

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 November 2024

DOCKET NUMBER: AR20240003468

APPLICANT REQUESTS: correction of her DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in:

- Item 24 (Character of Service), “honorable” instead of “under honorable conditions (general)”
- Item 26 (Separation Code), “JFF” instead of “JKA”
- Item 27 (Reentry Code), “1” instead of “3”
- Item 28 (Narrative Reason for Separation), “Secretarial Authority” instead of “Pattern of Misconduct”
- correction of her records to show she was medically discharged.

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

- DD Form 149 (Application for Correction of Military Record)
- The Veterans Consortium Agreement to Engage an Attorney, 3 January 2023
- Counsel Brief, 26 March 2024
- Exhibit 1: DD Form 214, 2 August 2006
- Exhibit 2: Applicant's Notarized Statement, 19 December 2023
- Exhibit 3: Department of Veterans Affairs (VA) Service-Connected Disabilities, 19 September 2023
- Exhibit 4: Report of Medical Examination, 8 February 2002
- Exhibit 5: Lab Referral Report, 23 February 2004
- Exhibit 6: Emergency Department Nursing Triage and Care Record, 25 March 2004
- Exhibit 7: Human Immunodeficiency Virus (HIV) Test, 14 June 2004
- Exhibit 8: Lab Results, 12 August 2004
- Exhibit 9: Emergency Care Report, 15 December 2004
- Exhibit 10: Screening Note of Acute Medical Care, 17 December 2004
- Exhibit 11: Emergency Care Report, 23 December 2004
- Exhibit 12: Hospital Narrative Summary, 28 December 2005
- Exhibit 13: Urine Test Result, 10 January 2005
- Exhibit 14: Emergency Room Telephone Consultation, 11 January 2005
- Exhibit 15: Supplemental Medical Data, 4 April 2005

- Exhibit 16: Emergency Care and Treatment Report, 16 August 2005
- Exhibit 17: Screening Note of Acute Medical Care, 24 January 2006
- Exhibit 18: Report of Medical Assessment, 4 March 2006
- Exhibit 19: Report of Medical History, 4 April 2006
- Exhibit 20: Mental Status Evaluation, 5 April 2006
- Exhibit 21: Medical Record – Supplemental Medical Data, 23 May 2006
- Exhibit 22: Psychiatrist Progress Notes (11 pages), printed 5 January 2022
- Exhibit 23: Memorandum for Record, 30 November 2005

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 states, in effect:

a. She suffered gang rapes, sexual assaults, and sexual harassment during her wartime service. Due to these experiences, she developed multiple severe conditions that adversely impacted her mental and physical health, including post-traumatic stress disorder (PTSD), anxiety, sleep disturbance, sexually transmitted diseases (STDs), as well as inflammatory disorder with urinary incontinence. All stemming from and related to military sexual trauma (MST).

b. She proudly joined the Army during a time where people were on edge about our country, government, and safety. She was deployed to Iraq while stationed at Fort Stewart, GA. She was the only female in 3rd Battalion, 15th Infantry Regiment. She was sexually assaulted while she was in Iraq and suffered a great deal. She was gang raped by American Soldiers. She contracted a STD, which caused her not to be able to have children. She is severely incontinent, both bowels and urine. She cannot have sexual intercourse at all with her husband, as it is still painful. Because of the STD, she gets frequent sexually transmitted infections (STIs). She has back issues, self-esteem issues, and marital issues surrounding the rape and the trauma that it caused.

c. After returning from Iraq, she reenlisted and served in Korea where she was faced with a great deal of sexual harassment and assault. She filed a Whistle Blower complaint and because of the reprisal she tried to commit suicide and was hospitalized. Shortly after her hospitalization and restriction, she was forced out of the military for patterns of misconduct. She should have been chaptered out for medical reasons. She states, she has not been in any trouble since being chaptered out of the Army.

3. The applicant's legal counsel states:

a. The applicant served her country in the U.S. Army from 5 March 2002 to 2 August 2006, including two years of foreign service. She decided to join the military as a result of September 11. While serving in Iraq, she was gang raped multiple times by several American service members. After returning from Iraq, she reenlisted and served in Korea. In Korea, she again was sexually harassed and assaulted by her fellow service members. During this time, she filed a whistleblower complaint to report the sexual abuse that she suffered, which resulted in no action. After several instances of minor misconduct, action was initiated against her to separate her from the Army with a general, under honorable conditions discharge.

b. The VA granted her 100 percent service-connection for, among other things, PTSD, anxiety, sleep disturbance, and pelvic inflammatory disorder with urinary incontinence, all related to MST. VA examiners opined that markers in her record are consistent with MST. Her PTSD, depression, anxiety, and pelvic inflammatory disorder all derived from MST, and directly resulted in her misconduct and separation.

c. The applicant's condition excuses and mitigates the discharge because the misconduct was a direct result of her mental health conditions. Conditions or experiences that may reasonably have existed at the time of discharge will be liberally considered as excusing or mitigating the discharge. Her pattern of minor misconduct during service, which primarily included issues with her demeanor and attendance, are directly tied to her MST and resulting PTSD. As shown through her record, her behavior changed due to her mental health conditions and the continued MST she suffered, which should be viewed as significant mitigating factors in the misconduct. Her experience, resulting trauma, and conditions mitigate her conduct. Although in some cases, the severity of the misconduct may outweigh any mitigation from the mental health conditions, in the case of Ms. F_ [applicant], her PTSD that resulted from gang rape, sexual abuse, and sexual assault overwhelmingly outweighs the minor misconduct.

d. She was a good Soldier. Her PTSD and other medical issues resulting from MST severely influenced her behavior, and her issues with demeanor and attendance were a result of the physical and emotional trauma of rape and sexual harassment. The symptoms caused her to behave differently. Despite these behaviors, she still received many decorations, medals, and other awards during her service. These achievements demonstrate her work ethic and commitment to the service.

e. Counsel's complete brief is available for the Board to review.

4. Counsel provides the following:

a. A letter from VA, dated 19 September 2023, which verifies the applicant's service-connected disabilities, with a 100 percent combined rating. VA records show her service-connected disabilities as:

- PTSD (also claimed as anxiety and sleep disturbance), 70 percent
- pelvic inflammatory disorder with urinary incontinence, 60 percent
- bilateral pes planus, 50 percent
- painful scars from breast reduction surgery, 30 percent
- degenerative disc disease of the lumbosacral spine, 20 percent
- radiculopathy, right lower extremity, 10 percent
- radiculopathy, left lower extremity, 10 percent
- surgical scars, status post breast reduction surgery, 0 percent

b. A report of medical examination for the purpose of enlistment, dated 8 February 2022, and shows the applicant was qualified for service.

c. A lab referral report dated 23 February 2004, which shows the applicant tested negative for chlamydia trachomatis.

d. Emergency Department Nursing Triage and Care Record dated 25 March 2004, which shows the applicant was treated for cramping and abdominal pain.

e. On 14 June 2004, she was administered an HIV test.

f. On 12 August 2004, she was tested for vaginal bacteriology, gonorrhea, chlamydia, and HCG QL urine (for pregnancy).

g. An emergency care report dated 15 December 2004, which shows the applicant was treated for cramping, abdominal pain, and vaginal spotting.

h. Screening note of acute medical care dated 17 December 2004, which shows she was treated at Yongsan Health Clinic for lower abdominal/pelvic pain with occasional bleeding.

i. An emergency care report, which shows the applicant was seen and treated for abnormal vaginal bleeding and burning pain on 23 December 2004.

j. A hospital narrative summary report, which shows the applicant was admitted to the hospital on 28 December 2005, for 8 days, due to severe pelvic and abdominal pain with no discernable etiology.

k. An HCG QL urine test (for pregnancy) was conducted on 10 January 2005, and shows the applicant tested negative.

l. An emergency room telephone consultation dated 11 January 2005, which states the applicant complained of chronic pelvic pain.

m. Medical Record – Supplemental Medical Data form, dated 4 April 2005, wherein the applicant noted she had an abnormal pap and breast reduction. She answered yes to the following questions: pelvic pain, loss of bladder control, and STD (chlamydia in 2002).

n. An emergency care and treatment report dated 16 August 2005, which shows the applicant's chief complaint was a possible yeast infection. She complained of vaginal discharge following sexual intercourse a few days prior.

o. A screening note of acute medical care, which shows she was treated for bacterial vaginosis on 24 January 2006.

p. A report of medical assessment dated 4 March 2006, wherein the applicant stated compared to her last medical assessment/physical examination, her overall health was worse and stomach pain caused her to miss duty for longer than 3 days.

q. 11 pages of mental health counselling and progress notes from the applicant's psychiatrist, printed on 5 January 2022, which shows the applicant was treated for PTSD and depression related to combat and MST. The counselor noted that the applicant stated:

(1) She was at a party with several female friends from the Army. She was offered a mixed drink and stated that she felt sick and dizzy. She went to lay down in a room until she felt better. She woke up and she realized that she was half naked and appeared to have been sexually assaulted. The next day she went home and to the hospital. She did not take legal action because she was in shock that it happened to her while she was with her friends at a "safe space."

(2) She served in Iraq as a driver in an infantry unit where she was the only female and experienced sexual harassment. While in Iraq, she witnessed a number of deaths and life-threatening accidents, several friends and local Iraqis killed (about 5) and witnessed a close friend's upper torso blown off in front of her eyes.

(3) In May 2006, after being transferred to Korea she came very close to slitting her wrist. She started drinking after leaving Iraq. There was no structure, after having a great deal of structure, and she learned her nephew had just died. She stopped herself and went to the local military hospital in Korea where she was diagnosed with PTSD. She was hospitalized for five days and discharged on Zoloft and Xanax.

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

a. The applicant enlisted in the Regular Army on 5 March 2002. The highest grade she held was specialist (SPC)/E-4.

b. The applicant was counseled for the following:

- 1 June 2005 – failure to report to duty
- 25 July 2005 – failure to follow instructions
- 25 July 2005 – failure to follow instruction/lying to a senior noncommissioned officer (NCO)
- 17 October 2005 – general counseling for use of chain of command directives/expectations
- 1 December 2005 – disrespect to a senior NCO and failure to follow instructions from a commissioned officer

c. On 12 December 2005, the applicant accepted non-judicial punishment (NJP) under the provisions of Article 15, uniform code of military justice (UCMJ), for the following misconduct:

- failing to go at the time prescribed to her appointed place of duty, to wit: 0900, prep time (work call), on or about 30 May 2005
- willfully disobeying a lawful order from her superior commissioned officer, on or about 30 November 2005
- being disrespectful in language toward a superior NCO, on or about 30 November 2005
- willfully disobeying a lawful order from a superior NCO, on or about 15 November 2005
- willfully disobeying a lawful order from a superior NCO, on or about 24 July 2005
- with intent to deceive, make an official statement, which statement was totally false, and was then known by her to be so false, on or about 30 November 2005
- with intent to deceive, make an official statement, which statement was totally false, and was then known by her to be so false, on or about 15 November 2005
- with intent to deceive, make an official statement, which statement was totally false, and was then known by her to be so false, on or about 15 November 2005
- with intent to deceive, make an official statement, which statement was false, and was then known by her to be so false, on or about 24 October 2005
- with intent to deceive, make an official statement, which statement was false, and was then known by her to be so false, on or about 1 February 2005

d. Her punishment included reduction to private first class (PFC)/E-3, extra duty for a period of 14 days, and 14 days of restriction.

e. The applicant was counseled for the following:

- 18 February 2006 – leaving physical training (PT) early and without authorization
- 28 February 2006 – monthly performance counseling
- 4 March 2006 – performance counseling
- 15 March 2006 – not showing up to PT formation and neglecting to inform chain of command of whereabouts
- 31 March 2006 – failure to comply and absent without leave
- 31 March 2006 – failure to report and insubordinate conduct toward an NCO

f. DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)), shows she was flagged on 31 March 2006 for elimination.

g. She was counseled for the following:

- 3 April 2006 – performance and pattern of misconduct.
- 4 April 2006 – potential absent without leave risk during chapter processing

h. On 4 April 2006, the applicant underwent a medical examination for the purpose of separation. The applicant noted she was seen in the emergency room for stomach pain, and she had been a patient in a hospital for stomach surgery.

i. The applicant underwent a mental status evaluation on 5 April 2006. The licensed clinical psychologist noted the applicant was depressed. He stated based on the evaluation, the diagnostic impressions, within the meaning of Army Regulation (AR) 40-501 (Standards of Medical Fitness), AR 635-200 (Active Duty Enlisted Administrative Separations), and the Diagnostic and Statistical Manual (DSM IVTR), were as follows: Axis I, adjustment disorder with depressed mood, alcohol abuse and Axis II, deferred. The applicant was at risk for recurrent difficulties with depression, which may not resolve in the short term without assistance, may interfere with her ability to perform duties, and be a concern for command. The applicant related that she was enrolled in Stress Management, was obtaining individual counseling, and would be attending Anger Management at the clinic. The psychologist recommended the command support the applicant following up at mental health. He noted she met the retention standards prescribed in chapter 3, AR 40-501, and there was no psychiatric disease or defect, which warranted disposition through medical channels. He cleared her for any administrative action deemed appropriate by the command.

j. On 12 April 2006, she accepted NJP under the provisions of Article 15, UCMJ, for failing to go at the time prescribed to her appointed place of duty, to wit: 0600, Troop Medical Clinic, for on or about 15 March 2006, without authority, failing to go at the time prescribed to her appointed place of duty, to wit: 0630 PT training, and for on or about 17 February 2006, without authority, leaving from her appointed place of duty, to wit: 0630 to 0730 PT training. Her punishment included reduction to private (PV2)/E-2, forfeiture of \$300.00 per month for two months, extra duty for 30 days, and 30 days restriction, all suspended, to be automatically remitted if not vacated before 9 October 2006.

k. On 24 April 2006, the applicant's immediate commander notified her of his intent to initiate separation actions against her under the provisions of AR 635-200, chapter 14, paragraph 14-12b, by reason of pattern of misconduct. The commander listed the following reasons for the proposed action: on 12 April 2006 she received a field grade Article 15 for leaving her appointed place of duty without authority, on 12 December 2005 she received a company grade Article 15 for failing to be at the appointed place of duty, disobeying a commissioned officer, disobeying an NCO, disrespecting an NCO, and making a false statement. In addition to the NJP she received, she was returned to the unit after numerous acts of misconduct and disrespect while attached to the tax center. She was counseled and received rehabilitative transfers numerous times for conflict with her coworkers and misconduct. The commander informed the applicant he was recommending she receive a general, under honorable conditions discharge and explained her rights.

l. On 28 April 2006, the applicant submitted an appeal.

m. On 3 May 2006, the applicant acknowledged receipt of her commander's separation notification and after being advised by her consulting counsel of the basis for the contemplated action to separate her for pattern of misconduct under AR 635-200, chapter 14, paragraph 14-12b, and its effects; of the rights available to her; and the effect of any action she took in waiving her rights.

(1) She understood that she may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to her.

(2) She submitted statements in her own behalf.

(3) She further understood that, if she received a discharge/character of service which was less than honorable, she may make application to the Army Discharge Review Board (ADRB) or the ABCMR for upgrading; however, an act of consideration by either board did not imply that her discharge would be upgraded.

(4) She understood that she would be ineligible to apply for enlistment in the United States Army for a period of two years after discharge.

(5) She retained a copy of this statement.

n. On the same date, the applicant's immediate commander recommended approval of the separation under the provisions of AR 635-200, chapter 14, paragraph 14-12b, pattern of misconduct, with a general, under honorable conditions discharge. The intermediate commander echoed the immediate commander's recommendation.

o. On 6 July 2006, the applicant submitted a request for separation from the United States Army. She stated that she had made an Inspector General (IG), whistleblower complaint, and she was told it would hold up the process of her chapter. It was 6 July 2006, and there had not been any resolution to her IG complaint, and the investigation had not been completed. She understood that by requesting the separation she would probably receive a general, under honorable conditions discharge, as explained to her by brigade legal. She stated there were several reasons for her request at this point to be chaptered, and the toll on her had been very painful. She apologized for the disturbance that she caused in the unit and wanted to leave with knowing she learned a great deal from the situations that she encountered in her years in the Army.

p. On 11 July 2006, the separation authority approved the discharge and directed the applicant be issued a general, under honorable conditions discharge. He stated there was no requirement for rehabilitative transfer and she could not be transferred into the Individual Ready Reserve.

q. The applicant was discharged on 2 August 2006, under the provisions of AR 635-200, paragraph 14-12b, by reason of pattern of misconduct, in the rank/grade of private (PV2)/E-2, and her service was characterized as under honorable conditions (general). Her DD Form 214 shows she completed 4 years, 4 months, and 28 days of net active service during the covered period. Additionally, her DD Form 214 shows in:

- Item 12f (Foreign Service): 2 years and 7 months
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Commendation Medal, Army Achievement Medal (2nd Award), Army Good Conduct Medal, National Defense Service Medal, Armed Forces Expeditionary Medal, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, Korea Defense Service Medal, and the Army Service Ribbon
- Item 18 (Remarks): Member has completed first full term of service.
- Item 26 (Separation Code): JKA
- Item 27 (Reentry Code): 3

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

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

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of her discharge to honorable, changes to her DD214, and a medical discharge. She contends she experienced military sexual trauma (MST) and resultant PTSD that mitigates her misconduct and discharge. 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 5 March 2002; 2) The applicant deployed to Iraq; 3) On 12 December 2005, the applicant accepted non-judicial punishment (NJP) for failing to be at work on time, disobeying a lawful orders, being disrespectful in language, and making false statements; 4) On 12 April 2006, the applicant again accepted NJP for not being at her place of duty multiple times; 5) The applicant was discharged on 2 August 2006, Chapter 14-12b- by reason of pattern of misconduct. Her service was characterized as under honorable conditions (general).

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 and VA medical documentation provided by the applicant were also examined.

c. The applicant asserts she was exposed to MST and experienced PTSD while on active service, which mitigates her misconduct and warrants a referral to IDES for a potential medical discharge. There was evidence the applicant was seen for mental health concerns while stationed in Korea starting in 2006. She was reporting anxiety and stress related to occupational and family problems. She was also concerned about her upcoming transition to civilian life. The applicant underwent a mental status evaluation on 5 April 2006. The applicant was reported to be depressed, and she was diagnosed with an adjustment disorder with depressed mood and alcohol abuse. The applicant was enrolled in behavioral health treatment, and she was recommended to continue. However, the applicant was reported to meet the retention standards prescribed in chapter 3, AR 40-501, and there was no psychiatric disease or defect, which warranted disposition through medical channels. She was cleared for any administrative action deemed appropriate by the command. There was insufficient evidence the applicant was ever placed on a psychiatric profile, determined to not meet medical retention status from a psychiatric perspective, or consistently attend behavioral health treatment for six-months while on active service.

d. A review of JLV provided sufficient evidence the applicant has been diagnosed with service-connected PTSD related to MST and combat, and she is actively engaged in behavioral health till present. She also currently receives service-connected disability for PTSD.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates her misconduct. However, there is insufficient evidence to support sending the applicant's case to IDES to assess her suitability for a medical discharge due to the insufficient evidence the applicant was ever placed on a psychiatric profile, determined to not meet medical retention status from a psychiatric perspective, or consistently attended behavioral health treatment for six-months while on active service.

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 and resultant PTSD that mitigates her misconduct. There is sufficient evidence the applicant reported experiencing mental health symptoms while on active service. She has also been diagnosed with service-connected PTSD as the result of MST and combat by the VA.

(2) Did the condition exist or experience occur during military service? Yes, Yes, the applicant asserts she experienced MST and resultant PTSD that mitigates her misconduct. There is sufficient evidence the applicant reported experiencing mental health symptoms while on active service. She has also been diagnosed with service-connected PTSD as the result of MST and combat by the VA.

(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 resultant PTSD while on active service. The applicant did engage in erratic and avoidant behavior which is a natural sequelae to MST and resultant PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to her discharge is mitigable. It is also recommended that her narrative reason for separation be amended. However, there is insufficient evidence to support sending the applicant's case to IDES to assess her suitability for a medical discharge due to the insufficient evidence the applicant was ever placed on a psychiatric profile, determined to not meet medical retention status from a psychiatric perspective, or consistently attended behavioral health treatment for six-months while on active service.




BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. 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 or experience that mitigates her misconduct. The opine, however determined there is insufficient evidence to support sending the applicant's case to IDDES to assess her suitability for a medical discharge.

2. The Board agreed, based on the advising official there is sufficient evidence to support the applicant's contentions for a discharge upgrade to honorable and correction to her narrative reason. The Board found the reentry code and separation code was not in error or unjust based on the applicant's discharge. Furthermore, the Board found insufficient evidence that would support sending the applicant's case to IDDES to assess her suitability for a medical discharge due to the lack of evidence the applicant was ever placed on a psychiatric profile, determined to not meet medical retention status from a psychiatric perspective, or consistently attended behavioral health treatment for six-months while on active service. Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by re-issuing the applicant a DD Form 214 for the period ending 2 August 2006 to show in:

- Item 24 (Character of Service) Honorable
- Item 25 (Separation Authority) AR 635-200
- Item 26 (Separation Code) JFF
- Item 27 (Reentry Code) 1
- Item 28 (Narrative Reason for Separation) Secretarial Authority

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 correction of the applicant's separation code, reentry code and the applicant's records to show sh



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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

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

a. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel

or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally considered appropriate. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provide the specific authorities (statutory or other directives), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. In effect at the time, the regulation showed Soldiers separated under the provisions of AR 635-200, paragraph 14-12b, with a narrative reason of pattern of misconduct, would receive SPD code "JKA." Soldiers separated under the provisions of AR 635-200, paragraph 5-3 (Secretarial plenary authority), would receive SPD "JFF."

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

5. Army Regulation 40-501 (Standards of Medical Fitness), governs medical fitness standards for enlistment, induction, appointment, retention, and separation. It states medical evaluation of certain enlisted military occupational specialties and officer duty

assignments in terms of medical conditions and physical defects are causes for rejection or medical unfitness for these specialized duties. If the profile is permanent the profiling officer must assess if the Soldier meets retention standards. Those Soldiers on active duty who do not meet retention standards must be referred to a medical evaluation board.

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

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//