that time. He did engage in repeated misconduct both before and after his deployment, and he was evaluated by behavioral health providers both before and after his deployment. While erratic behavior can be associated with some mental health conditions including PTSD, the presence of misconduct is not sufficient evidence of a mental health condition. A number of years after his discharge from active service, the applicant was diagnosed with mental health conditions including PTSD. However, there is insufficient evidence these conditions were present during his active service or related to his military service at this time. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board made the following findings and recommendations related to the requested relief:

- Discharge Upgrade: DENY, based upon the pattern of misconduct leading to the applicant's separation and the lack of mitigation found in the medical review.
- Corrections related narrative reason, separation code, and reentry code: DENY, based upon the board finding that the narrative reason for separation and the separation code accurately depict the events leading to the applicant's separation and the reentry code in compliance with regulatory guidance
- Award the Combat Action Badge: DENY, based upon the lack of any evidence of a qualifying combat event for the award to be granted.

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.

2/5/2025

X

CHAIRPERSON

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. Section 1556 of Title 10, USC, 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. AR 600-8-22 (Military Awards), in effect at the time, prescribed Army policy, criteria, and administrative instructions concerning individual and unit military awards. Instructions stated the requirements for award of the Combat Action Badge are branch and military occupational specialty immaterial. Assignment to a combat arms unit or a unit organized to conduct close or offensive combat operations, or performing offensive combat operations, is not required to qualify for the Combat Action Badge. It is not intended to award the Combat Action Badge to all Soldiers who serve in a combat zone or imminent danger area. The Combat Action Badge may be awarded to any Soldier. Paragraph 8-8 outlined specific eligibility requirements to include:

a. Soldier must be performing assigned duties in an area where hostile fire pay or imminent danger pay is authorized.

b. Soldier must be personally present and actively engaging or being engaged by the enemy and performing satisfactorily in accordance with the prescribed rules of engagement.

c. Soldier must not be assigned or attached to a unit that would qualify the Soldier for the Combat Infantryman Badge/Combat Medical Badge. For example, an 11B (Infantryman) assigned to Corps staff is eligible for award of the Combat Action Badge. However, an 11B assigned to an infantry battalion is not eligible for award of the Combat Action Badge.

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from their last period of service with a non-waivable disqualification

5. AR 635-5-1 (Separation Program Designator Codes) provides the specific authorities, reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. Separation code "JKQ" is the appropriate code to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 14, Paragraph 14-12c, by reason of misconduct – commission of a serious offense.

6. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. The regulations provides:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions (UOTHC) was normally considered appropriate. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

7. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. 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.

8. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal

sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//