

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2025

DOCKET NUMBER: AR20240001147

APPLICANT REQUESTS: reconsideration of his previous requests to upgrade his under other than honorable conditions discharge to honorable or in the alternative, under honorable conditions (general)

- change narrative reason from in lieu of trial by court martial to "Secretarial Authority"
- remove all references to other than honorable discharge and separation in lieu of trial by court martial from his military records
- appearance before the Board via video/telephone

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

- Two DD Forms 149 (Application for Correction of Military Record)
- Exhibit C-Self-Authored Statement
- Attorney Brief
- List of Exhibits
- Exhibit A Collection of Statutes and Regulations Information
- Exhibit B Guidance to Military Discharge Review Boards, 25 July 2018
- Exhibit F Character Reference JJ__
- Exhibit E Character Reference SB__
- Exhibit G Character Reference DP__
- Exhibit H Character Reference BH__
- Exhibit J Character Reference KM__
- Exhibit I Character Reference DK__
- Exhibit D Character Reference PK__

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 Numbers:

- AR20120021368 on 20 June 2013

- AR20150010927 on 7 July 2016
- AR20180008684 on 15 January 2020
- AR20220004903 on 14 October 2022

2. The applicant states:

a. As new evidence the applicant provides a new application, and he now has counsel. He also provides post service information and character references (7). He requests a change in his character of service. He is challenging his Under Other than Honorable Conditions discharge due to an incident that occurred in 1995 where he was court martialed. He feels like he was wrongly discharged, and he is unable to get veterans benefits due to his character of discharge. The applicant marked "Other Mental Health" on his application. The applicant submits this request for reconsideration with evidence of post-service achievements and character references not previously presented or considered by the Board. The May 2023 decision explicitly stated that the board could not make clemency determination because there was no evidence of post-service achievements or letters of reference provided.

b. Exhibit B-He states he enlisted and completed training. He received awards during his service. He began developing severe bilateral knee pain that prevented him from performing the necessary skills for his position in his military occupational specialty (MOS) 96R (Ground Surveillance Systems Operator). His knee pain forced him to go to sick call on a daily basis. In April 1995 he was referred for Disability Evaluation System processing, which involved evaluation by the medical Evaluation Board (MEB) and subsequently, the Physical Evaluation Board (PEB). In August the PEB found him physically unfit for duty due to his chronic knee pain and recommended separation from the army due to this disability.

c. Before his discharge he was told to move his car from an area a noncommissioned officer (NCO) told him to move while using profane language and the applicant regrets and apologizes for his behavior, although there was a verbal argument, there was no physical altercation. The NCO told his chain of command he had threatened him, and explained he did not threaten him as a result his superiors believed the NCO and he was given two choices be sent to court martial or accept a other than honorable discharge in lieu of court martial. He was also threatened with being sent to jail.

d. He was discharge on 22 November 1995. His discharge status made it difficult for him to find employment. He worked in warehouses but this type of work cause pain in his knees. He obtained his commercial driver's license and was able to obtain work various truck driving jobs. He has worked as a jailor and a substitute teacher, which he thoroughly enjoys. He loves mentoring youth. He has coached little league football since 1996. He is a proud father of three children and grandfather to three grandchildren. An

upgrade of his discharge would significantly improve his life, including allowing him to receive the appropriate medical treatment for his knees and disability payment to support him while recovering.

3. Counsel states on 19 April 2011 the Army Discharge Review Board (ADRB) informed [REDACTED] that his discharge upgrade request was denied. The ADRB's decision was based on the presumption of government regularity in the discharge process because there was no evidence in the applicant's military record. The applicant has applied to the ABCMR on separate occasions and his requests were denied. Counsel reiterates the applicant's above statement. due to his discharge he initially struggled to find employment opportunities. The ABCMR may correct a military record when it is "necessary to correct an effort or remove an injustice." It is in the interest of justice for the ABCMR to upgrade the applicant's discharge characterization to honorable or in the alternative under honorable conditions (general); replace existing narrative reason for discharge with "Secretarial Authority;" and remove all references to a under other than honorable conditions discharge and separation in lieu of trial by court martial from the applicant's records.

4. The applicant provides:

- Exhibit F Character Reference JJ__, 25 October 2024 attests to the applicants being immensely caring and supportive of his community; he volunteers and is giving and will go above and beyond for those around him, he is a great friend who has love for his family
- Exhibit E Character Reference SB__, 5 November 2024, the applicant is a friend who is fun, caring and be relied upon, he coaches little league
- Exhibit G Character Reference DP__, 14 November 2024 the applicant is an awesome guy with a great sense of humor, he is committed to the community and helps those in need
- Exhibit H Character Reference BH__, 14 November 2024 the applicant is a friend who will always support you, he is generous and of good character, he likes to benefit and help the community, he is family oriented with strong family morals
- Exhibit J Character Reference KM__, 2 December 2024 the applicant is dedicated to his children and grandchildren, he is a great family man with a big heart
- Exhibit I Character Reference DK__, 4 December 2024 cherishes his relationship with his father who always gives back and is very caring to those around him
- Exhibit D Character Reference PK__, 13 December 2024 the applicant is her older brother, and he has always been a dependable team player who volunteers, he is a source of inspiration to her, his time in the military has shaped him into a person of immense strength and resilience, his power of perseverance and the importance of his integrity she is incredible proud to call him her bother

5. The applicant's service record shows:

- He enlisted in the Regular Army on 21 January 1994
- He completed basic combat and advanced individual training, and he was awarded MOS 96R
- A medical evaluation board (MEB) convened on 7 July 1995 and found the applicant's medical condition of chronic bilateral patellofemoral syndrome of the knees (knee pain) medically unacceptable, the MEB recommended he be referred to a physical evaluation board (PEB)
- Physical Profile, 11 July 1995 shows the applicant's medical condition as bilateral patellofemoral pain syndrome
- An informal PEB convened on 4 August 1995 and found the applicant physically unfit due to chronic bilateral patellofemoral pain syndrome, he was rated under the Department of Veterans Affairs (VA) Schedule for Rating Disabilities codes 5257 and 5003 and assigned a zero percent rating with his disposition as separation with severance pay, if otherwise qualified
- He concurred on 18 August 1995, with the PEB's findings and recommendation and waived a formal hearing of his case
- Before he was medically separated, court-martial charges were preferred against him. The DD Form 458 (Charge Sheet) and separation packet are not available for review. However, the available evidence includes:
- A statement in one of the applicant's previous applications (ADRB 1 April 2011, statement dated 8 July 2010) in which he states he was being given a medical discharge in 1995 when he and a sergeant had a verbal exchange, he believes the sergeant had an issue with him because he could not run or do physical training, he had parked his car behind the barracks in the designated parking spot, he and two friends exited the car, the sergeant came out of the barracks and started yelling at him, he was cursing and called him "Boy" he asked him to stop yelling and cursing at him; he told the sergeant that he would move the car once his friends exited; the sergeant got in his face and told him to move the car now before he kicked his a**; he told the sergeant that he would kick his a** right back; they came face to face, the sergeant pointed at him, and he pointed at the sergeant; his friends grabbed him, and they both walked away; the next workday, he was told to report to the first sergeant's office in the barracks, he reported to the first sergeant's office and he and eight officers were in the office; he was told by the senior officer to sign some papers related to a charge of taking a swing at the sergeant, and that if he refused, he would face a court martial and be sent to jail
- Orders 324-0030, 20 November 1995 ordered the applicant be reassigned to the U.S. Army Transition Point on 22 November 1995 for transition/separation processing under chapter 10 (in lieu of trial by court-martial) of Army Regulation (AR) 635-200 (Personnel Separations)

- He was discharged from active duty on 22 November 1995; his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged in accordance with chapter 10 of AR 635-200 with an under other than honorable conditions characterization of service, Separation Code KFS and Reentry Code 3, he completed 1 year, 10 months and 2 days of net active service. It also shows:
 - Item 24 (Character of Service) Under Other Than Honorable Conditions
 - Item 28 (Narrative Reason for Separation) In Lieu of Trial by Court Martial

6. On 1 April 2011, the ADRB reviewed his discharge but found it proper and equitable. The ADRB denied his request to upgrade his discharge.

7. On 20 June 2013 (AR20120021368), the Board considered his request for an upgrade of his discharge and denied it. The Board stated that although the applicant's record is void of the specific facts and circumstances surrounding his discharge processing, it does contain a properly constituted DD Form 214 that identifies the authority, reason, and the characterization of the applicant's service.

a. The evidence of record shows the applicant was found physically unfit for retention due to knee pain. However, he was not discharged based on his medical condition. Although he may have suffered from a medical condition while in the military, he was discharged under the provisions of chapter 10, AR 635-200, for the good of the service to avoid a trial by court-martial. Therefore, he could not continue physical disability processing when action was being taken to discharge him with a characterization of service of under other than honorable conditions.

b. It is presumed in this case that the applicant voluntarily requested discharge from the Army in lieu of trial by court-martial. All requirements of law and regulation were met, and the rights of the applicant were fully protected throughout the discharge process. As a result of the issuance of an under other than honorable conditions discharge, he is ineligible for many or all benefits administered by the VA, and he may be deprived of his rights and benefits as a veteran under both Federal and State laws.

c. His record shows he was 22 years of age at the time of his enlistment, and he was 23 years of age at the time of discharge. However, there is no evidence that indicates he was any less mature than other Soldiers of the same age who successfully completed their military service obligation. Additionally, the ABCMR does not upgrade discharges solely for the purpose of making the applicant eligible for benefits. Every case is individually decided based upon its merits when an applicant requests a discharge upgrade. The available evidence is insufficient for granting the applicant's request.

8. On 7 July 2016 (AR20150010927), the Board reconsidered his request for an upgrade of his discharge after he contended that he believed that he was not afforded the opportunity to consult with counsel and be provided proper legal advice to defend himself against the allegations. The Board again denied his request and stated:

a. The applicant's record is void of the complete facts and circumstances surrounding his 1995 discharge. However, the evidence shows he requested a discharge under the provisions of chapter 10, AR 635-200. A Soldier requesting a chapter 10 discharge will be given reasonable time to consult with consulting counsel or they could waive that right. There is no available evidence, and he provided none to support his contentions that he was not afforded the opportunity to consult with counsel and/or provided proper legal advice during his discharge process. His statements alone do not overcome the presumption of regularity in the processing of his discharge.

b. There is also no evidence indicating he was not properly and equitably discharged in accordance with the regulations in effect at the time, all requirements of law and regulations were not met, or his rights were not fully protected throughout the separation process. The characterization of his discharge was commensurate with the reason for discharge in accordance with the governing regulation in effect at the time. His service did not rise to the level required for an honorable or a general discharge.

9. On 15 January 2020 (AR20180008684), the Board again reconsidered his request for an upgrade of his discharge after he provided certificates that are reflective of some of his achievements. The Board denied his request and stated:

a. The Board carefully considered the applicants request, supporting documents, evidence in the records and published DoD guidance for consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board found insufficient evidence of in-service mitigating factors for the misconduct and the applicant provided no evidence of post-service achievements or letters of support to weigh a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. After reviewing the application and all supporting documents, the Board found that relief was not warranted.

10. On 14 October 2022 (AR20220004903), the Board again reconsidered his request for an upgrade of his discharge after he argued that he got into a verbal altercation in the parking lot with a noncommissioned officer (NCO) who used derogatory terms and language towards him because he would not move his vehicle from the parking area, a place he had the right to be, and although the fight was not physical, the next day he

reported the incident, because he was being medically discharged the following Monday and did not want to get into trouble. He was summoned to the sergeant's office along with the NCO, who stated that the applicant took a swing at him and that he had witnesses. He did not have any witnesses for the event because they were out in the field.

a. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

b. The applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions characterization of service. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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

12. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR for reconsideration of his previous requests an upgrade of his under other than honorable conditions discharge and other changes to his DD214. He contends his experience of mental health conditions is related to his request. 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 21 January 1994; 2) On 4 August 1995, an informal PEB convened and found the applicant physically unfit and assigned a zero percent rating. He concurred on 18 August 1995 with the PEB's findings and recommendation; 3) Court-martial charges were preferred against the applicant, but the relevant charge sheet and separation packet are not available for review; 4) On 22 November 1995, the applicant was discharged, Chapter 10 (in lieu of trial by court-martial) with an under other than honorable conditions characterization of service; 5) The ADRB reviewed and denied the applicant's request for an upgrade in 2011. The ABCMR reviewed and denied the applicant's requests for an upgrade in 2013, 2016, 2020, and 2022.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical records were provided for review.

c. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder, while on active service.

d. A review of JLV provided evidence the applicant began behavioral health treatment at the VA in 2015. He has been diagnosed and treated for nonservice-connected Major Depressive Disorder and Chronic Adjustment Disorder. At this time, the applicant has not been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability as a result of a mental health condition.

e. Based on the available information, it is the opinion of the Agency Medical 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 mental health conditions which mitigate his misconduct. The applicant has been diagnosed with Major Depression and Chronic Adjustment Disorder by the VA, which have not been attributed to his military service.

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

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while on active service. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his reported mental health condition or experience. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The Board determined and concurred with the medical advisory official who found insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The applicant was pending court-martial charges for having a physical altercation with an NCO. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant claim that he provides statements on his behalf, but none were provided in his application. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust and denied relief.

- Upgrade Character of Service to General or Honorable. Deny: The Board determined and concurred with the medical advisory official who found insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The applicant was pending court-martial charges for having a physical altercation with an NCO. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant claim that he provides statements on his behalf, but none were provided in his application. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust and denied relief.
- Change narrative reason to "Secretarial Authority". Deny: The Board determined and concurred with the medical advisory official who found insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. The applicant was pending a court-martial and requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated narrative reason for separation and denied relief.
- Remove all references to OTH discharge in his military records. Deny: The Board determined there was no error or injustice when the applicant received an OTH discharge as a result of pending a court-martial for assault. Although the Board notes the applicant claims he has supporting statements to support his side, none were provided in his application. As a result, the Board concluded there

was insufficient evidence to warrant removal of his OTH from his military records and denied relief.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions which mitigate his misconduct. The applicant has been diagnosed with Major Depression and Chronic Adjustment Disorder by the VA, which have not been attributed to his military service.

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

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while on active service. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his reported mental health condition or experience. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration. The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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 amendment of the ABCMR decision rendered in Docket Numbers AR20120021368 on 20 June 2013, AR20150010927 on 7 July 2016, AR20180008684 on 15 January 2020, and AR20220004903 on 14 October 2022

X //SIGNED//

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. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a states that 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. Paragraph 3-7b states that 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.

2. Section 1556 of Title 10, U.S. Code (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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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.

4. Army Regulation 635-5 (Personnel Separations-Separation Documents) prescribed the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It established the standardized policy for the preparation of the DD Form 214. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation. It states for:

a. Item 24 (Character of Service) characterization or description of service is determined by directives authorizing separation. Proper completion of this block is vital since it affects the Soldier's eligibility for post-service benefits. Only six standard characterizations in this block are authorized: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable and uncharacterized.

b. Item 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635-5-1.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The KFS (is to be used for RA Soldiers discharged for the good of the service-in lieu of trial by court martial).

6. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows KFS has a corresponding RE Code of "3."

7. Army Regulation 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-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment

- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

8. Title 10, USC, section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.

9. Army Regulation (AR) 600-8-104 (Army Military Human Resource Records (AMHRR) Management) states The AMHRR is a permanent record remaining under Army control for 62 years from a Soldier's final separation date to include retirement, separation, and death. Only documents pertaining to a Soldier's military career and listed in this regulation will be filed in the AMHRR. No more than one copy of a document will be uploaded into the AMHRR. The document will not be removed from or moved to another part of the AMHRR unless directed by certain agencies, to include this Board.

10. 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.

11. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole, or in part, to: mental health conditions, including PTSD; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for that misconduct which led to the discharge.

12. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a

sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//