

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240003325

APPLICANT REQUESTS: reconsideration of his previous request to:

- upgrade his under other than honorable conditions (UOTHC) discharge to honorable
- Item 26 (Separation Code): change to KFF vice KFS
- Item 27 (Reenlistment Code): change to RE-1 vice RE-3-3B-3C
- Item 28 (Narrative Reason for Separation): change to “convenience of the government” or “secretarial authority” vice for the good of the service – in lieu of court-martial

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Consortium Pro Bono Program agreement
- Counsel brief
- Licensed Clinical Psychologist letter, 31 May 2023
- Veterans Consortium letter, 21 December 2023

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220000414 on 10 June 2022.

2. The applicant states his misconduct of absent without leave (AWOL) is mitigated by his Bipolar diagnosis and was not violent in nature and he respectfully requests that his discharge be upgraded to fully honorable with a narrative separation reason of “convenience of the government” or “secretarial authority” with a separation code of KFF and RE-1 reenry code. The UOTHC discharge was an injustice because the Army did not consider his diagnosis of Bipolar 1, which made it impossible for him to conform to the Army's high standards. The discharge was an error because he was insane at the time of his discharge, which made it impossible for him to assert or waive his rights during the administrative separation process. 38 CFR 3.354(a) and RCM 916(k)(1). His discharge was an injustice because he served honorably and with positive evaluations

and promotions before his Bipolar diagnosis, which led to erratic behavior and an inability to conform to the Army's standards. He has suffered long enough with this discharge.

3. The applicant's counsel states pursuant to Department of Defense Instruction (DODI) 1332.28 E.3.2.9.4.1, prior to initiating the decision process, the veteran had the right to provide a rebuttal to the advisory opinion. The applicant was never given the chance to provide a rebuttal opinion, so this reconsideration memo focuses on the independent medical opinion by Licensed Psychologist AB. Please refer to the previous arguments contained within the brief filed with his original application AR20220000414 for background and context. Counsel also states the applicant contends:

a. The UOTH discharge was an injustice because the Army did not consider his diagnosis of Bipolar I, which made it impossible for him to conform to the Army's high standards.

b. The discharge was an error because he was insane at the time of his discharge, which made it impossible for him to assert or waive his rights during the administrative separation process. 38 CFR 3.354(a) and RCM 916(k)(1).

c. Serious misconduct is misconduct that has the potential to result in death or serious bodily harm. The applicant's misconduct, AWOL, mitigated by his Bipolar diagnosis, was not violent in nature and he respectfully requests that his discharge be upgraded to fully honorable with a narrative separation reason of "Convenience of the Government" or "Secretarial Authority" with a separation code of KFF and RE-1 reentry code.

d. The applicant's discharge was an injustice because he served honorably and with positive evaluations and promotions before his Bipolar diagnosis, which led to erratic behavior and an inability to conform to the Army's standards. He has suffered long enough with this discharge.

e. Counsel argues the UOTH discharge was an injustice because the Army did not consider his diagnosis of Bipolar I, which made it impossible for him to conform to the Army's high standards.

(1) Counsel states the ABCMR's own advisory opinion conceded that the applicant was diagnosed with Bipolar I disorder severe enough to require being medevac'd to the Continental United States for inpatient treatment at Walter Reed Hospital on 2 April 1986. The advisory opinion found that he did have Bipolar during service but found that it did not mitigate his misconduct of going AWOL. The applicant should have been given the chance to rebut that partially favorable advisory opinion with regard to whether the Bipolar mitigated his misconduct.

(2) An independent medical opinion written by Licensed Psychologist A.B. concluded, after a review of the records and an interview with the veteran, that the applicant has struggled with Bipolar since he was in the military, and that his severe mental health condition did mitigate the misconduct. Dr. B. opined that his well-documented Bipolar "... led to an inability to clearly articulate why he went AWOL, and his decision to waive his rights at discharge ..." (see attached opinion). It is noteworthy that he went AWOL on 7 July 1986, a mere 3 months after being medevac'd from his deployment to Walter Reed for mental health treatment. Seven months after that treatment, he was discharged with an UOTHC discharge on 12 November 1986.

f. Counsel argues the discharge was an error because he was insane at the time of his discharge, which made it impossible for him to assert or waive his rights during the administrative separation process. 38 CFR 3.354(a) and RCM 916(k)(1).

(1) The severity of the applicant's Bipolar symptoms (of record) demonstrate that it was not well-controlled at the time he went AWOL or when he was discharged. Therefore, he met the definition of insanity under 38 CFR 3.354(a) and under the Uniform Code of Military Justice (UCMJ) RCM 916(k)(1). The CFR defines insanity as "... one who, while not mentally defective or constitutionally psychopathic ... exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior; or who interferes with the peace of society; or who has so departed (become antisocial) from the accepted standards of the community to which by birth and education he belongs as to lack the adaptability to make further adjustment to the social customs of the community in which he resides.

(2) Similarly, the UCMJ acknowledges that severe mental illness is a mitigating factor in misconduct. The UCMJ is primarily focused on insanity as a defense at a court-martial trial, but it is relevant to this case because his misconduct was quite clearly attributable to a sudden decline in his mental health, and he accepted an UOTHC in lieu of a court martial. Article 50a of the UCMJ states: "It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense (RCM 916(k)(1)). His Bipolar symptoms were so severe that he met the definitions of insanity in both the military and civilian contexts.

g. Counsel argues the applicant's discharge was an injustice because he served honorably and with positive evaluations and promotions before his Bipolar diagnosis, which led to erratic behavior and an inability to conform to the Army's standards. He has suffered long enough with this discharge. He also states it was an error for the Army to discharge him with an UOTHC discharge when it was impossible for him to control his behavior and make sound decisions due to insanity. His insanity also made it

impossible for him to meaningfully participate in the administrative separation process and consent to or waive his rights therein. As Dr. B.'s medical opinion stated, he clearly meets all the requirement of the Wilkie Memo needed for this Honorable Board to grant relief. Per the Kurta Memo, absent clear evidence to the contrary, a diagnosis by a licensed psychologist or psychiatrist is evidence that the veteran had a condition that may excuse or mitigate the discharge. In this case, he was diagnosed while in the military and has had consistent treatment for Bipolar ever since. The advisory opinion conceded this, and the opinion by Dr. B. explained how his Bipolar symptoms mitigated his misconduct. This Board has the opportunity to correct an injustice that has followed the applicant for nearly 40 years.

4. The applicant enlisted in the Regular Army on 24 April 1984.
5. His first duty station was Germany. He was promoted to private first class/E-3 on 1 March 1985.
6. On 7 July 1986, the applicant's duty status was changed from present for duty (PDY) to AWOL. On 6 August 1986, his duty status was changed from AWOL to dropped from the rolls (DFR). On 13 September 1986, his duty status was changed from DFR to PDY.
7. A Processing Control Facility Information Sheet shows the applicant was returned to military control due to apprehension. He did not request a physical and did not want to stay in the Army.
8. On 24 September 1986, court martial charges were preferred against the applicant for being AWOL from on or about 7 July 1986 to on or about 13 September 1986.
9. On 24 September 1986, after consulting with 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 (Discharge for the Good of the Service). In his request, he affirmed no one subjected him to coercion and counsel had advised him of the implications of his request. He understood that if his request for discharge is accepted, he may be discharged under conditions other than honorable and furnished an Under Other Than Honorable Discharge Certificate. He was advised and understood the possible effects of an UOTHC discharge. He also understood:
  - 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 Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws
  - he may expect to encounter substantial prejudice in civilian life because of an Under Other than Honorable Discharge

- he was advised he could submit any statements he desired in his own behalf; he elected not to submit a statement

10. The applicant's chain of command recommended approval of the applicant's request for discharge with an Other Than Honorable Discharge Certificate to be issued.

11. On 15 October 1986, the separation authority approved the applicant's request for discharge, and directed he be reduced to the rank of private/E1, and an Other Than Honorable Discharge Certificate be furnished.

12. Accordingly, on 12 November 1986, the applicant was discharged under the provisions of AR 635-200, chapter 10. His DD Form 214 shows he had completed 2 years, 4 months, and 14 days of net active service. He had lost time from 7 July 1986 to 12 September 1986. He was awarded or authorized the Army Service Ribbon, Army Achievement Medal, Marksman Marksmanship Qualification Badge Rifle, and the Sharpshooter Marksmanship Badge Grenade. His DD Form 214 also shows:

- Item 24 (Character of Service): under other than honorable conditions
- Item 26 (Separation Code): KFS
- Item 27 (Reenlistment Code): RE-3-3B-3C
- Item 28 (Narrative Reason for Separation): For the Good of the Service – In Lieu of Court-Martial

13. On 13 November 1992, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge. He was notified on 7 January 1993.

14. In his previous request (AR20220000414) on 10 June 2022, after reviewing the application and all supporting documents, the Board determined relief was not warranted.

15. The applicant provides:

a. Veterans Consortium Pro Bono Program agreement, in which the applicant agreed to engage an attorney.

b. Licensed Clinical Psychologist letter (6 pages) completed on 31 May 2023, stating she interviewed the Veteran for 45 minutes, via telehealth on 27 May 2023. He was informed of the purpose of the interview and that the information he provided would be included in her report. He agreed to these conditions. The purpose of the interview was:

- To review various aspects of the veteran's [applicant] military service and gather more details about possible traumatic stressors he had experienced

- To elicit information about the applicant's post-military history and mental health symptoms
- To review the applicant's overall level of functioning and symptom severity

(1) The applicant was alert and oriented to time, person, place, situation, and purpose of the interview. His speech was clear and coherent, however circumstantial, and tangential at times. He appeared tense with a minimal range of affect. He was engaged and cooperative throughout the interview. No perceptual disturbances were reported or observed. He appeared to be a good historian with no intent to deceive or mislead.

(2) The psychologist provided comments related to his pre-military history, military history, and post-military history.

(3) DSM-V Diagnosis and Conclusion states the psychologist concurred with the diagnosis of bipolar disorder that was endorsed by several other mental health providers since 1986. It is her professional opinion as a licensed clinical psychologist that the applicant's symptoms meet the DSM-5 diagnostic criteria for Bipolar I Disorder, moderate, most recent episode manic, in full remission (F31. 74). Bipolar disorder is a mood disorder associated with unusual shifts in mood, activity levels, concentration, and the ability to effectively carry out day-to-day tasks. The disorder is characterized by increased irritability, marked difficulty in regulating the pursuit of goals, and impaired decision making captured in impulsivity and risk-taking. Coinciding with extreme fluctuations in mood, someone with bipolar disorder may experience fluctuations in decision making mental capacity, particularly during prolonged episodes of mania. During these periods, they may hold uncharacteristic beliefs which lead them to make uncharacteristic decisions despite risks that seem obvious to professionals and loved ones.

(4) The applicant deployed to Germany in October of 1984 where he excelled in his training and received an Army Achievement Medal in 1985. In 1986 he was hospitalized for a manic episode and diagnosed with bipolar 1 disorder and a few months later, his command reported/listed him as AWOL on 7 July 1986. On 1 October 1986, his commanding officer recommended that he be discharged in lieu of a court-martial with an other than honorable discharge.

(5) Based on the psychologist's holistic review of the evidence stated above, as well as the information gathered through the interview, it is her professional opinion as a licensed clinical psychologist that the applicant's bipolar disorder more likely than not affected his judgment, capacity to make good decisions and cognitive functioning. The disorder led to more risk-taking behavior and a disregard for rules, authority, and consequences, which resulted in the misconduct (AWOL) leading to the applicant's discharge. It is also her professional opinion that the bipolar disorder more likely than

not contributed to his inability to clearly articulate why he went AWOL, his decision to waive his rights at discharge, and his reluctant acceptance of an other than honorable discharge which abruptly ended his military career. She believes that this should be considered as compelling mitigating circumstances that warrant a discharge upgrade. (The entire 6-page letter is attached in documents for review).

c. Veterans Consortium letter in support of his request.

16. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. 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.

17. By regulation 635-5-1, (Personnel Separations – Separation Program Designators (SPD), paragraph 10, in lieu of trial by court martial are assigned the Separation Code KFS.

18. By regulation 601-210, (Regular Army and Reserve Enlistment Program) paragraph 3-8, the RE Code associated with this separation is RE-4 which applies to persons separated from last period of service with a non-waivable disqualification, ineligible for enlistment.

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

## 20. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request to: upgrade his under other than honorable conditions (UOTHC) characterization of service, change his separation code to KFF, change his reenlistment code to RE-1, and change the narrative reason or separation to “convenience of the government” or “secretarial authority.” The applicant’s previous petition to the Board is summarized in Docket Number AR20220000414 dated 10 June 2022. He contends that his misconduct was mitigated by Other Mental Health Issues, more specifically, Bipolar Disorder. 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 24 April 1984, 2) on 24 September 1986, court-martial charges were preferred against the applicant for being absent without

leave (AWOL) from 07 July 1986 to 13 September 1986, 3) on 12 November 1986 the applicant was discharged under the provisions of Army Regulation (AR) 635-200, Chapter 10, with a separation code of KFS, reenlistment code of RE-3-3B-3C, and narrative reason for separation as "For the Good of the Service-In Lieu of Court-Martial," 4) on 13 November 1992, the Army Discharge Review Board (ADRB) denied the applicant's request for an upgrade of his discharge, 5) the applicant's previous petition to the ABCMR was denied on 10 June 2022.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's previous ABCMR BH Advisory in Docket Number AR20220000414 was reviewed. The Advisor noted that the applicant provided a statement prior to his discharge regarding the specific reasons for going AWOL. It was documented that the applicant reported he went AWOL because of problems at the unit and not being helped with his financial problems. The Advisor documented that although the applicant was service-connected for Bipolar Disorder through the VA for treatment purposes only, due to the applicant providing specific reasons for his decision to go AWOL, his condition was determined to not be a mitigating factor. As such, BH mitigation was not supported.

d. A review of JLV shows the applicant is 0% service-connected (for treatment purposes only) through the VA for Bipolar Disorder. The applicant underwent a BH Compensation and Pension (C&P) examination on 23 May 2018 and was Diagnosed with Bipolar I Disorder. The provider documented that the applicant reported that, while stationed in Germany he had difficulty sleeping, began having delusional and bizarre thoughts, and engaged in non-suicidal self-injury (NSSI) resulting in him being sent to the hospital. The provider cited a service treatment record (STR) dated 17 March 1986 noting that he was diagnosed with Adjustment Disorder with Mixed Emotional Features. The provider further documented that he had been on mood stabilizers since age 20 and had been psychiatrically hospitalized on several occasions since being discharged from the military due to his condition. The provider opined that, given his symptoms that started while in-service and continued treatment since his discharge, it is likely that his diagnosis of Bipolar Disorder first manifested in service. Records show the applicant is currently prescribed Quetiapine (antipsychotic) and Mirtazapine (antidepressant) and that he has continued to seek BH treatment through the VA through the present day.

e. The applicant provided a civilian psychological evaluation dated 31 May 2023 as part of his application. The findings are well-outlined in the ROP and thus will only be briefly summarized by this Advisor. The provider diagnosed the applicant with Bipolar I

Disorder, Moderate, Most Recent Episode Manic, In Full Remission to which she noted was present since 1986. The provider opined that the applicant's misconduct was related to his condition, more specifically, that risk-taking behavior, disregard for rules, authority, and consequences resulted in his going AWOL.

f. The applicant is applying to the ABCMR requesting reconsideration of his previous request to: upgrade his UOTHC characterization of service in addition to changing his separation and reenlistment codes, and narrative reason or separation to "convenience of the government" or "secretarial authority." There were no in-service records available for review. Post-military records show that the applicant has been diagnosed and service-connected through the VA for treatment purposes only with Bipolar Disorder. Moreover, the evaluating provider cited an in-service STR noting that the applicant was diagnosed with Adjustment Disorder with Mixed Emotional Features in 1986 prior to his going AWOL. The applicant has also been diagnosed with Bipolar I Disorder by a civilian psychologist who opined that his misconduct was a result of his psychiatric condition.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and service-connected through the VA with Bipolar Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is service-connected through the VA for Bipolar Disorder. Service connection establishes that the condition existed in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. There were no in-service treatment records available for review; however, it was noted in a VA C&P examination that the applicant was diagnosed with Adjustment Disorder with Mixed Emotional Features in-service in March 1986, prior to his going AWOL. Since being discharged from the military, the applicant has been diagnosed and service-connected through the VA for treatment purposes only with Bipolar Disorder. Although it is acknowledged that the applicant provided a statement regarding the specific reasons for his going AWOL as noted by the previous BH Advisor, his statements for going AWOL do not negate the association between the applicant's diagnosis of Bipolar Disorder and the behavior that led to his misconduct. As there is an association between risk-taking behaviors, poor decision-making/judgment, impulsivity, and going AWOL, there is a nexus between his diagnosis of Bipolar Disorder and the misconduct that led to his discharge. As such, BH mitigation is supported.

**BOARD DISCUSSION:**

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant committed a serious offense (AWOL).

a. Discharge upgrade: Partial Grant. The applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding sufficient evidence to support the applicant had condition or experience that mitigated his misconduct. Based on this mitigation, the Board determined that while his service did not rise to the level required for an honorable discharge; a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests is warranted.

b. Narrative Reason and Corresponding Codes: Deny. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of chapter 10 of AR 635-200, in lieu of trial by court-martial. The narrative reason specified by Army Regulations for a discharge under this chapter for an enlisted Soldier is "In Lieu of Trial by Court-Martial," the separation code is "KFS," and the reentry code is "RE-4." AR 635-8, Separation Documents, governs preparation of the DD Form 214, and dictates that entry of the narrative reason for separation, entered in Block 28, separation code, entered in Block 26, and RE Code, entered in Block 27 of the DD Form 214 will be entered exactly as listed in AR 635-5-1, Separation Program Designator Codes. While the Board noted that his misconduct/AWOL is mitigated by a behavioral health condition, this does not change the fact that he was separated due to his own voluntary request to separate vice being tried by a court-martial. The Board found no mitigating factors that would merit a change to the applicant's narrative reason for discharge or associated codes. In view of the foregoing, the Board determined that the reason for discharge, and associated codes, were proper and equitable and there is no reason to change these entries.

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 partial amendment of the ABCMR's decision in Docket Number AR20220000414 on 10 June 2022. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 12 November 1986, as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: 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 any relief in excess of that described above.

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

REFERENCES:

1. Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

d. Chapter 10 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 a 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. Army policy states that although an honorable or general, under honorable conditions discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

2. AR 601-210 (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and non-waiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

a. RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

b. RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waivable. Eligibility: Ineligible unless a waiver is granted.

c. RE-4 Applies to: Person separated from last period of service with a non-waivable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years of active Federal service. Eligibility: Ineligible for enlistment.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial. The SPD Code/RE Code Cross Reference Table shows that a Soldier assigned an SPD Code of "KFS" will be assigned an RE Code of "4."

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations, and mitigating factors, when taking action on applications from former service members administratively discharged under other than honorable conditions, and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

5. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

6. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), sexual assault, or sexual harassment. Standards for review should

rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

7. 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.

8. 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//