

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240002306

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions (UOTHC) discharge
- change of the narrative reason for his separation and corresponding Separation Code to reflect that he was discharged under “Secretarial Authority” rather than “In Lieu of Trial by Court-Martial”
- recognition of his period of honorable service

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statements (3)
- photograph
- Official Military Personnel File
- Department of Veterans Affairs (VA) Form 21-0781 (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD))
- Active duty medical record documents
- Civilian medical record documents
- Employment documents
- Buddy statements (8)
- Counsel brief and 11 Enclosures:
  - Enclosure 1 - DD Form 149
  - Enclosure 2 - DD Form 214 (Certificate of Release or Discharge from Active Duty)
  - Enclosure 3 - Applicant's self-authored statement
  - Enclosure 4 - Hagel Memorandum
  - Enclosure 5 - Civilian court case disposed
  - Enclosure 6 - DA Form 705 (Army Physical Fitness Test Scorecard (APFT))
  - Enclosure 7 - Documentation for award of the Army Commendation Medal
  - Enclosure 8 - 82d Airborne Division Certificate of Training
  - Enclosure 9 - Junior High School Honor Roll Certificates (3)
  - Enclosure 10 - Michigan State Board of Education Certificate of Recognition
  - Enclosure 11 - Power of Attorney

- Enclosure 12 - VA Report is listed as an Enclosure but was not included with the application

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 contends he was the victim of jealousy, bias, and racism. He provides a synopsis of his military service in four self-authored statements. He believes his civilian and military achievements reflect his pride in serving his country and warrant consideration. He states he was told initially that discharges are automatically upgraded after six months. He further states, in part:

a. Prior to joining the Army, he was a great student. He attended Christian School for three years of high school where he learned many life skills, became closer to God, and found that one must push past their comfort zone in order to grow. For his senior year, due to logistics, he returned to the public school system. He was advised almost instantly that certain credits were no longer valid for transfer and instead of being able to graduate earlier he would have to play catch up. Nonetheless, he graduated with his class on time. This taught him two valuable lessons: one being not everyone feels the same as you do when it comes to religion, effort, and the sacrifices you've made; and two life is never over. He graduated with some scholarship funds but needed more being he was the first to graduate high school and attempt college in his household.

b. He chose the military as a means to help with this. He scored well on the Army Skills Vocational Aptitude Battery and had his choice of branch as well as many occupations. His life during his time in service was great for the most part. He met people that he considers to be family and life-long friends. He was fast tracking and excelled in many areas such as leadership. Within his first unit the rapport was great, the command leadership believed in him, and gave him enough room to allow himself to learn and grow. He knows that was the reason so many of them returned home safely from deployment. During their return and reintegration his group had to undergo psychiatric evaluations weekly and PTSD therapy. He also suffered a traumatic brain injury (TBI) in a car wreck prior to deployment.

c. During the time at his second duty station is when trouble came for him. Fort Bragg, NC, was well-known for having problems with racism and white supremacist in its ranks. He arrived with less than six months remaining in the military so, no Soldier connections were formed with him because he was new and would be leaving soon. This was further complicated by the fact that he had just been featured in a movie

documentary called "Gunner Palace" and some Soldiers were jealous of him. No one knew who he was or what he stood for so, it was easy to write him off. After the trauma of deployment, his tank was low. His state of mind and judgment were based solely on being around people he trusted no matter the circumstances and finding peace.

d. He was arrested for common law robbery and conspiracy. Prior to that, he had only encountered the principal's office in school. Nonetheless, when this issue arose, he was aggressively reprimanded. No one signed for his release, he found his own counsel, and used his savings to bail himself out of jail. He thought this was common practice until everyone else involved was not only bailed out, but no military action such as court martial was initiated against them.

e. He does not make excuses for his actions or lack of judgment, but standards should be set for protection and due process. In spite of two prior commanders believing he deserved due process; he was advised by counsel that there was a 100 percent guarantee that he would be convicted. So, he requested administrative separation in lieu of court-martial and was separated in less than a month. After he was discharged, the civilian case was dismissed, and all charges were dropped. His career was over even though the court dismissed all charges.

e. Since his separation, he has kept his military life in a black box filled with shame and unused potential. He has tried to live as if it never happened and strives to be a beacon of hope to his friends, family, and other Veterans who struggle with thoughts of suicide.

f. The delay in filing this appeal is the result of grappling with PTSD issues, fear, a lack of trust, homelessness, feelings of low self-worth, and having been a victim of corruption. He and many other Veterans live in the shadows of their former selves, battling PTSD, anxiety, and depression. He has fought homelessness, thoughts of suicide, unemployment, loss of children, and cancer. Now, he must fight the injustice of a discharge UOTHC.

3. Counsel contends the applicant's request is made based upon the lack of evidence against him, disparate treatment based on his race, and the publication of the 2014 memorandum rendered by the Secretary of Defense Hagel. The applicant was recommended for a discharge with a classification of UOTHC, following a period of suffering from PTSD. The PTSD led to the conduct that he was discharged for, thus, the discharge must be viewed with a liberal view of the applicant's current discharge characterization.

a. Counsel restates the synopsis of the applicant's civilian education and military career provided by the applicant in the previous paragraph.

b. The applicant was unjustly separated from the Army. Although he was arrested by civilian authorities, the case against him was dismissed and he was never convicted of anything. However, the Army continued to pursue charges against him despite no evidence and while the civilian charges were pending. Moreover, the Soldiers he was with were not administratively separated and never faced any disciplinary actions. The applicant was a black Soldier who therefore faced disparate treatment based on his race. Lastly, the applicant was unknowingly suffering from PTSD when he was separated from the service. Therefore, according to the Hagel memo, the Board must give liberal consideration to this petition.

c. It has been well established that racism disrupts the morale and effectiveness in a military Command. Service members who are of a racial minority are less likely to stay in the military if they have negative experiences as a result of the behavior of racism. The long history of race conflict in the military is evident by the Vietnam War, and major incidents at Camp LeJeune in 1969 and Travis Air Force Base in 1971 that provoked the military to launch educational programs to reduce tensions. Despite the Defense Department's investment of resources into equal opportunity programs and improvement on some issues, many of the issues were prevalent during the 1990s continue today. In a 2017 Equal Opportunity survey conducted by the Defense Department, 31.2 percent of black active-duty service members indicated they experienced racial or ethnic harassment or discrimination in the past year, compared to 12.7 percent of white active duty service members. A 2020 report by the Government Accountability Office demonstrated that black service members were more likely than white service members to be tried in a court-martial proceeding. That same year, Reuters found Equal Opportunity offices and discrimination complaint processes were inadequate when reported by black service members.

d. Counsel contends that continuing with the applicant's administrative separation after learning that it was wholly unsupported by evidence constitutes an unreasonable violation of his rights to due process and requires a reversal or modification of his official record. His command was aware there was no evidence that could be used against him. The State had withdrawn charges against him due to no witness to any alleged crimes. The charges of robbery and conspiracy were withdrawn by the State of North Carolina and the Army attempted to bully him out of service.

e. He was essentially tried by his command a second time for a case that was eventually dismissed. The Army sought to continue with a trial against him that would not have met the necessary elements for a conviction. Under Article 81 of the Uniform Code of Military Justice (UCMJ), there are two elements that must be met. First, that the accused entered into an agreement with one or more persons to commit an offense under the code. Second, while the agreement continued to exist, and while the accused remained a party to the agreement, the accused or at least one of the co-conspirators performed an overt act for the purpose of bringing about the object of the conspiracy.

Therefore, the accused must be convicted for the act of the conspiracy. The State could not meet the elements of robbery, thus, could not have reached the elements of conspiracy. Thus, the case was dismissed.

f. The military may coordinate with civilian authorities when taking legal action against a Soldier. Army regulations, however, state a person who is subject to the UCMJ who has been tried in a civilian court may not generally be tried by court-martial for the same act over which the civilian court has jurisdiction. Double jeopardy does not bar the military from seeking legal action against a Soldier who is facing civilian legal action. Yet, it is not favored as demonstrated by Navy and Air Force regulations and the case of *Military v. Olsen*. Although it is constitutionally permissible to try a person by court-martial and by a State Court for the same act, as a matter of policy a person who is pending trial or has been tried by a State Court should not ordinarily be tried by court-martial for the same act.

g. The applicant deployed for 18 months to Iraq and received the Army Commendation Medal for his performance. He is currently diagnosed with and being treated for PTSD and anxiety. He suffered from untreated and undiagnosed PTSD following the traumatic combat-related experiences that he had while serving. Prior to those experiences, he was a stellar Soldier.

h. The applicant was unjustly separated from the Army with a lack of evidence against him. Unbeknownst to him, he was also suffering from PTSD at the time. Finally, he was treated differently by his command based upon his minority status. The Army used an arrest that resulted in a dismissal to be a basis for falsely finding him guilty of a crime for which the civilian authorities had no evidence. Counsel respectfully requests that the applicant's discharge be upgraded to honorable, and his administrative data be changed to reflect a less derogatory term such as "Secretarial Authority."

i. Counsel provides the following Enclosures:

(1) Enclosure 1 - An undated and revised DD Form 149.

(2) Enclosure 2 - The applicant's DD Form 214, which provides a synopsis of the applicant's service in the Regular Army including his military training, awards and decorations, and the nature of his discharge.

(3) Enclosure 3 - A previously discussed self-authored statement from the applicant.

(4) Enclosure 4 - The 2014 Hagel Memorandum which will be further discussed in the References portion of this Record of Proceedings.

- (5) Enclosure 5 - A document which shows the civilian court case against the applicant was disposed.
  - (6) Enclosure 6 - An APFT Scorecard which shows the applicant achieved a maximum of 300 on a record APFT on 27 July 2005.
  - (7) Enclosure 7 - Documentation showing the applicant was recommended and approved for award of the Army Commendation Medal for exemplary performance during his unit's deployment to Baghdad in support of Operation Iraqi Freedom.
  - (8) Enclosure 8 - An 82d Airborne Division Certificate of Training shows the applicant successfully completed the 40-hour Combat Lifesaver Course on 12 August 2005.
  - (9) Enclosure 9 - Certificates show the applicant received Honor Roll Recognition for the third, fourth, and fifth marking periods of the 1996 school year in junior high school.
  - (10) Enclosure 10 - A State Board of Education Certificate of Recognition was awarded to the applicant for achievement on the 1996-97 Michigan Educational Assessment Program Writing Test while attending junior high school.
  - (11) Enclosure 11 - A Power of Attorney shows the applicant designated counsel to represent him in all matters relating to and/or arising out of his employment by the Federal Government on 23 August 2021.
  - (12) Enclosure 12 - VA Report is listed as an Enclosure but was not included with the application.
4. On 2 August 2001, the applicant enlisted in the Regular Army in the rank/grade of private/E-2 for a period of 2 years. He was assigned to a unit in Giessen, Germany. He was advanced to private first class/E-3 on 2 August 2002.
  5. It is presumed the applicant was required to either extend or reenlist in order to fulfill the regulatory requirements for assignment to Germany. Additionally, the applicant's DD Form 214 indicates he reenlisted on 17 December 2003, however, there is no documentation in the available record commemorating either of these events.
  6. The applicant served in the Imminent Danger Pay area of Iraq from 26 January 2003 to 15 July 2004. He was advanced to specialist (SPC)/E-4 on 1 June 2003; the highest rank/grade he held while serving.

7. An Incident/Investigation Report shows the applicant was arrested by the Fayetteville, NC Police Department along with four other suspects on 20 June 2005 and charged with Robbery and Conspiracy for conspiring and forcibly taking a purse from A.W.

8. A Charge Sheet shows on 2 August 2005, court-martial charges were preferred against the applicant for violation of the following Articles of the UCMJ:

a. Article 81, by on or about 20 June 2005, conspiring with K.L.S., A.R., V.B., and B.P. to commit robbery of a purse and cellular phone, the property of A.W., and in order to effect the object of the conspiracy, the said K.L.S. did take the purse and cellular phone of A.W. and the said accused did drive off with the purse and cellular phone in his motor vehicle.

b. Article 122, by on or about 20 June 2005, by means of force and violence, and putting him in fear, steal from A.W., against his will, a purse and cell phone, of a total value of less than \$500.00, the property of A.W.

9. The applicant's company and battalion commanders recommended referral of the case to a Special Court-Martial empowered to adjudge a Bad Conduct Discharge.

10. On 18 August 2005, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, for the good of the service in lieu of trial by court-martial. He indicated that prior to completing this request, he consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He further understood that there is no automatic upgrading or review by any government agency of discharges UOTHC and that he must apply to the Army Discharge Review Board or the ABCMR if he desired review of his discharge. He elected not to submit statements in his own behalf.

11. The applicant underwent a separation medical examination and was found to be qualified for administrative separation.

12. On 26 August 2005, 82d Airborne Division Staff Judge Advocate (SJA) reviewed the applicant's case and forwarded it to the separation authority for further action. The SJA stated all members of the applicant's chain of command recommended approval of his request with the issuance of a discharge UOTHC. The SJA concurred with these recommendations.

13. On 26 August 2005, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC. He

further directed the applicant be reduced from SPC/E-4 to PV1/E-1 prior to the execution of the discharge. The applicant was reduced to PV1/E-1 the same day.

14. Orders and the applicant's DD Form 214 show he was discharged on 16 September 2005, in the rank/grade of PV1/E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial by Court-Martial" with separation code "KFS" and reentry code "4." He was credited with completing 4 years, 1 month, and 15 days of net active service this period. Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows, in part, he was awarded the Army Good Conduct Medal.

15. Block 18 (Remarks) of his DD Form 214 shows he had immediate reenlistments this period from 20010802-20031216 (indicating from 2 August 2001 to 16 December 2003) but does not identify his period of continuous honorable service (see Administrative Notes).

16. In addition to the previously discussed evidence, the applicant provides the following documents:

- a. A photograph of himself in his early 20s featuring Gunners Palace in Iraq.
- b. A copy of his Official Military Personnel File.
- c. A VA Form 21-0781 rendered by the applicant in support of his claim for service connection for PTSD on 12 November 2023.
- d. Active duty medical record documents which show he indicated during his separation medical examination he had experienced the following since his deployment to Iraq:
  - nervous trouble of any sort (anxiety or panic attacks)
  - loss of memory or amnesia; or neurological symptoms
  - been evaluated or treated for a mental condition
- e. Civilian medical records which show, in part, he was diagnosed and treated for Major Depressive Disorder, recurrent, severe; and PTSD, unspecified. No other mental disorders or TBI were diagnosed.
- f. Employment documents wherein the applicant indicates having to provide his DD Form 214 and undergo a background check as conditions of employment hindered his job opportunities.



g. Eight "Buddy statements" rendered by his wife, fellow Veterans with whom he served, and friends who make very favorable comments regarding the applicant's character, work ethic, and integrity. They also discuss the negative impact that being subjected to racism and suffering from behavioral health conditions have had on his life.

17. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

18. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board.

19. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of the characterization of his service from Under Other Than Honorable Conditions (UOTHC). He is also requesting a change of the narrative reason for his separation. He contends a traumatic brain injury (TBI), mental health conditions including PTSD and racial discrimination are related to his request for an upgrade. 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 2 August 2001; 2) The applicant served in Iraq from 26 January 2003-15 July 2004; 3) On 2 August 2005, court-martial charges were preferred against the applicant for: A) conspiring with others to commit robbery and B) by means of force and violence, and putting him in fear, steal from a civilian 4) On 16 September 2005, the applicant was discharged, Chapter 10-by reason of In Lieu of Trial by Court-Martial. His service characterized as UOTHC.

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

c. The applicant stated he experienced a TBI, mental health conditions including PTSD and racial discrimination, which are related to his request for an upgrade. The applicant went through a Report of Medical History on 07 September 2005, as part of his separation process. The applicant reported being involved in a motor vehicle accident and experienced a concussion while stationed in Europe. He was treated at a European hospital for a head injury as a result. He also reported exposure to direct

combat during his deployment to Iraq. He also described loss of memory, nervousness, and a history of being evaluated and treatment for a mental health condition.

d. A review of JLV provided sufficient evidence the applicant has been diagnosed with service-connected PTSD and anxiety starting in 2023. In addition, the applicant provided hardcopy civilian medical documentation that he has sought treatment for depression, anxiety, and PTSD related to experiences in the military. Specifically, he provided a psychological diagnostic assessment from a clinical psychologist, who diagnosed with the applicant with Major Depressive disorder. He also provided a summary of treatment from the Harris Center for Mental Health and IDD in Houston, TX, dated 06 November 2023. The applicant was reported to be an active patient at the center and being treated for Major Depressive disorder and PTSD.

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, there is sufficient evidence the applicant reported to have experienced a head injury during his active service. He also reported mental health symptoms such as anxiety while on active service. Later, he was diagnosed with service-connected anxiety and PTSD by the VA. In addition, he has been diagnosed and treated for Major Depressive disorder and PTSD by civilian providers. The applicant's reported mental health conditions including PTSD have been attributed to his experiences in the military. The applicant also contends racial discrimination is related to his request for an upgrade.

(2) Did the condition exist or experience occur during military service? Yes, there is sufficient evidence the applicant reported to have experienced a head injury during his active service. He also reported mental health symptoms such as anxiety while on active service. Later, he was diagnosed with service-connected anxiety and PTSD by the VA. In addition, he has been diagnosed and treated for Major Depressive disorder and PTSD by civilian providers. The applicant's reported mental health conditions including PTSD have been attributed to his experiences in the military. The applicant also reported racial discrimination is related to his request for an upgrade.

(3) Does the condition experience actually excuse or mitigate the misconduct? No, there is sufficient evidence beyond self-report the applicant experienced a head injury and was experiencing mental health conditions including PTSD, while on active service. It is also noted the applicant reported experiencing racism while on active service. However, there is no nexus between these experiences and mental health conditions,

including PTSD and his misconduct of conspiring with others to commit robbery and by means of force and violence, and putting in fear and steal from a civilian: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's mental health conditions and experiences; 2) the applicant's mental health conditions and experiences do not affect one's ability to distinguish right from wrong and act in accordance with the right. However, the applicant contends he was experiencing a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the criminal misconduct leading to the applicant's separation and the lack of mitigation for such misconduct found by the medical advisor, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or narrative reason for separation.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|   |   |   |                      |
|---|---|---|----------------------|
| : | : | : | GRANT FULL RELIEF    |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| ■ | ■ | ■ | DENY APPLICATION     |

BOARD DETERMINATION/RECOMMENDATION:

1. The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.
2. Prior to closing the case, the Board did note the administrative note below from the analyst of record and recommended that change be completed to more accurately reflect the military service of the applicant.

A rectangular box containing several lines of text that have been completely redacted with black bars. The redaction covers the entire content of the administrative note.

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.

ADMINISTRATIVE NOTES:

A review of the applicant's record shows his DD Form 214, for the period ending 16 September 2005, is missing an important entry that may affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding in item 18 (Remarks): "CONTINUOUS HONORABLE SERVICE FROM 20010802-20031216."

REFERENCES:

1. Title 10, U.S. Code (USC), Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
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.

prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

4. Army Regulation 635-5 (Personnel Separations – Separation Documents), in effect at the time, prescribes the separation documents prepared for Soldiers upon retirement, discharge, or release from active military service or control of the Army. It establishes the standardized policy for preparing and distributing the DD Form 214. It states the DD Form 214 provides a brief, clear-cut record of active Army service at the time of release from active duty, retirement, or discharge.

a. Paragraph 1-4b(5) of the regulation in effect at the time stated that a DD Form 214 would not be prepared for enlisted Soldiers discharged for immediate reenlistment in the Regular Army.

b. Paragraph 2-4h(18) of the regulation currently in effect states that item 18 documents the remarks that are pertinent to the proper accounting of the separating Soldier's period of service. Subparagraph (c) states that for enlisted Soldiers with more than one enlistment period during the time covered by the DD Form 214, enter "IMMEDIATE REENLISTMENTS THIS PERIOD" and specify the appropriate dates. For Soldiers who have previously reenlisted without being issued a DD Form 214 and who are later separated with any characterization of service except "honorable," enter "CONTINUOUS HONORABLE ACTIVE SERVICE FROM" (first day of service which DD Form 214 was not issued) UNTIL (date before commencement of current enlistment)." Then, enter the specific periods of reenlistments as prescribed above.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) states that separation codes are three-character alphabetic combinations that identify reasons for and types of separation from active duty. Separation codes and corresponding narrative reasons are aligned with applicable regulatory authority paragraphs. The regulation provides that the separation code "KFS" is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, by narrative reason of "in lieu of trial by court-martial."

6. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was

authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

b. 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.

c. 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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC 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.

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; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are 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 misconduct that led to the discharge.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-

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

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, 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.

//NOTHING FOLLOWS//