

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 September 2024

DOCKET NUMBER: AR20240000921

APPLICANT REQUESTS: upgrade of his under honorable conditions (general) discharge to honorable

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) documents

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states, in effect, he is requesting upgrade of his discharge to apply for VA benefits. He has untreated mental stress or illness. He had incomplete depression treatment when he was in the Army. He was given medication and then left on his own, well before he committed the misconduct. He was not allowed to complete his financial wellness training. He was enrolled in the classes and was in the middle of completing them when he was discharged. After he tried to commit suicide, there was no counseling offered. This all happened when he was stationed in Illesheim, Germany in 1991 through 1992 during the Gulf War, in which he participated in and later developed post-traumatic stress disorder (PTSD). He was very affected by the discharge and the circumstances around it, and the fact that the enlistment he was on would have taken him beyond his retirement. His mental health, stress, and PTSD kept him from wanting anything to do with the Army for years. He felt he was being treated differently than others in his unit.
3. The applicant provides his VA mental health records which will be reviewed and discussed by the Mental Health Staff at the Army Review Boards Agency (ARBA). His diagnosis was PTSD, chronic.
4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment or Reenlistment Agreement - Armed Forces of the United States) shows he enlisted in the Regular Army on 19 April 1976. He remained in the Regular Army through immediate reenlistments and attained the rank of sergeant first class (SFC).

b. An Administrative Letter of Counseling, from his command sergeant major, 26 March 1990, states he was counseled for dereliction of duty and failure to prepare. Specifically, he acted in an insubordinate, disrespectful, and irresponsible manner by authorizing his Soldiers to miss the squadron formation. He elected not to make a statement regarding the letter of counseling.

c. General Counseling Forms, show he was counseled on:

(1) 29 May 1990 for talking about a junior Soldier's mother. He did not make an election whether or not he concurred with the counseling or not. However, he acknowledged and signed the form on 30 May 1990.

(2) 20 February 1991 for being late for formation. He non-concurred with the statement and made a comment, which is difficult to read. He signed the form on 22 February 1991.

(3) 16 April 1991 for being apprehended by the military police and being charged with assault, commensurate with battery, for an incident involving him and his spouse. He concurred with the statement and signed the form on 16 April 1991.

d. Duty status change documents show his duty status was changed from present for duty (PDY) to confined by civilian authorities in Belton County Jail, Texas on 24 October 1990 and from confined by civilian authorities to PDY on 26 October 1990.

e. Standard Form (SF) 513 (Consultation Sheet), 29 January 1991, states he was referred by a psychologist for evaluation. He was seeking help to control his anger. He and his wife had been arguing. He handed her a knife and said, "if you want to kill me do it." He had a history of ingesting a handful of over the counter sleeping medication even though he states he did not want to die, and he did not think they would kill him.

f. Letter of Concern, 20 February 1991, from his commander states:

(1) The letter was given to him to let him know of his commander's concern over certain aspects of his performance, which may impact his career should they continue to go uncorrected. They were in the areas of leadership and responsibility.

(2) The commander had counseled him on his leadership abilities. One area the commander constantly stressed was setting the example, personally and professionally,

for his subordinates. During their most recent discussion on the subject, the applicant stated his Soldiers had total faith and confidence in him as a leader, however, since that time several of his Soldiers had gone to the platoon leader seeking "a new platoon sergeant". His Soldiers' actions were indicative of his failure as a leader.

(3) He had set a terrible example for his Soldiers by not managing his personal affairs. He had allowed financial debts to exceed his capabilities. He had been incarcerated for his failure to obey civil law. He had dedicated an inordinate amount of time to his personal affairs. He had given guidance to his subordinates that was contrary to the instructions he received from the first sergeant (1SG). His Soldiers reported for duty at the wrong place, at the wrong time, and in the wrong uniform and the applicant was not present at either place of duty. All of these actions were not conducive to being a leader, projecting the image of a leader, nor creating an environment fostering the growth of new leaders. His actions destroyed the trust his Soldiers had in him as well as the commander's faith and confidence in his abilities as a leader.

(4) An individual who is responsible for his actions develops trust in his subordinates and his commander. He had strained the commander's trust in his actions. He had not lived up to financial obligations and instead of trying to rectify the problems, he had continued to elude collection agencies for nearly two years. It was only after simple investigation on the commander's part and documentation on his part that the Consumer Affairs Division was able to alleviate his debt. This problem could have been cleared up months before had he been responsible for his actions and sought a solution.

(5) The applicant continued to find reasons to be away from his platoon and/or reasons why he should not know what was going on within his platoon. He had been away on personal appointments for entire days and had not concerned himself to call in, check on his Soldiers, or leave specific instructions for his troops. His absences from work had mounted to the point that his subordinates felt as though he had been relieved. More importantly, he was responsible for the health, morale, and welfare of his Soldiers and this responsibility could not be met by a leader who did not play an active role in his Soldiers' lives and jobs. Despite him being the only noncommissioned officer (NCO) in the platoon, he also felt it was not his duty to know the exact status of working being conducted by his platoon. Platoon sergeants have the authority, responsibility, and must have the desire to ensure they know about the status of their Soldiers.

(6) He had not kept his platoon leader, 1SG, or commander informed as to his whereabouts. Although he had legitimate appointments, he failed to advise his chain of command about what he was doing. On at least three occasions, he knew he had an appointment that was going to require him to be away from work; however, he elected not to tell anyone in his chain of command. Instead, he waited until the evening, prior to

the appointment, and then told one of his subordinates. These actions are unacceptable. Just as he had responsibility for his Soldiers, his superiors had a responsibility for him and could not afford to be looking for a sergeant first class.

(7) He failed to accept the responsibility for his children by not paying child support. He tested the civil court system and instead of accepting responsibility by paying his child support he was incarcerated for contempt of court.

(8) His actions typified his lack of leadership skill and desire to accept responsibility. This had no place in the U.S. Army or NCO ranks. He needed to restore faith and confidence in his subordinates and leaders. He needed to seek financial assistance and get his personal life in order. He needed to follow instructions given to him by his leaders and ask questions if he did not understand the task, condition, and standard. He must be a positive role model to his troops and be where they were even if personal issues must be sacrificed. He must accept responsibility for his action no matter how they were. He had to face challenges head on and not allow them to haunt him. His Soldiers' lives were in his hands and, as such, he must accept responsibility for their health, morale, and welfare. He needed to become intimately familiar with his Soldier, their needs, desires, shortfalls, etc. He could not afford to be surprised in battle. He could never know too much about his platoon or what it was doing. The more he knew about his Soldiers the easier it was to provide for them.

g. On 27 February 1991, the applicant submitted a rebuttal to the Letter of Concern, which states:

(1) He had led the troop both as 1SG and maintenance supervisor. He was directly responsible for setting up shop personnel and giving the shop supervisors power and latitude they needed to set up and run their individual shops. At the same time, he set up all basic and training files on all personnel for the incoming 1SG. He also selected a publications NCO to order publications that they, as a troop, were so desperately in need of. He personally made runs for blank forms to ensure the unit could begin and function better.

(2) As the maintenance platoon sergeant, he had a problem with equipment and personnel. He was given all the support he needed in trying to get equipment they needed to do their jobs. He was not given the support on an equal basis with the Soldiers, to instill the importance of getting their jobs done. In this area support by him fell short. He made great efforts to get equipment needed for smooth operation, many times using his privately owned vehicle to seek and get estimates for local purchase of special tools that they vitally needed. He noted all equipment shortages and had taken steps beyond his job to ensure they, as a troop, received them. He had done all of this and much more with the benefit or influence of any formal counsel, which is mandatory, every three months.

(3) As far as personnel were concerned, the applicant felt before his problems had surfaced the commander was interacting with his Soldier and making statements about his Soldiers. The statements the commander made, at that time, were not positive and the commander had no idea what was going on with the applicant's Soldiers.. These actions show the commander's lack of confidence in him from the start of his overseas tour. This caused some lack of confidence from some of his Soldiers. This interaction gave leeway allowing his Soldiers to relax and undermine some of his direction, some of which came directly from the commander.

(4) Even in the face of all of that, he had accomplished all missions that were given to him. This lack of confidence the commander openly showed to the Soldiers in reference to the applicant, took away from his credibility with them. The commander's actions had not only caused problems in his section but others as well. platoon sergeants, other than the applicant, had openly complained in meetings.

(5) The commander's lack of counseling statements from the applicant's platoon leader or from anyone else has made many of the commander's accusations unfounded.

(6) He sought the commander out and informed him of most of his personal problems. If the commander was sincere in helping him and was not satisfied with his progress, why write the commander's first statement three to six months later? That had been resolved. Why add things in the statement that are not true? Things he had not been counseled on by his platoon leader. He still had not been counseled on some of the things listed in the commander's letter. Counseling statements were supposed to help correct shortcomings. He felt the commander's fist and only statement on him was an attempt to overthrow him without a chance of redemption.

(7) His enlisted evaluation report, written by the commander, recommended the applicant be promoted to 1SG and did not reflect the same attitude as to what type of Soldier the commander was portraying him to be at the time of the letter.

(8) It was very evidence the commander had lost all remaining confidence in the applicant, and that was why he had launched an attack on the applicant personally. The commander had set standards and limitations on him that did not apply to other Soldiers in the troop of the same grade or a lower grade.

(9) In the applicant's view, the commander could no longer judge him fairly and he could not function under such great prejudice, which caused him a lot of undue stress in the work place. Therefore, he was requesting to be transferred to another battalion as of 27 February 1991.

h. On 7 March 1991, he accepted nonjudicial punishment under Article 15. Record of Proceedings Under Army 15, Uniform Code of Military Justice, shows he accepted nonjudicial punishment for unlawfully striking his spouse in the head with his fist on or about 18 February 1991 and elbowing a military policeman in the eye. His punishment included forfeiture of \$10 pay per month for two months and a letter of reprimand. It is unclear if he appealed his punishment.

i. Letter of reprimand, 19 March 1991, states the reprimand was in conjunction with the Article 15. It states:

(1) He has disgraced the Noncommissioned Officer (NCO) Corps by his actions which raises great concern about your future in the United States Army. The wanton disregard for civil propriety is a serious breach of trust given you as a senior NCO. Last May 1990 in Fort Hood, TX, a similar incident involving a previous wife occurred at which time he gave his word to the commander he would correct the situation. He (the commander) chose not to pursue a legal course of action based on the faith of his (applicant's) word. He has now have demonstrated the same type of behavior with regard to his present family life. This civil unrest caused by the applicant can no longer be tolerated.

(2) He must seek professional marriage counselling to conform to acceptable behavior. His rebuke for authority was again surfaced by resisting arrest. This conduct is unsatisfactory, demonstrating poor judgement and actions of immaturity. Furthermore, while at Fort Hood, TX, the unit received numerous letters of his indebtedness to include failure to pay child support. This situation ended by him being incarcerated for one day without authorization to be on leave. Again, he gave his word as a professional that he would solve his problems and did not need assistance. He is developing a trend of unreliability, poor judgement, and inability to manage his personal affairs. I will not tolerate

j. Report of Medical Examination, 20 August 1991, does not indicate he had any mental health or health issues. He was qualified for separation. His Report of Medical History shows he was in good health and taking no medication. However, he did indicate he had depression or excessive worry.

k. Report of Mental Status Evaluation, 20 August 1991, shows he had the mental capacity to understand and participate in the proceedings, was mentally responsible, and met retention requirements.

l. SF 513, 30 September 1991 shows he was seen for depression. He was not suicidal and was willing to abstain from drinking. The entire form is available for the Board's review.

m. In an undated memorandum, the applicant's commander initiated separation of the applicant for pattern of misconduct or serious acts of misconduct. The commander was recommending an under other than honorable conditions discharge, but the separation authority was not bound by his recommendation. The reason for the commander's proposed action was his:

- indebtedness
- writing bad checks
- dereliction of duty
- serious misconduct on two separate incidences of assault on his wife and family member

n. In an undated memorandum, the applicant stated he had been advised by his consulting counsel of the basis of the contemplated action to separate him for patterns of misconduct and/or a serious act of misconduct and its effects, of the rights available to him, and the effect of waiving his rights. He requested consideration of his case by an administrative separation board, requested a personal appearance before an administrative board, requested consulting counsel at the administrative separation board, and elected not to submit statements in his own behalf.

o. The applicant's chain of command recommended approval of his separation with an under other than honorable conditions discharge.

p. On 11 October 1991, the applicant was notified he had to appear before a board of officers to determine whether he should be separated from the Army. The entire memorandum is available for the Board's review.

q. The board of officers/administrative separation board found the applicant committed a pattern of misconduct for bad checks, failure to pay debt, dereliction of duties, failure to repair, and two assault charges. The administrative separation board recommended the applicant be separated from the Army with an under honorable conditions (general) discharge.

r. On 1 November 1991, the Department of the Army imposed a Bar to Reenlistment on the applicant based on the Qualitative Management Program (QMP). The unit informed the applicant of the Bar to Reenlistment based on QMP and on 5 December 1991, he elected not to submit an appeal. He understood he would be separated within 90 days of the date of the option statement. His commander stated he had been recommended for discharge with an under honorable conditions (general) and they were waiting for the approval authority to make his determination regarding the recommended separation.

s. On 11 December 1991, the separation/appropriate approval authority approved the administrative separation board findings and directed the applicant be discharged with an under honorable conditions (general) discharge.

t. On 21 January 1992, the applicant was discharged accordingly. His DD Form 214 shows he was discharged for a pattern of misconduct in accordance with chapter 14-12b of Army Regulation 635-200 with a general, under honorable conditions characterization of service, with Separation Code JKM and Reentry Code 3. He completed 15 years, 9 months, and 3 days of active duty service.

(1) The Remarks block listed his reenlistment dates but did not list his continuous honorable service or whether he completed his first term of service.

(2) the Remarks block listed his service in Southwest Asia from 6 April 1991 to 20 July 1991.

u. On 18 July 1995, the Army Discharge Review Board (ADRB), responded to his application for an upgrade of his discharge stating, after careful consideration of his military records and all other available evidence, the ADRB determined his characterization of discharge he received was both proper and equitable. The entire ADRB case is available for the Board's consideration.

5. Based on the applicant's assertion he suffered from other mental health issues and PTSD that was undiagnosed and untreated, the ARBA Medical Section provided a medical review for the Board's consideration.

6. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under honorable conditions (general) to honorable. He contends he experienced a mental health condition, including PTSD, that mitigates his misconduct.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted into the Regular Army on 19 April 1976.
- The applicant was counseled for several problems between March 1990 and April 1991. On 7 March 1991 he accepted NJP for unlawfully striking his spouse in the head with his fist and elbowing a military policeman in the eye. His commander initiated separation for pattern of misconduct with reasons as follows: indebtedness, writing bad checks, dereliction of duty, and two incidences of assault on his wife and family member.

- The applicant was discharged on 21 January 1992 and completed 15 years, 9 months, and 3 days of active duty service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts untreated mental stress or illness and incomplete depression treatment as mitigating factors in his misconduct. The application included VA documentation dated 28 June 2023, which showed the applicant attended an educational group for PTSD treatment. A medical record document dated 29 June 1991 reported a 33-year-old male who presented for anger control following an incident between him and his wife where he handed her a knife and told her "If you want to kill me, do it." He also reported a history of suicidal behavior by ingesting a handful of over-the-counter medications in 1988. A Report of Medical Examination and A Report of Medical History dated 20 August 1991 showed the applicant indicated "depression or excessive worry," and, although somewhat illegible, it appears to note citalopram and Ativan as medications. A Mental Status Evaluation dated 20 August 1991 showed that the applicant met retention standards and had capacity to understand and participate in administrative proceedings. A medical record dated 3 September 1991 documented that the applicant presented for depression and increased alcohol intake, and the provider noted he was depressed due to marital and career problems but was not suicidal or homicidal. He agreed to abstain from alcohol, attend a stress management class, and take Elavil, an antidepressant medication. There was sufficient evidence that the applicant reported mental health problems while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed the applicant is 100% service connected for several physical health conditions. He initially engaged VA for mental health treatment on 20 June 2023, and he reported symptoms of anxiety and feeling "stressed out" since 1992. He expressed ambivalence about engaging in therapy because "due to passive (suicidal ideation) he was removed from his position in the military and has suffered significantly since then." His diagnoses were PTSD, Major Depressive Disorder (MDD), and Anxiety Disorder, and he was referred to an educational group related to PTSD. He declined individual therapy and medication management, and he attended six sessions of the group.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a mental health condition while on active service, but his condition only partially mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had a mental health condition, including

PTSD, at the time of the misconduct. Documentation from his time in service showed he had reported symptoms of depression, anxiety, and anger problems, and he was prescribed an antidepressant and an anxiolytic medication. He was seen for one initial intake through the VA and was diagnosed with PTSD, MDD, and Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service and documentation supports this assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed documentation of mental health problems while on active service, but there is no clear diagnosis rendered. It appears he was treated with medications, but he met retention standards at separation. He has also received diagnoses of PTSD, MDD, and Anxiety Disorder through the VA, but he is not service connected for any mental health conditions. While the applicant's pattern of misconduct, including indebtedness and dereliction of duty, could be indicative of stressors associated with PTSD, anxiety, or depression, there is no nexus between his mental health symptoms and his misconduct related to writing bad checks and assault on his wife: 1) these types of misconduct are not part of the natural history or sequelae of a mental health condition; 2) his asserted mental health conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his

BOARD DISCUSSION:

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

a. Discharge upgrade: Deny. The evidence shows the applicant committed a series of misconduct (indebtedness, writing bad checks, dereliction of duty, and two separate incidents of assault on his wife and family member). As a result, his chain of command, initiated separation action against him. An administrative separation board heard the applicant's case, found the applicant did in fact commit the misconduct and recommended his discharge. Accordingly, the applicant was discharged due to misconduct, and he received an under honorable conditions discharge (general). The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and

conclusions of the medical reviewing official. The Board agreed with the medical provider's finding sufficient evidence to support the applicant had an experience or condition that partially mitigates his misconduct. The Board agreed that while there is a nexus between his mental health symptoms and the offenses of indebtedness and dereliction of duty, as these could be indicative of stressors associated with PTSD, anxiety, or depression; there is no nexus between his mental health symptoms and his misconduct related to writing bad checks and assault on his wife. Also, the applicant provided insufficient evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the general, under honorable conditions character of service the applicant received upon separation was not in error or unjust.

b. Continuous Honorable Service: Grant. The Board noted that the applicant's service from first date of enlistment to the date before his last reenlistment was honorable. For enlisted Soldiers with more than one enlistment period during the time covered by this DD Form 214, in addition to listing immediate reenlistment(s), an entry is required for continuous honorable service from first day of service for which DD Form 214 was not issued until date before commencement of current enlistment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his DD Form 214 for the period ending on 21 January 1992 to show:

- Continuous Honorable Service from 1976-04-19 to 1990-04-19
- Member Completed First Full Term of Service

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 upgrading the characterization of his discharge.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to

timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14 (Misconduct), paragraph 14-12b, was a separation for a pattern of misconduct. A pattern of misconduct, provided for the separation of a Soldier due to discreditable involvement with civil or military authorities. Discreditable conduct and conduct prejudicial to good order and discipline included conduct violation of the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army regulations, the civil law, and time-honored customs and traditions of the Army. The issuance of a discharge under other than honorable conditions was normally considered appropriate for discharges under Chapter 14. 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.

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

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

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 JKM is used for discharge for misconduct.

4. 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.

5. 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.

6. 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.

7. 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//