

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 October 2024

DOCKET NUMBER: AR20240002713

APPLICANT REQUESTS:

- upgrade of her characterization of service from under other than honorable conditions (UOTHC) to honorable or under honorable conditions (general);
- change of her narrative reason from "for the good of the service – in lieu of court-martial" to "Secretarial Authority" or "Miscellaneous/General Reasons";
- and change of her separation code from "KFS" to "JFF".

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

- DD Form 149 (Application for Correction of Military Record), 26 August 2023
- self-authored statement
- legal brief
  - complete official military personnel file
  - complete medical record
  - Don't Ask Don't Tell Repeal Act memorandum, 20 September 2011
  - Clemency Memorandum, 25 July 2016
  - Kurta Memorandum, 25 August 2017
  - character reference, from R.W., 8 March 2023
  - character reference, from H.S., 7 April 2023
  - character reference, from A.B., 13 April 2023
  - character reference, from M.D.W., 15 April 2023
- Counsel supplemental evidence statement, 18 July 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 provides an 8-page statement, available for the Board's review in its entirety in the supporting documents. Below is a summary of her self-authored statement:

a. She states, in effect, while in the Army she was recognized by her superiors as a competent medic and a quick learner, she was someone who was able to gain the trust of her patients. She enjoyed serving in the Army and believed her future was bright, until she was sexually abused by a noncommissioned officer serving in the company.

b. She references the incident of her sexual assault, and states after her report to her superiors, the Army did not handle the matter discreetly and her report became common knowledge to others. She felt shame and it led to hostility from other officers. After her sexual assault, she sought mental health counseling but was told from other Army superiors to stop complaining and deal with it. She had the impression that because the Army would not seek justice for her, she would not seek justice as well. She moved on, meanwhile the noncommissioned officer received a reduction in rank and otherwise remained unpunished.

c. Following her sexual assault, she met with a social worker who referred her to a rape crisis center, she was admitted at the hospital and was diagnosed with adjustment disorder with mixed emotional features, manifested by feelings of anger, frustration, depressed mood, and problems coping. She states, to this day, because of the trauma of the assault, she avoids being in a room alone with another male, with limited exception for most male family members.

d. Due to her sexual assault, she decided she would not reenlist and continued her career while keeping her head down and planning her next career when she was discharged from the Army.

e. While she served, she maintained a correspondence relationship with a female who served in the United States Air Force (USAF). The USAF investigated the female Airman's sexual orientation and as a result of incidents that occurred between her and others. The investigation found letters and photographs they had exchanged. After the investigation, the female Airman was discharged, and her investigation file was sent to the applicant's commander. At her age of 20, she was fearful due to the Army's aggressive investigatory tactics, which included being followed constantly, being fingerprinted, and subjected to intense probing interrogations about her personal life and sexual history. At times, the Army requested her to implicate others in exchange for a possible lighter punishment to include an honorable discharge.

f. Out of fear, she presented a false narrative to explain the letters and photographs, she later had no other option but to disclose she had a relationship with the female Airman. After her admission, she became distraught, she felt isolated, abandoned, others began to distance themselves due to her investigation. She informed the Army of her sexual orientation and began to panic. Due to her mental state of being, she had a breakdown and went absent without leave (AWOL). After approximately four days of being AWOL, she spoke to her chain of command, she was picked up by the military

police – who were unaware of her conversation with her command, fully cooperated with the military police and was released an hour later.

g. After her return, she was reduced in grade and reassigned for separation. She was charged with commission of consensual sodomy and false swearing for lying about her relationship. She additionally was charged with being AWOL, she faced court-martial and she felt her only option was to accept an UOTHC discharge.

h. While serving, she mentioned receiving one nonjudicial punishment for a "blanket party" which she and others took part in. After this incident she vowed to always do the right thing and try to look out for those unable to look out for themselves. She apologizes immensely about her mistake and has even apologized to the females that were part of the "blanket party". After her discharge from the Army, she felt a loss of herself personally and professionally. She experienced depression and continues to suffer mental health trauma as a result of her sexual assault. She has faced several challenges in life with her receipt of an UOTHC discharge.

i. She describes her post service life, as she has worked in various jobs, she volunteered in her community, coached junior high softball, volunteered in community cleanup, worked with a pet rescue, she has advocated rights of individuals with disabilities and has spoken publicly addressing funding for care of juveniles in the state court system. She and her wife raise their son together, and they have served, as guardians, on behalf of six adults with physical and intellectual disabilities.

j. She had planned to work with the Department of Veterans Affairs (VA) while using her benefits; however, due to her UOTHC discharge her life was sent down a different path. Despite her setbacks, she is hopeful her discharge would be upgraded to reflect the value she provided to the Army and her country. She thanks the Board for their time and consideration.

3. The applicant's counsel provides an 18-page legal brief. Below is a summary of the brief:

a. Counsel reiterates the applicant's self-authored statement, addressing her military sexual trauma (MST), the one punishment she received, her sexual orientation investigation which led to her ultimate discharge, and her post service life.

b. Counsel argues the applicant's case warranting relief while referencing the Stanley, Wilkie, and Kurta memorandums. Counsel states the military's change in policy on homosexual servicemembers warrants upgrading her characterization of service. Additionally adding the applicant's case was based solely on Don't Ask Don't Tell (DADT) or a similar predecessor policy and there were no aggravating factors in her

record such as misconduct, she also had demonstrated a strong character even with the MST she endured.

c. Counsel asserts the applicant's discharge as being solely based on the military policy banning homosexual servicemembers. Referencing her court-martial charges of consensual sodomy because of her sexual orientation, her false statement because she was having a homosexual relationship, and her being AWOL because she was evading the homosexual ban policy. Counsel additionally asserts the applicant's misconduct in her record does not rise to the level necessary to prevent an upgrade to her discharge. Specifically, addressing the Wilkie memorandum as not needing a flawless military service. The applicant received punishment and took responsibility by self-reporting, the "blanket party" misconduct, which she lost \$300.00 in pay, and served 18 days of extra duty and restriction. She has not since 1987 had any further lapses in judgement or infractions.

d. Counsel argues the applicant's time of AWOL, was solely based on the investigation of her sexual orientation. Counsel further adds, the applicant's experience of her MST and exemplary post-discharge conduct supports her request for a discharge upgrade. Counsel completes his request on the basis of the applicant's behavior while in-service and post-service, saying the applicant has been and is positive, and productive, post-discharge. Counsel asserts the applicant's job history, character, reputation, and meritorious service, all strongly support her request for her discharge upgrade.

4. On the applicant's DD Form 149, she annotates other mental health, sexual assault/harassment, and DADT is related to her request.

5. The applicant enlisted in the Regular Army on 30 September 1986, for a 3-year period. She was awarded the military occupational specialty of 91A (Medical Specialist). The highest rank she attained was private first class/E-3.

6. She accepted nonjudicial punishment, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ), on 23 July 1987, for committing an assault upon another female Soldier, by striking her in the head and body with a means likely to produce death or grievous bodily harm to wit: the straight detachable portion of a crutch; or on or about 3 February 1987, for conspiring with other Soldiers to commit an offense under the UCMJ to wit: aggravated assault upon two female Soldiers, to wit: planning a "blanket party"; and for disobeying a lawful order by planning and giving two female Soldiers a "blanket party". Her punishment imposed was forfeiture of \$300.00 per month for two months, 18 days of extra duty, and 18 days of restriction. The portion on her \$300.00 forfeiture of pay was suspended to reflect forfeiture of \$300.00 for one month.

7. The USAF conducted an investigation on a female Airman, the investigation seized letters and photographs and found the female Airman and the applicant had a homosexual relationship. The USAF informed the United States Army of the investigation on 14 April 1983.

8. A report from the Criminal Investigation Command shows the applicant was investigated on 19 April 1988 for indecent acts with another, specifically a female with a date of offense(s) of 26 June 1986 through 29 June 1988. The applicant was interviewed on 13 June 1988 and again on 29 June 1988, wherein she admitted to having a homosexual relationship with (name redacted).

9. Two DA Form 4187 (Personnel Action) shows the applicant's duty status changed from present for duty to absent without leave (AWOL) effective 1 July 1988 and from AWOL to present for duty effective 5 July 1988. Additionally stating the applicant voluntarily returned from AWOL status.

10. Court-martial charges were preferred against the applicant on 22 July 1988, for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows she was charged with:

- going AWOL on or about 1 July 1988 and remaining AWOL until on or about 5 July 1988
- committing sodomy with another female on divers occasions between 12 March 1988 and 29 June 1988
- making a false statement on or about 23 June 1988 stating she had not had a homosexual affair with the female Airman or anyone else

11. The applicant consulted with legal counsel on 28 July 1988, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). She acknowledged her understanding of the following in her request:

a. She understood that she could request discharge for the good of the service because the charges preferred against her could result in the imposition of a punitive discharge.

b. Prior to completing this request, she was afforded the opportunity to consult with appointed counsel, who fully advised her of the basis for her contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to her.

c. She acknowledged that she was making this request of her own free will and had not been subjected to any coercion by any person. Although counsel furnished her legal advice, this decision was her own. Additionally, she understood she may encounter substantial prejudice in civilian life and elected not to submit statements in her own behalf.

12. On 29 July 1988, the Staff Judge Advocate, recommended approval the applicant's request for discharge. Additionally stating the applicant was pending charges for consensual sodomy, being AWOL, and false swearing. She had no previous military convictions or previous non-judicial punishments (Article 15's). Further stating the applicant's commanders recommended approval of the applicant's request for discharge with an UOTHC type of discharge.

13. The separation authority approved the applicant's request for discharge for the good of the service on 29 July 1988, and further directed the applicant receive a UOTHC discharge, and that she be reduced to the lowest enlisted grade of E-1.

14. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was discharged on 16 August 1988, under the provisions of AR 635-200, Chapter 10, for the good of the service – in lieu of court-martial, in the grade of E-1. She received an UOTHC characterization of service, with separation code KFS, and reenlistment code RE-3. She was credited with 1 year, 8 months, and 17 days of net active service. She was awarded the Army Service Ribbon.

15. The applicant and her counsel additionally provide:

a. Her complete official military personnel file to include her medical records which includes the full USAF investigation showing evidence the applicant was in a homosexual relationship.

b. The DADT (Stanley) memorandum, Clemency, and the Kurta memorandum.

c. Four-character reference statements, all of whom summarize the applicant as courteous, caring, kind, hard-working, someone who takes the initiative, who is responsible, has integrity, is a great leader, friend, and family member. They reference the applicant's volunteer work, as well as her civilian work, adding she works hard and is honest and respectful. She is someone who cares for others and will do anything in her power to ensure others are taken care of. They believe the applicant is deserving of an upgrade to her discharge.

d. A letter from counsel, dated 18 July 2024, stating in effect, the applicant's discharge was based solely on the Army's policy banning homosexual servicemembers, which the Stanley, Wilkie, and Kurta memorandum warrant correcting the applicant's

military record. The applicant demonstrated one single act of misconduct in her record which does not rise to the level of aggravating factors precluding her requested relief. The applicant's experience with MST while in service and her exemplary post-discharge conduct further supports her application for a discharge upgrade. Counsel further addresses, the applicant's indecent acts with another, a charge in which was directly related to the applicant's sexual orientation, as well as the action taken as a special court-martial, which she requested discharge in lieu of court martial, supports conclusion the applicant's discharge was based solely on her status as a homosexual servicemember.

16. The ABCMR Case Management Division requested and received redacted Criminal Investigation Divisions military police sexual assault reports pertaining to the applicant. The report shows the applicant was investigated on 19 April 1988 for indecent acts with another, specifically female with a date of offense(s) of 26 June 1986 through 29 June 1988.

17. Discharges under the provisions of AR 635-200:

a. Chapter 10 are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

b. State when an individual is discharged under the provisions of AR 635-200, Chapter 10, for the good of the service - in lieu of trial by court-martial, "KFS" is the appropriate separation code.

18. The DADT policy was implemented in 1993. This policy banned the military from investigating service members regarding their sexual orientation. Under the previous policy, service members may have been investigated and administratively discharged if they made a statement that they were lesbian, gay or bisexual; engaged in physical contact with someone of the same sex for the purposes of sexual gratification; or married, or attempted to marry, someone of the same sex.

19. The DADT Repeal Act of 2010 was a landmark U.S. federal statute enacted in December 2010 that established a process for ending the DADT policy, thus allowing gays, lesbians, and bisexuals to serve openly in the U.S. Armed Forces. It ended the policy in place since 1993 that allowed them to serve only if they kept their sexual orientation secret and the military did not learn of their sexual orientation.

20. The Under Secretary of Defense for Personnel and Readiness memorandum, dated 20 September 2011, Subject: Correction of Military Records Following Repeal of Section 654 of Title 10, USC, provides policy guidance for Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs)

to follow when taking action on applications from former service members discharged under DADT or prior policies.

21. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

22. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her characterization of service of under other than honorable conditions (UOTHC), along with changes to her narrative reason for separation and separation code. She contends she experienced military sexual trauma (MST), discrimination related to sexual orientation, and resultant mental health conditions that mitigates her misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in Regular Army on 30 September 1986; 2) Court-martial charges were preferred against the applicant, on 22 July 1988, for: A) going AWOL from 1-5 July 1988; B) committing sodomy with another female; and C) making a false statement on 23 June 1988 about a homosexual affair; 3) The applicant was discharged on 16 August 1988, Chapter 10, for the good of the service – in lieu of court-martial. She received an UOTHC characterization of service.

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

c. The applicant asserts she was exposed to MST, discrimination related to sexual orientation, and resultant mental health conditions that mitigates her misconduct. There is evidence the applicant reported experiencing MST to a military behavioral health provider in June 1987. She also described experiencing anxiety and stress related to the event, along with hesitancy to discuss the event with the provider. There is later evidence she was diagnosed with an Adjustment Disorder when admitted to the hospital for physical concerns.

d. A review of JLV was void of medical documentation related to the applicant, and she does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence to support the applicant had a condition and experience that mitigates her misconduct.



f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts she experienced MST, discrimination related to sexual orientation, and resultant mental health conditions. There is sufficient evidence the applicant did report experiencing a sexual assault while in active service to a behavioral health provider, reported significant mental health symptoms, and was diagnosed with an Adjustment Disorder. There was also evidence that she was, in part, discharged for her sexual orientation.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts she experienced MST, discrimination related to sexual orientation, and resultant mental health conditions. There is sufficient evidence the applicant did report experiencing a sexual assault while in active service to a behavioral health provider, reported significant mental health symptoms, and was diagnosed with an Adjustment Disorder. There was also evidence that she was, in part, discharged for her sexual orientation.

(3) Does the condition experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was exposed to MST and a resultant mental health condition. The applicant did go AWOL and give a false statement. It is likely this avoidant behavior is a natural sequelae to the applicant's experience with MST and resultant mental health condition. In addition, it is evident the applicant was experiencing discrimination related to sexual orientation. Avoidant behavior such as going AWOL or giving a false statement related to her orientation is also a natural sequelae to the experience of discrimination. Therefore, there is sufficient evidence the applicant was experiencing a mental health condition and experience which mitigates her misconduct per Liberal Consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising official finding sufficient evidence to support the applicant had a condition and experience that mitigates her misconduct. The opine found sufficient evidence the applicant did report experiencing a sexual assault while in active service to a behavioral health provider, reported significant mental health symptoms, and was diagnosed with an Adjustment Disorder.

2. The Board determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct. The Board agreed avoidant behavior such as going AWOL or giving a false statement related to her orientation is also a natural sequelae to the experience of discrimination. The Board determined the applicant was serving honorably until she was separated after a fellow servicemember's investigation was provided to her leadership regarding their consensual homosexual conduct. With the circumstances discussed in this case, the Board agreed it is equitable and just to upgrade the applicant's discharge to general under honorable conditions and correct her narrative reason and separation code. As such the Board granted relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by issuing the applicant a new DD Form 214 for the period ending 16 August 1988 showing in:

- item 24 (Character of Service): Under Honorable (General) Conditions
- item 25 (Separation Authority): Army Regulation 635-200, paragraph 5-3
- item 26 (Separation Code): JFF
- item 27 (Reentry Code): 3
- item 28 (Narrative Reason for Separation): Secretarial Authority

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. Section 1556 of Title 10, U.S. 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.

3. 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."

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

a. Paragraph 5–3 (Secretarial plenary authority) provides that:

(1) Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

(2) Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. When used in the latter circumstance, it is announced by special Headquarter, Department of the Army directive that may, if appropriate, delegate blanket separation authority to field commanders for the class category of Soldiers concerned.

b. At the time, Chapter 15 stated that homosexuality was incompatible with military service and provided for the separation of members who engaged in homosexual conduct or who, by their statements, demonstrated a tendency to engage in homosexual conduct.

c. Chapter 10 of that regulation provides, in pertinent part, 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.

d. 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.

e. 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.

5. The Don't Ask Don't Tell (DADT) policy was implemented in 1993. This policy banned the military from investigating service members regarding their sexual orientation. Under the previous policy, service members may have been investigated and administratively discharged if they made a statement that they were lesbian, gay or bisexual; engaged in physical contact with someone of the same sex for the purposes of sexual gratification; or married, or attempted to marry, someone of the same sex.

6. The DADT Repeal Act of 2010 (Title 10, USC, Section 654) was a landmark U.S. federal statute enacted in December 2010 that established a process for ending the DADT policy, thus allowing gays, lesbians, and bisexuals to serve openly in the U.S. Armed Forces. It ended the policy in place since 1993 that allowed them to serve only if they kept their sexual orientation secret and the military did not learn of their sexual orientation.

7. Under Secretary of Defense for Personnel and Readiness memorandum, dated 20 September 2011, Subject: Correction of Military Records Following Repeal of Section 654 of Title 10, USC, provides policy guidance for Service Discharge Review Boards (DRBs) and Service Correction of Military/Naval Records (BCM/NRs) to follow when taking action on applications from former service members discharged under DADT or prior policies.

a. This memorandum provided that effective 20 September 2011, Service DRBs and BCM/NRs should normally grant requests in these cases to change the following:

- item 24 to "Honorable"
- item 25 to "Army Regulation 635-200, paragraph 5-3"
- item 26 to "JFF"
- item 27 to "1"
- item 28 to "Secretarial Authority"

b. For the above upgrades to be warranted, the memorandum states both of the following conditions must have been met: (1) the original discharge was based solely on DADT or a similar policy in place prior to enactment of DADT and (2) there were no aggravating factors in the record, such as misconduct.

c. Although each request must be evaluated on a case-by case basis, the award of an honorable or general discharge should normally be considered to indicate the absence of aggravating factors.

d. Although BCM/NRs have a significantly broader scope of review and are authorized to provide much more comprehensive remedies than are available from the DRBs, it is Department of Defense (DoD) policy that broad, retroactive corrections of records from applicants discharged under DADT [or prior policies] are not warranted. Although DADT is repealed effective 20 September 2011, it was the law and reflected the view of Congress during the period it was the law. Similarly, Department of Defense regulations implementing various aspects of DADT [or prior policies] were valid regulations during that same or prior periods. Thus, the issuance of a discharge under DADT [or prior policies] should not by itself be considered to constitute an error or injustice that would invalidate an otherwise properly taken discharge action.

e. The DD Form 214 (Certificate of Release or Discharge from Active Duty) should be reissued in lieu of the DD Form 215 (Correction of the DD Form 214), to avoid a continued record of the homosexual separation.

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 DRB and BCM/NR when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. 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, 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//