

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20240003644

APPLICANT REQUESTS:

- the Purple Heart award be added to his DD Form 214 (Certificate of Release or Discharge from Active Duty) and service record
- restoration of his rank, back pay, and debt forgiveness based upon the findings of the Army Discharge Review Board (ADRB) in 2016
- his discharge from the U.S. Army Reserve in 2010 be reversed and that he be reinstated to "troop program unit (TPU) status" at a commensurate rank/grade
- his status be changed to "Retired" with a commensurate rank/grade based upon his length of service
- deletion of the derogatory statement regarding his other than honorable (OTH) discharge from the Army National Guard from item 18 (Remarks) of his DD Form 214 for the period ending 3 November 2005
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- In-Service Personnel Records (201), dated 30 June 2004 to 25 October 2005
- Legal Documents (24 pages), dated 8 July 2004 to 8 April 2015
- Legal Brief, dated 31 March 2009
- DD Form 149, previous request for Purple Heart award and allied documents, dated 19 November 2015
- excerpt, Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 6 June 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:

a. He was wounded and medically evacuated out of Balad, Iraq, on 11 April 2004. A DA Form 4187 (Personnel Action) was completed for award of the Purple Heart, but he did not receive a certificate nor orders. His commander at Fort Bragg, NC, refused to acknowledge the documents received to support his Purple Heart award. This is the same commander who facilitated the discharge which was overturned and upgraded by the ADRB in 2016, due to arbitrary and capricious actions by his command. He has a 100 percent (%) service-connected disability rating from the Department of Veterans Affairs (VA) because of the injuries he sustained.

b. He requests the narrative on his DD Form 214 for the period ending 3 November 2005 that reflects his OTH discharge from the National Guard be removed. It is no longer an accurate statement based upon the findings of the ADRB in 2016. The narrative is null and void.

c. He suffered at the hands of a commander at Fort Bragg while on medical hold. Despite numerous transfer requests and complaints to the Inspector General, he was continuously targeted by the commander. He was reduced from specialist/E-4 to private/E-1 before being discharged with an OTH. After rejoining the U.S. Army Reserve (USAR), he had no negative actions from 2006 to his discharge in 2009. He most likely would have been a staff sergeant/E-6 by then. He would like to see back pay from the reduction in rank and elimination of any debt which may have existed as a result of the overturned discharge in 2005. Additionally, based upon his 100% disability rating from the VA, his status should be changed to "Retired."

d. He was informed that since he did not receive a waiver or initiate a waiver, that he did knowingly and fraudulently enlist back into the USAR. He was reduced from corporal/E-4 to private/E-1 and given an OTH discharge. He would like this to be overturned based upon the direction of the ADRB after his 2005 discharge was upgraded.

e. He holds a bachelor's degree in emergency and disaster management, graduating Summa Cum Laude, despite all of the adversity he has faced. He is pursuing his master's in leadership. If not for the 2005 discharge, he could have been a captain by now. He takes pride in serving his country and wants to be able to continue to let that pride shine by serving his country again.

3. On 18 January 2017, the ABCMR closed the applicant's previous request for award of the Purple Heart, citing Army Regulation 15-185 (ABCMR), which states that the ABCMR will not consider an application unless the applicant has exhausted all administrative remedies to correct the alleged error or injustice.

a. The authority to approve or disapprove recommendations for the Purple Heart for service members who did not receive the award while serving in a unit with wartime awards approval authority is the Chief, Awards and Decorations Branch, U.S. Army Human Resources Command (HRC).

b. To date, the applicant's service record does not contain nor does he provide evidence that he has submitted an application for award of the Purple Heart to HRC. The applicant's request to the ABCMR is premature and will not be further addressed in this record of proceedings (ROP).

4. A DD Form 214 shows the applicant served in the U.S. Marine Corps from 19 June 1990 to 2 October 1991. He was discharged with an under other than honorable discharge (UOTHCD), by reason of misconduct-minor disciplinary infractions. He completed 1 year, 3 months, and 14 days of net active service.

5. He enlisted in the Army National Guard of the United States (ARNGUS) on 12 August 2002 for a 6-year period. He was ordered to initial active duty for training. Upon completion, he was awarded military occupational specialty 74C (Record Telecommunications Operator-Maintainer).

6. He was released from active duty (REFRAD) and returned to the Army National Guard (ARNG) on 3 April 2003, in the rank/grade of specialist (SPC)/E-4, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), by reason of completion of required active duty. His character of service was honorable. He completed 4 months and 20 days of net active service.

7. A National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant was discharged from the ARNGUS and the Utah Army National Guard, in the rank/grade of private first class (PFC)/E-3, on 12 January 2004, under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), due to moving to an area where there was no ARNGUS unit within commuting distance. His character of service was honorable. He completed 1 year, 5 months, and 1 day of net service.

8. The applicant enlisted in the ARNGUS on 13 January 2004, for a 2-year period, in the rank/grade of PFC/E-3.

9. The applicant was ordered to active duty in support of Operation Iraqi Freedom on 16 January 2004, with service in Iraq from 3 March 2004 to 11 April 2004.

10. The applicant's command initiated nonjudicial punishment against him on 26 October 2004, under the provisions of Article 15 of the Uniform Code of Military Justice, for being absent without leave (AWOL), on or about 13 July 2004 until on or

about 16 July 2004; and for altering a DA Form 31 (Request and Authority for Leave), on or between 24 June 2004 and 13 July 2004. His punishment consisted of reduction to PFC/E-3, forfeiture of \$349.00 pay, and extra duty for 14 days. His appeal of the punishment was denied.

11. Orders Number A-11-411203, issued by the U.S. Army HRC, on 5 November 2004, retained the applicant on active duty for the purpose of medical retention processing (MRP) for a period of 179 days.

12. The applicant was formally counseled on 11 occasions between 5 January and 29 April 2005. Areas of emphasis covered in the counseling included:

- release of his cellular phone records to his commander
- failure to obey a lawful and direct order from his commander
- revocation of pass privileges
- payment of basic allowance for housing (BAH) to his wife on five occasions
- retention on active duty beyond his expiration term of service (ETS)
- pending Article 15 for failure to financially support his wife
- delinquency of Army Emergency Relief (AER) loan payments (4 months)
- separation for misconduct

13. Two letters from the applicant to the Troop Commander, Womack Army Medical Center, dated 14 July 2005, show the applicant requested a rehabilitative transfer and postponement of his pending Article 15 hearing. He stated the charges against him were unfounded and based upon conversations between his wife and his commander. The commander told him over a year ago that he intended to remove the applicant from the military. Army Regulation 635-200 states a rehabilitative transfer is recommended and encouraged prior to initiation of separation proceedings. Additionally, he could not consult with counsel, as counsel was unavailable until the following week.

14. The applicant's spouse, K.H., requested a Military Protective Order, on 19 July 2005, which prohibited the applicant from having contact with her or her extended family.

15. The applicant's command initiated nonjudicial punishment against the applicant, on 6 July 2005, under the provisions of Article 15 of the Uniform Code of Military Justice, for stealing and cashing a money order, a value of \$519.00, the property of K.R., on or about 4 December 2004, and being indebted to A.E.R. and dishonorably failing to pay said debt, from 2 February 2004 to 1 June 2005. His punishment consisted of reduction to private (PV2)/E-2, forfeiture of \$692.00 pay, and extra duty for 30 days. His appeal of the punishment was denied.

16. Two letters from the applicant to the Commander, Womack Army Medical Center, dated 28 July 2005 and 4 August 2005, show the applicant requested rehabilitative transfer, effective immediately. He stated he requested a transfer five times in the past 10 months, citing harassment and persecution from his commander.
17. The applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation 635-200, paragraph 14-12b, for patterns of misconduct. The commander noted the applicant's episode of AWOL and two Article 15s as specific reasons for the action.
18. The applicant's service record does not contain his acknowledgement of the notification nor his election of rights and options.
19. On 27 September 2005, the applicant was notified to appear before an administrative separation board to determine whether he should be administratively discharged. The applicant acknowledged receipt of the notification on the same date.
20. Two letters to the MRP Company Commander, dated 14 October 2005, show the applicant and Defense Counsel both requested the applicant be released from active duty due to ETS. He tried to decline his current order but was told he could not as he was pending administrative action. Defense Counsel stated under the provisions of Army Regulation 635-200, the applicant could not be retained beyond his ETS without consent, which was confirmed by HRC. The applicant acknowledged understanding the rights and advantages of remaining on active duty and was fully advised that if he REFRAD, he would be ineligible for separation or retirement for physical disability.
21. On 17 October 2005, the applicant signed a declination of medical retention, acknowledging that he was fully advised of the rights and benefits of remaining on active duty.
22. On that same date, Defense Counsel formally objected to the administrative separation board, stating the applicant declined his MRP orders and could not be extended beyond his ETS for the sole purpose of adverse administrative action.
23. An administrative separation board convened on 18 October 2005. The board determined the allegations against the applicant were supported by a preponderance of evidence. They further recommended he be separated under Army Regulation 635-200, Chapter 14, for misconduct.
24. The applicant's request for REFRAD was approved on 18 October 2005.
25. On 24 October 2005, the Chief, Administrative Law Division, conducted a review of the administrative separation board proceedings, stating the preponderance of evidence

did not support a finding that the applicant violated the Uniform Code of Military Justice by stealing and cashing the money order. Instead, the preponderance of evidence indicated he cashed the money order only after it was returned to him via the U.S. Postal Service. However, the erroneous finding by the Board constituted a harmless error and did not require any corrective action by the Board.

26. The applicant was formally counseled on 25 October 2024, for continually and consistently attempting to work around the chain of command.

27. On 26 October 2005, the separation authority approved the recommended separation action and directed the applicant be reduced to private/E-1 and the issuance of a UOTHC discharge.

28. The applicant was discharged on 3 November 2005, in the rank/grade of private/E-1, under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of patterns of misconduct. His DD Form 214 shows his character of service was UOTHC, with separation code JKA and reentry code RE-3. He completed 1 year, 9 months, and 18 days of net active service. He was awarded or authorized:

- Parachutist Badge
- National Defense Service Medal (2nd award)
- Army Service Ribbon
- Armed Forces Reserve Medal with "M" device
- Iraq Campaign Medal

29. The applicant was subsequently discharged from the North Carolina ARNG effective 3 November 2005, under the provisions of NGR 600-200, 8-26e(2), by reason of acts or patterns of misconduct. An NGB 22 shows his character of service was UOTHC, with reentry code RE-3. He completed 1 year, 9 months, and 21 days of net service this period.

30. The applicant's service record does not contain a DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States) showing that he was granted a waiver and/or enlisted in the USAR, ARNGUS, Regular Army or any other component of the Armed Forces.

31. Orders Number D-01-601215, U.S. Army HRC, dated 17 January 2006, shows the applicant was honorably discharged from the Inactive Ready Reserve (IRR), USAR, in the rank/grade of PFC/E-3, on 17 January 2006, under the provisions of Army Regulation 135-178 (Enlisted Administrative Separations), effective 6 January 2006. This order was subsequently revoked on 15 February 2006.

32. Multiple order sets, dated 7 March 2006 to 23 April 2008, show the applicant transferred multiple times between troop program units and the IRR during that time period.
33. On 22 August 2008, the applicant was ordered to active duty as a member of his Reserve Component unit in support of Operation Iraqi Freedom. The order was subsequently revoked on 2 October 2008.
34. The applicant was issued a DD Form 220 (Active Duty Report), dated 17 October 2008, that shows the entries "NA" for authorizing orders and effective dates. The second page of the form is not available for review in the record. However, ABCMR Docket Number AR20090012604, Record of Proceedings, paragraph 11f, provides that the document included the following statement in item 21 (Remarks), "Individual mobilization orders issued erroneously. Soldier was discharged effective 3 November 2005 with a character of service of 'under other than honorable conditions' and did not have an approved waiver to reenter the military. No DD Form 214 or discharge certificate will be furnished." The document was authenticated by the adjutant or officer representing the commander.
35. The applicant reenlisted in the USAR on 29 April 2010, for a 1-year period, in the rank/grade of specialist (SPC)/E-4.
36. The complete facts and circumstances surrounding his discharge are not available for review in the applicant's service records. However, Orders Number 10-305-00009, Headquarters, 81st Regional Support Command, Fort Jackson, SC, show the applicant was reduced from SPC/E-4 to private/E-1, effective 1 November 2010. He was discharged from the USAR, effective 6 November 2010, under the provisions of Army Regulation 135-178, with a UOTHC character of service.
37. On 24 November 2009, the ABCMR reviewed the applicant's request for credit for active service from 1 to 22 October 2008, cancellation of his debt, payment of all pay and allowances for this period, and the issuance of a DD Form 214. After a careful review of the applicant's records, the Board determined the applicant had no official standing in the ARNGUS, USAR, or Regular Army during the period under review. His request for relief was denied.
38. On 16 February 2010, the ADRB reviewed the applicant's request for an upgrade of his character of service. Despite the analyst's recommendation for an upgrade to under honorable conditions (general), the Board determined the applicant's discharge was proper and equitable and denied his request for relief.
39. On 15 November 2016, the ADRB reviewed the applicant's request that his ARNG discharge be upgraded to honorable; his UOTHC discharge be upgraded to honorable

with a change in narrative reason; his status be reinstated back to Reserve status; and his rank be reinstated commensurate to where it would be to date. After careful consideration, the Board determined the applicant's discharge from the ARNG in 2005 was now inequitable. The Board voted to grant relief in the form of correction of his DD Form 214 to show an upgrade of his character of service to honorable, and a change to his narrative reason for separation to "Misconduct (Minor Infraction)," Army Regulation 635-200, Paragraph 14-12a, with separation code JKN. The findings and recommendations were provided to the NGB for referral to and final action by the appropriate State Adjutant General. To date, there is no documentation in the applicant's record which shows the ARNG has upgraded his discharge.

40. Accordingly, the applicant was issued a corrected DD Form 214 on 24 April 2017, which shows he was honorably discharged from the ARNGUS on 3 November 2005, under the provisions of Army Regulation 635-200, paragraph 14-12a, with separation code JKN, by reason of Misconduct (Minor Infraction).

41. On or about 18 January 2017, the ABCMR reviewed the applicant's request for award of the Purple Heart. A review of his application did not contain evidence that he first requested a decision from the HRC Awards and Decorations Branch. The application was returned, without action by the Board, with instructions for the applicant to submit his request to HRC for further consideration.

42. The applicant provides:

a. 201 pages of in-service personnel records which are summarized, in pertinent part, in the ROP above.

b. 24 pages of civilian legal documents, which include a copy of the applicant's Complaint for Annulment from K.R.-H., dated 9 July 2004; a no-contact order against K.R. (formerly K.R.-H.), dated 7 September 2006; and a warrant for K.R.'s arrest for stalking after injunction, dated 8 April 2015.

c. An 11 page Legal Brief to the ABCMR, from Waple & Associates, dated 31 March 2009, which provided arguments to support the applicant's contentions that his discharge, character of service, and narrative reason for separation in 2005 was inequitable.

d. A DD Form 149 containing the applicant's previous request for award of the Purple Heart, and allied documents which include the original DA Form 4187, medical documents, and additional supporting documentation required to recommend the applicant for the award.

e. An excerpt from Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 6 June 2005

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

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his service record, the frequency and nature of his misconduct, reviews of previous Board considerations and the documentation provided by the applicant. The Board considered his previous discharges reviews, the documents included with prior considerations and the applicant's statement and legal brief dated 2009 accompanying this request. The Board made the following findings for the applicant's requested relief:

- Restoration of rank, back pay and debt forgiveness due to the 2016 ADRB upgrade: The Board did not find additional evidence of mitigation or evidence of an error or injustice to support further correction of his 2005 DD For 214 over and above the corrections made by the Army Discharge Review Board.

- Reversal of his 2010 USAR discharge: The Board did not find evidence in the record that showed the reason for the applicant's reduction in rank and separation from the USAR. The Board found insufficient evidence of error or injustice to support a change to the applicant's 2010 USAR discharge.

- Change his status to Retired: The Board did not find sufficient evidence to show that the applicant completed the required service to be eligible for retirement and determined there was no evidence of an error or injustice.

Based on a preponderance of evidence, the Board determined that there was not evidence of error or injustice that would warrant corrections to the applicant's record.

- Deletion of a reference to his ARNG discharge from item 18 of his 2005 DD Form 214: The Board did not find that evidence supported the applicant's requested change due to an error or injustice. The Board found that the ADRB forwarded a recommendation to the ARNG to consider his UOTHC separation after the ADRB

upgraded his DD Form 214. There is no evidence provided by the applicant or in the record that the NGB 22 was changed or that the ADRB referral was denied.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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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. 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 Army Board for Correction of Military Records (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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides:

a. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

b. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

c. The ABCMR cannot consider any application until the applicant has exhausted all administrative remedies available to correct the alleged error or injustice.

3. Army Regulation 135-178 (Army National Guard and Army Reserve Enlisted Administrative Separations) establishes policies, standards, and procedures governing the administrative separation of certain enlisted Soldiers of the Army National Guard of the United States (ARNGUS) and the U.S. Army Reserve (USAR).

a. Chapter 7, in effect at the time, established policy and prescribed procedures for separating enlisted members for minority, erroneous enlistment, reenlistment or extension of enlistment, defective enlistment agreement, or fraudulent enlistments or reenlistments.

b. A Soldier may be separated under the guidance of this regulation, on the basis of procurement of a fraudulent enlistment or reenlistment through any deliberate material misrepresentation, omission, or concealment which, if known at the time of the enlistment or reenlistment might have resulted in rejection. This includes all disqualifying information requiring a waiver, to include concealment of a prior separation from any of the Armed Forces of the United States under conditions barring enlistment or reenlistment in the ARNGUS or USAR.

4. Army Regulation 37-104-4 (Military Pay and Allowances Policy) states, only the Director, DFAS-IN may make settlement actions affecting the military pay accounts of

Soldiers as a result of correction of records by the ABCMR per provisions of AR 15–185 (ABCMR).

5. Army Regulation 600-8-22 (Military Awards) provides that the Purple Heart is awarded for a wound sustained in action against an enemy or as a result of hostile action. Substantiating evidence must be provided to verify the wound was the result of hostile action, the wound must have required treatment by medical personnel, and the medical treatment must have been made a matter of official record.

a. The authority to approve or disapprove recommendations for the award for service members who did not receive a Purple Heart while serving in a unit with wartime awards approval authority is the Chief, Awards and Decorations Branch, HRC. Although a service member may be deployed, award of the Purple Heart for injuries incurred in a previous deployment must be processed through the service member's current chain of command to the Commander, HRC for approval. The first general office in the current chain of command may disapprove the recommendation.

b. Any member of the Army who believes that they are eligible for the Purple Heart but, through unusual circumstances no award was made, may submit an application through the member's chain of command to Commander, HRC (AHRC–PDP–A). If the requestor has separated from the military, the application may be mailed directly to the Commander, HRC (AHRC–PDP–A). The application will include the following documentation pertaining to the wound and inflicting force:

- DA Form 4187 (for currently serving members)
- Chain of command endorsement (through the first general officer in the Soldier's current chain of command for currently serving members)
- Deployment orders
- DA Form 4037 (Officer Record Brief)/Enlisted Records Brief (ERB)/DA Form 2–1 (Personnel Qualification Record)
- One-page narrative describing the qualifying incident and the conditions under which the member was injured or wounded
- Statements from at least two individuals, other than the proposed recipient, who were personally present, observed the incident, and have direct knowledge of the event. Alternatively, other official documentation may be used to corroborate the narrative
- Casualty report (if available).
- Standard Form 600 (Medical Record - Chronological Record of Medical Care)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) (if applicable)

6. Army Regulation 635-5 (Separation Documents), in effect at the time, prescribed the separation documents that were prepared for individuals upon retirement, discharge, or

release from active military service or control of the Army. It established standardized policy for preparing and distributing DD Form 214. The purpose of the separation document is to provide the individual with documentary evidence of his or her military service at the time of release from active duty, retirement, or discharge. It is important that information entered on the form be complete and accurate, reflective of the conditions as they existed at the time of separation.

7. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a provides that 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.

b. Paragraph 3-7b states 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.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). 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 appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if merited by the Soldier's overall record.

8. National Guard Regulation 600-200 (Enlisted Personnel Management), prescribes the criteria, policies, processes, procedures and responsibilities to classify; assign; utilize; transfer within and between states; provide Special Duty Assignment Pay; separate, and appoint to and from Command Sergeant major, Army National Guard and ARNGUS enlisted Soldiers.

9. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for the Correction of Military Records (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//