

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240002238

APPLICANT REQUESTS: through counsel, correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) to show in:

- Item 11a (Discharged), from discharged to disability
- Item 11c (Reason and Authority), from “For the Good of the Service” to “Convenience of the Government” or “Secretarial Authority” and corresponding separation program number (SPN)
- Item 13a (Character of Service), upgrade from under other than honorable conditions to honorable
- Item 15 (Reenlistment Code (RE)), from RE-3 to a reenlistment code that corresponds to the requested narrative reason for separation

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

- DD Form 149 (Application for Correction of Military Record)
- Agreement to Engage Attorney, 21 November 2023
- Legal Brief, 27 February 2024
- Applicant Personal Statement, undated
- Armed Forces of the United States Identification Card, issued 8 December 1969
- Medical Records, 1970
- DD Form 214, 7 September 1971
- Letter from National Personnel Records Center (NPRC), 23 November 1992
- Request for Information Needed to Reconstruct Medical Data, 27 June 2001
- Letter from Member of Congress, 28 January 2010
- Letter from Member of Congress, 12 February 2010
- Case Information and Privacy Act Release Form, 12 February 2010
- Request Pertaining to Military Records, 29 January 2020
- Power of Attorney for Obtaining Records, The Veterans Consortium, 28 February 2020
- Third Request to NPRC, 4 October 2023
- Letter, Office of the Commanding General, United States Army Combat Readiness Center, 20 October 2023
- Letter, NPRC, 29 January 2024

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's legal counsel states in pertinent part:
 - a. The applicant received an Other Than Honorable Discharge for conduct directly related to a traumatic brain injury (TBI) that he suffered during service. He suffered a severe head injury in 1970 when the car he was a passenger in crashed at 130MPH. As a result of this injury, he was unconscious for at least a week and was also in traction with his jaw wired shut. He was transferred to several different hospitals from Germany to the U.S. due to neurological deterioration that constituted an emergency and specialized treatment. Less than two months after his TBI and hospitalization, while he was still recovering, he was charged as absent without leave (AWOL) by the Army and eventually discharged due to being AWOL.
 - b. The applicant did not commit any misconduct other than failing to check in with the Army during his recovery. The civilian who was appointed his guardian during his recovery did not inform him that the Army had listed him AWOL. Due to issues with that guardian, the applicant removed himself from her care and continued to await his orders from the Army, which he had been promised when he was discharged from the hospital. His AWOL is directly tied to his TBI, which must be seen as a mitigating factor. Accordingly, the Board should view the applicant's TBI, and its effects on his physical and mental health, as a mitigating factor in his misconduct and upgrade his discharge to Honorable.
 - c. Army medical records from the period immediately following the injury indicate the applicant was unconscious for 5 days after the accident, then transferred to Naval Hospital Philadelphia from 14 May 1970 – 19 May 1970. He was then transferred to Walson Army Hospital at Fort Dix and treated there from 20 May 1970 – 29 June 1970. One day later, on 30 June 1970, he was marked as AWOL.
 - d. The applicant's TBI and resulting symptoms were a major contributing factor to his being charged with AWOL one day after he was released from his 57-day hospitalization. He thought he was discharged to recuperate at home and his TBI residuals clearly excuse and mitigate his discharge. Conditions that may reasonably have existed at the time of the discharge must be liberally considered as excusing or mitigating the discharge. Mental health conditions, including TBI, inherently affect one's behaviors and choices and can materially impact a veteran's ability to conform to the expectations of a military environment.

e. The Army typically enjoys a presumption of regularity in government affairs. However, this presumption can be rebutted, by a clear and convincing absence of any records showing the Army notified the applicant that he was AWOL. The Army should not presume regularity because there are no records showing their efforts to notify the veteran that they considered him AWOL, or that they followed the proper procedures in separating him under chapter 10.

f. Counsel's complete brief and supporting documents are available for the Board to review.

3. The applicant states he was in a 135MPH car accident on 3 May 1970 in [REDACTED] while home on leave. His buddy [REDACTED] was driving. He ended up in the hospital with a serious head injury and other physical injuries, including a broken jaw. He was knocked out for about a week, then they flew him to a military hospital in [REDACTED]. Then they moved him to another hospital. When it was time for him to leave, the nurse came and said, "Mr. [REDACTED] we're going to let you go home now and you'll get your orders telling you where to go." He never received his orders. He just figured it was taking a long time, but in hindsight he should have followed up. The guardian who was taking care of him after his injury hid the AWOL papers from him. He ended up with an undesirable discharge due to being counted AWOL during his head injury recovery. He does not think that he deserves an undesirable discharge due to an accident that was not his fault.

4. Counsel provides the following:

a. A copy of the applicant's Armed Forces of the United States identification card issued on 8 December 1969.

b. The applicant's medical records which show he was admitted to [REDACTED] on 14 May 1970 due to an automobile accident that occurred on 4 May 1970. He was diagnosed with a fractured skull, occipital, cerebral contusion, and fractured mandible. He was unconscious for approximately five days in a civilian hospital. Following recovery of his sensorium, he was transferred to the Walson Army Hospital at Fort Dix for care of his fractured mandible, and for convalescence. Two days after hospitalization at Fort Dix, the general surgeons felt the applicant represented neurological deterioration and he was transferred to the [REDACTED] as an emergency. He was admitted to the U.S. Walson Army Hospital, Fort Dix, NJ on 20 May 1970 for convalescent care, further treatment, and disposition. He was discharged from the hospital on 29 June 1970.

c. A letter from the Office of the Commanding General, U.S. Army Combat Readiness Center, dated 20 October 2023, which states the U.S. Army Combat Readiness Center tracks and maintains reports of Army ground accidents occurring

since 10 September 1973. Consequently, they regretted to inform the applicant that their office did not have any accident records responsive to his request.

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

a. He was inducted into the Army of the United States on 3 December 1969.

b. A Chronological Record of Medical Care shows he was admitted to Naval Hospital, Philadelphia, PA on 14 May 1970 due to an automobile accident that occurred on 4 May 1970. He was unconscious for approximately five days in a civilian hospital. He was diagnosed with a fractured skull, which was revised to cerebral contusion, and fractured mandible. On 20 May 1970, he was admitted to Walson Army Hospital, Fort Dix, NJ for further treatment and disposition. He was discharged from the hospital on 29 June 1970.

c. DA Form 268 (Report for Suspension of Favorable Personnel Actions), dated 8 July 1970, shows the applicant entered AWOL status on or about 0800, 30 June 1970. He was assigned to the Medical Holding Company, U.S. Walson Army Hospital, Fort Dix, NJ.

d. DA Form 3545 (Deserter Wanted by the Armed Forces), dated 4 August 1970, lists his nearest relative as [REDACTED] (uncle) and [REDACTED] (guardian).

e. An undated letter, addressed to the applicant's guardian, Mrs. [REDACTED] which states the applicant had been AWOL since 30 June 1970, and outlined the seriousness of his AWOL. It also informed the guardian that the applicant was jeopardizing his health and aggravating his medical condition by remaining AWOL from the medical care afforded by the staff of the hospital.

f. A Letter of Inquiry, undated, from the applicant's immediate commander, shows the applicant was a member of the Medical Holding Company and was reported AWOL on 30 June 1970. The reason for him going AWOL was unknown to the unit. A letter was sent to the applicant's next of kin requesting that they notify the unit or the nearest military installation of his whereabouts if it was known to them.

g. A military police report, dated 4 August 1971, shows the applicant was apprehended by a Special Agent on 28 July 1971 and transferred to the Personnel Confinement Facility at Fort George G. Meade, MD on 4 August 1971.

h. Court-martial charges were preferred against the applicant on 9 August 1971. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 30 June 1970 to on or about 28 July 1971.

i. On 10 August 1971, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. The applicant acknowledged that he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged his understanding that by requesting this discharge it could lead to a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge. He elected not to make statements in his own behalf.

j. Standard Form 93 (Report of Medical History), dated 13 August 1971, shows the applicant noted he was in fair health, had attempted suicide, had frequent or severe headaches, head injury, loss of memory or amnesia, and had nervous trouble.

k. On 13 August 1971, the applicant underwent a medical examination for the purpose of separation. The examining official noted the applicant was qualified for separation.

l. On 24 August 1971, the applicant's immediate commander recommended approval of the applicant's separation under the provisions of AR 635-200, chapter 10, and issuance of an undesirable discharge.

m. A Statement of Medical Condition, dated 7 September 1971, shows the applicant underwent a separation medical examination more than 3 working days prior to his departure from place of separation and to the best of his knowledge, since his last separation examination there had been no change to his medical condition.

n. On 7 September 1971, the separation authority approved the recommended discharge, directed the applicant be reduced to the lowest enlisted grade, and furnished an Undesirable Discharge Certificate (DD Form 258A).

o. The applicant was discharged on 7 September 1971. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. It lists his SPN code as 246. He completed 8 months and 1 day of net service this period. This form also shows in:

- Item 15 (Reenlistment Code): RE-3
- Item 24 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal

- Item 30 (Remarks): 399 days lost under 10 U.S. Code 972 from 30 June 1970 thru 3 August 1971.

6. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that board's 15-year statute of limitations.

7. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

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

9. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR)(AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 7 September 1971 discharge characterized as under other than honorable conditions. He has indicated on his DD Form 149 that TBI [traumatic brain injury] is an issue related to his request. Counsel states:

"Mr. [Applicant] suffered a serious TBI when he was a passenger in a speeding car. He was unconscious in the hospital for at least 5 days, then discharged home to recover with no further instructions. He has been unable to obtain his full personnel file in spite of multiple attempts over the past 50 years.

Apparently, he was discharged for being AWOL [absent without leave] while he recovered from his TBI, but of course he was not actually AWOL, just recovering from a serious head injury. He still suffers from cognitive defects and limitations due to the TBI. Given what we now understand about the severity of TBI's, it is in the interest of justice to upgrade his discharge to Honorable."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of service under consideration shows he entered the regular Army on 3 December 1969 and was discharged on 7 September 1971 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (12 April 1971): Discharge for the Good of the Service. The DD 214 shows the applicant had 399 days lost under Title 10, United States Code, Section 972 (30 June – 1970 thru 3 August 1971). There are no periods of Service in a hazardous duty or imminent danger pay area.

d. A 19 May 1970 Naval Hospital, Philadelphia, PA discharge summary shows the applicant sustained a skull fracture, cerebral contusion, and fractured mandible in a motor vehicle accident on 4 May 1970:

“HISTORY OF PRESENT ILLNESS: This 20-year-old Caucasian male was involved in a motor vehicle accident on 4 May 2004. He was unconscious for approximately five days in a civilian hospital. Following recovery of his sensorium, he was transferred to the Walson Army Hospital at Ft. Dix for care of his fractured mandible and convalescence. Two days after hospitalization at Fort Dix, it was noted that he vomited times one and it was the feeling of the general surgeons that this represented neurological deterioration. He was transferred to the Naval Hospital, Philadelphia.

On admission to this hospital, he was noted to be a drowsy young male who was easily aroused and who kept his left eye closed to avoid diplopia [double vision]. He demonstrated marked ataxia [lack of muscle coordination causing a staggering, unsteady gait] but no distinct hemiparesis. Arch bars were in place but there was no intermaxillary fixation ...

HOSPITAL COURSE: His hospital course was punctuated by progressive improvement. His vomiting abated overnight, and by 18 May 1970, the patient was able to walk and his sensorium was considerably more clear. His cranial nerve examination was normal and the suspected diplopia had abated. Because of the rapid resolution of his signs and symptoms of cerebral contusion, it was elected to transfer the patient back to Walson Army Hospital for his convalescent care.”

e. The applicant went absent without leave from the medical holding company at Walson Army Hospital on 30 June 1970. On 28 July 1971, he was apprehended by an FBI agent in [REDACTED].

f. A Charge Sheet (DD Form 458) shows he was charged with being absent without leave from 30 June 1970 thru 28 July 1971. The applicant subsequently requested discharge from the Army under provisions in chapter 10 of AR 635-200.

g. The applicant underwent a pre-separation medical examination on 13 August 1971. The provider documented a normal examination, did not annotate any defects or diagnoses, and determined the applicant qualified for separation.

h. His request was approved on 7 September 1971 with the directive he “be furnished an Undesirable Discharge Certificate (DD Form 258A).”

i. JLV shows he is not registered with the VA.

j. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: A TBI with skull fracture and cerebral contusion

(2) Did the condition exist or experience occur during military service? YES

(3) Does the condition or experience actually excuse or mitigate the discharge? YES: Some residuals of a TBI are impulsivity and poor decision making/judgement and thus the condition fully mitigates the period of absence without leave.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined partial relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the available evidence, the Board made the following findings and recommendations related to the requested relief:

- Change narrative reason for separation to medical disability: DENY, based upon the lack of any medical condition be unfit for further military service
- Change narrative reason to Secretarial Authority or Good of the Service: DENY, based upon the lack of justification for the change and the current entry accurately reflecting the facts and conditions for the separation
- Discharge upgrade: PARTIAL GRANT, based upon the misconduct leading to the separation and the mitigation for the misconduct found in the medical review.
- Change RE Code: DENY, based upon the lack of justification for the change and the current entry in line with the narrative reason for separation according to regulatory guidance

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 reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

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 all other requested relief.

3/31/2025

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, 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 (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that an individual whose conduct has rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge may submit a request for discharge for the good of the service. The request for discharge may be submitted at any time after court-martial charges are preferred against him. Commanders will ensure that there is no element of coercion in submitting a request for discharge for the good of the service. The member will be given a reasonable time to consult with counsel and to consider the wisdom of submitting such a request for discharge. If he elects to submit the request, the member will personally sign the written request, certifying that he understands that he may receive a discharge under other than honorable conditions and that he understands the adverse nature of such a discharge and the possible consequences thereof. An undesirable discharge certificate was normally furnished to an individual who was discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge, if warranted.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and has been cooperative and conscientious in doing his assigned tasks, he may be furnished an honorable discharge.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. An undesirable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for unfitness or misconduct. An undesirable discharge will be directed only by a commander exercising general court-martial jurisdiction, a general officer in command who has a judge advocate officer on his staff, or by higher authority, based on the approved recommendation of a board of

officers, unless the member waives the board or requests discharge for the good of the Service.

3. AR 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), currently in effect, states:

a. Chapter 15 (Secretarial Plenary Authority):

(1) Separation under this chapter is the prerogative of the SECARMY. Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies. Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interest of the Army. Separations under this chapter are effective only if approved in writing by SECARMY or the Secretary's approved designee as announced in updated memoranda.

(2) The service of Soldiers separated under Secretarial plenary authority will be characterized as honorable or under honorable conditions as warranted by their military records unless an entry-level status separation (uncharacterized) is warranted. No Soldier will be awarded a character of service under honorable conditions in accordance with this chapter unless the Soldier is notified of the specific factors in his or her service record that warrant such a characterization, using the notification procedure.

b. Chapter 5 (Separation for Convenience of the Government):

(1) Unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status.

(2) 5-14 (Other designated physical or mental conditions), states, excluding conditions appropriate for separation under paragraph 5-10, commanders specified in paragraph 1-20 may initiate separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (see DoDI 1332-18 (Disability Evaluation System Manual: Processes), AR 40-501 (Standards of Medical Fitness), and AR 635-40 (Personnel Separations – Disability Evaluation for Retention, Retirement, or Separation) that interfere with assignment to or performance of duty. Such physical or mental conditions may include, but are not limited to:

- Airsickness, motion, and/or travel sickness
- Phobic fear of air, seas, and submarine modes of transportation
- Attention-Deficit/Hyperactivity Disorder
- Sleepwalking
- Enuresis

- Adjustment Disorder (except Chronic Adjustment Disorder)
- Personality Disorder – commander will refer the Soldier for a medical examination and/or mental status evaluation and is only required for separation on the basis of mental disorders (not physical disorders). The evaluation will assess whether PTSD, TBI, depression, sexual assault, and other behavioral conditions may be contributing factors to the basis for administrative separations. Soldiers will not be processed for administrative separation under this paragraph if PTSD, TBI, and/or other co-morbid behavioral health conditions are significant contributing factors to the basis for separation but will be evaluated under DES in accordance with AR 635-40.

4. AR 40-501 (Standards of Medical Fitness), governs medical fitness standards for enlistment, induction, appointment, retention, and separation. It states medical evaluation of certain enlisted military occupational specialties and officer duty assignments in terms of medical conditions and physical defects are causes for rejection or medical unfitness for these specialized duties. If the profile is permanent the profiling officer must assess if the Soldier meets retention standards. Those Soldiers on active duty who do not meet retention standards must be referred to a medical evaluation board.

5. AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

a. The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

b. The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

6. AR 635-5 (Personnel Separation – Separation Documents), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10 for the Good of the Service in lieu of court-martial would receive an SPN of "246."

7. 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 last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

8. 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.

9. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

10. Section 1556 of Title 10, United States Code, 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//