

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 January 2025

DOCKET NUMBER: AR20240003722

APPLICANT REQUESTS: an upgrade of his uncharacterized discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Medical Profile, 16 March 2012
- Medical Profile, 20 March 2012
- Medical Records
- Mental Health Records
- Department of Veterans Affairs (VA) Benefits Letter, 14 February 2024

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. He was injured during a basic training exercise and was told by the doctor that he would have to go home. He elected an option that would allow him to leave in a way that would allow him to return rather than a medical discharge as he wanted to try to enlist again once he was healed. His drill sergeant never had anyone quit before and it was also his final term as an instructor, and he believes he took the applicant's choice to leave personally. He ordered everyone else to make him as miserable as possible to change his mind. The other Soldiers started by simply bullying him, but it escalated to beatings and hiding his things including his crutches.

b. The physical bullying started simple with things like shoving him in the locker, knocking him over on his crutches, and knocking his food tray out of his hands during lunch (with the knowledge that he could barely carry it and use his crutches, much less bend over to grab what fell). At one point he woke up in the middle of the night to people

holding him down while complaining to each other that they were not able to both restrain him and beat him with their socks full of soap. The next day was the day where they were talking about that movie (possibly Full Metal Jacket) where the one guy got held down and beaten with socks filled with soap, essentially the scenario he woke up to, and from what they were saying it was clear that they were attempting to recruit more people to help with what they either referred to as a sock party or soap party. He began to hide in order to avoid being attacked. He began hiding in the shower whenever he was not monitored so that he could avoid harassment. He also hid in his locker when people approached so that he was already inside, and it rendered the action relatively harmless.

c. He asked the drill sergeant what it would take to make it stop and he was told that he would have to lie to the doctor and tell him that he was all healed. Another drill sergeant told him that his only way out was to kill himself and began urging him to any time he saw him. To this day, he still trembles when thinking about it and has nightmares about his repeated approaches. The statements were so bad that he considered it many times. On his last night there, his drill sergeant had him to stand in the middle of the room and circled everyone around him. He made everyone give 1 to 3 reasons why they thought he was faking his injury and if they did not then everyone had to do pushups. Upon completion, the drill sergeant took his crutches and ordered him to walk across the circle. He fell a few steps in and hit his eye on the corner of the gun rack that was kept in the middle of the room. He laughed at his "obvious acting" as he put it and pushed him. He still has a twitch in that eye sometimes.

d. He tried to report these incidents to the unit commander, captain (CPT), but he refused to acknowledge them. He said that there was no chance that something like this was happening but it was obvious that he was covering for the drill sergeant. He also learned that another drill sergeant had been recently suspended from the very same company during the very same term, and it was well known that the CPT was against it and not happy about it. The difference was that the drill sergeant was not well liked by those under him, and multiple people had reported him so the CPT could not ignore the situation. There was a petition going around the company to get the drill sergeant suspended or worse (the same one who was pushing him to kill himself) and so the captain could not ignore it. The applicant attempted to get people to help him, but everyone loved the drill sergeant who started all this. At that point, only 2 other Soldiers spoke to him socially by the time this had escalated this far. They both told him that if they had to choose between him and that drill sergeant, that it wasn't even a question who they would pick. Every single person he spoke to, friend or otherwise, said that they did not want to risk losing this drill sergeant because he was "so chill" so they would rather lie on his behalf than tell the truth. When he went to the CPT, he had no support and was told that if he kept bothering him with this it would just get worse.

e. After that is when a man that he never met came in with his exit paperwork.

After everything that had been happening, he was just eager to get out of there. The man was exceedingly nice, told him what to sign, and gave him a summary of what everything meant. He found out the next day that the man worked for the captain as he saw him grouped with the captain and the drill sergeants laughing together and pointing at him. He realized as he was at home that they were laughing because the man had gotten him to sign away his right to get any help or support from the military after he left.

3. The applicant provides:

a. Two medical profiles show the applicant was placed on profile with limited drills and training, in addition to be issued crutches.

b. A medical record lists a report summary of the applicant's history from approximately 14 January 1991 to 16 January 2015.

c. His mental health records include a letter from Dr. BO of Geode dated 8 June 2023, which states he has been treating the applicant for post-traumatic stress disorder (PTSD) since June 2022 with additional details of his symptoms. Additionally, a letter from The Ginkgo Psychology Group dated 12 June 2023, includes a list of the applicant's current diagnoses which includes:

- PTSD
- major depressive disorder
- generalized anxiety disorder

d. A letter from the VA dated 14 February 2024, shows the applicant received a 100% service-connected disability rating effective 6 September 2023 and is considered to be totally and permanently disabled due to his service-connected disabilities.

4. A review of the applicant's available service record reflects the following:

a. He enlisted in the Regular Army on 22 February 2012.

b. The Fort Benning Initial Entry Training (IET) Sick Slip shows on 12 March 2012 and on 16 March 2012, he was restricted from running and ruck marching due to injury to his legs.

c. On 16 March 2012, he was assessed and recommended for separation by a Licensed Clinical Social Worker under the provisions of Chapter 11 for unsatisfactory performance.

d. A DD Form 2627 (Report of Medical Assessment) dated 20 March 2012 shows he was being assessed for medical injury of shin splints to his legs and management of his mental condition.

e. On 27 March 2012, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 11, Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separation), for entry level performance and conduct. The reasons for his proposed action were because he had not adapted socially or emotionally to military life. He demonstrated character and behavior characteristics not compatible with satisfactory continued service and failed to respond to counseling. He acknowledged receipt on the same day.

f. On 27 March 2012, after declining consultation with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to him
- he may be ineligible for many or all benefits as a Veteran under both Federal and State laws
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading
- he will be ineligible to apply for enlistment in the U.S. Army for a period of six months following discharge

g. On 28 March 2012, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of AR 635-200, Chapter 11, for entry level performance and conduct.

h. On 5 April 2012, he was discharged from active duty with an uncharacterized characterization of service. His DD Form 214 shows he completed 1 month and 14 days of active service with no list time. He was assigned separation code JGA and the narrative reason for separation listed as "Entry Level Performance and Conduct," with reentry code 3.

5. On 18 March 2015, 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, with a subsequent denial on 3 January 2024.

6. By regulation (AR 635-200), a separation is described as an entry-level separation if processing is initiated while a member is in an entry-level status. This separation policy applies to Soldiers who enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve who are in entry level status and, before the date of initiation of separation action, have completed no more than 180 days of creditable continuous active duty or IADT by the date of separation and have demonstrated they are not qualified for retention.

7. By regulation (AR 635-8), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

8. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his uncharacterized discharge. On his application he indicated Posttraumatic Stress Disorder (PTSD) is related to his request. 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 (RA) on 22 February 2012, 2) he provided two sick slips from Fort Benning Initial Entry Training (IET) (12 March 2012 and 16 March 2012) showing he was restricted from running and ruck marching due to injury to his legs, 3) on 16 March 2012, he was recommended for separation by a Licensed Clinical Social Worker (LCSW) under the provisions of Chapter 11 for unsatisfactory performance, 4) a DD Form 2627 dated 20 March 2012 shows he was being assessed for medical injury of shin splints to his legs and management of his mental condition, 5) on 27 March 2012, the applicant's immediate commander notified the applicant of his intent to separate him under the provisions of Chapter 11, Army Regulation (AR) 635-200, for entry level performance and conduct. The reasons for his proposed action were because he had not adapted socially or emotionally to military life and that he demonstrated character and behavior characteristics not compatible with satisfactory continued service and failed to respond to counseling, 6) on 05 April 2012, he was discharged from active duty with an uncharacterized characterization of service. He completed 1 month and 14 days of active service with no lost time with a separation code of JGA, narrative reason for separation as Entry Level Performance and Conduct, and a reentry code of '3.' 7) the

applicant's previous requests to the ADRB on 18 March 2015 and 03 January 2024 were denied as his discharge was determined to be fair and equitable.

2. 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) and Veterans Benefits Management System (VBMS) were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. In-service medical records were available for review via JLV from 23 February 2012 through 19 April 2012. On 24 February 2012 at the Reception Station TMC as part of a medical screening it was noted that the applicant reported a history of previous treatment for depression and medications and was requesting to speak with someone. At the time of the visit, he denied having current suicidal ideation and denied any previous suicide attempts (SA). He was diagnosed with Adjustment Disorder with Anxiety and was released without limitations. On 25 February 2012, his medical provider referred him to counseling. On 01 March 2012, he was seen by BH for an initial intake and reported the following mood symptoms: "low self-esteem, guilt, shame, feeling tired, feel tense, stressed." The provider noted that he denied any previous psychiatric treatment or hospitalizations. He was not diagnosed with a psychiatric condition at the time of the evaluation, and it was noted that he was having some trouble adjusting but was "doing better now." He was returned to duty without limitations. He was re-evaluated by BH on 13 March 2012 noting that he was unable to keep up with others in training. More specifically, the provider documented how his treatment by peers and cadre was impacting his emotional state and performance (e.g., doing horrible at PT, difficulty keeping up with others, trouble connecting with peers, difficulty coping with being in training, desire to go home and work on his physical abilities and then return at a later date, and feeling upset about the health of his grandmother). He was diagnosed with Adjustment Disorder with Disturbance of Emotions and was released without limitations. He presented to BH on 16 March 2012 to attend the Cognitive Processing Therapy (CPT) group. He was released without limitations and the provider noted that the applicant was provided a memorandum for his unit to consider a Chapter 11, Entry Level Separation (ELS). On 21 March 2012, he presented to BH for a follow-up, and it was noted that he reported being singled out by his drill sergeant for "harassment citing that he was denied permission to access the TMC." It was documented that he reported experiencing low self-esteem, that he could not make it through basic training, and was seeking "rescuing by CMHS." During his BH follow-up on 23 March 2012, it was noted that he would continue to follow-up with BH on a weekly basis in the Chapter 11 Discharge group, which he attended until his discharge. His last BH visit was on 03 April 2012 with his final BH diagnosis noted as Adjustment Disorder.

4. A review of JLV shows the applicant is 100% service-connected for PTSD through the VA. A VA Rating Decision Letter dated 01 October 2024 noted that the applicant was granted service connection for PTSD with MDD and GAD effective 04 January 2015. An Initial PTSD Disability Benefits Questionnaire (DBQ) dated 13 September 2017 shows the applicant was diagnosed with Major Depressive Disorder (MDD), Recurrent, Severe with Psychotic Symptoms, PTSD, and Cannabis Use Disorder, Moderate. The stressor associated with his diagnosis of PTSD was documented as verbal abuse and threats that occurred during his two months of basic training. He completed another Compensation and Pension (C&P) examination on 23 October 2023 with his diagnoses of PTSD and MDD reaffirmed (his MDD specifier was updated to Moderate with Anxious Distress and removed Severe with Psychotic Symptoms) and added a diagnosis of Generalized Anxiety Disorder (GAD).

5. The applicant provided an undated self-authored statement regarding his experiences in the military as part of his application. He asserted that his drill sergeant took his "leaving personally" and ordered everyone to make him "as miserable as possible to change my mind." He described episodes of bullying and physical assault. He also asserted that one drill sergeant told him the only way out was to "kill myself and began urging me to any time he saw me." He also indicated he tried to report these incidents to the Captain but "refused to acknowledge them."

6. The applicant provided civilian BH records as part of his application. A treatment summary dated 08 June 2023 authored by his treating psychiatrist at Geode documented he had been under his care for treatment of PTSD since 06 June 2022. The provider documented that the applicant attributed his PTSD symptoms to his time in basic training and noted he continued to suffer from nightmares, flashbacks, intrusive memories, negative emotional state, avoidance behaviors, difficulty with participation, hypervigilance/anxiety, insomnia, exaggerated startle response, difficulty leaving his home, making friendships, and working. He also provided a letter from his treating psychologist from The Ginkgo Psychology Group dated 12 June 2023. The provider documented the applicant had been engaged in individual therapy with him since June 2018 with his diagnoses were noted as PTSD, MDD, and GAD. It was also documented that the applicant reported his ongoing problems stemmed from the "various forms of aggression, violence, and threats of violence that he alleges to have endured during his Army training."

7. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed post-discharge through the VA with three potentially mitigating BH conditions, PTSD, MDD, and GAD. In-service records show he was diagnosed with adjustment disorder (with Disturbance of Emotions; with Anxiety); however, it is of note that adjustment disorders that are acute (i.e., lasting less than 6 months) do not constitute mitigating conditions and fall under the purview of administrative separations. Although there is evidence that the

applicant has been diagnosed and service-connected through the VA post-discharge with several potentially mitigating BH conditions, this Advisor contends that his discharge under the provisions of AR 635-200, Chapter 11 was fair and equitable.

#### 8. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been 100% service-connected through the VA for PTSD with MDD and GAD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been 100% service-connected through the VA for PTSD with MDD and GAD.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Review of the available in-service medical records show the applicant was diagnosed with Adjustment Disorder (with Disturbance of Emotions; with Anxiety). There is no documentation in the available in-service medical records indicating the applicant was diagnosed with a BH condition that fell below medical retention standards IAW AR 40-501 (e.g., no evidence of a BH profile or need for extended or recurrent hospitalization for any BH conditions). Furthermore, it is of note that Adjustment Disorders that are acute (i.e., lasting less than 6 months) do not constitute mitigating conditions and fall under the purview of administrative separations. Since being discharged from the military, the applicant has been diagnosed and 100% service-connected through the VA for PTSD with MDD and GAD. It is of note that VA examinations are based on different standards and parameters, they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. Thus, subsequent diagnoses of PTSD, MDD, and/or GAD through the VA is not indicative of misdiagnosis or other injustice at the time of service. Furthermore, even in-service diagnoses of PTSD, MDD and/or GAD are not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. Given that the preponderance of evidence available does not indicate the applicant had a condition at the time of discharge that would have required disposition through medical channels, a referral to IDES for further processing is not warranted and his Uncharacterized separation under provisions of Chapter 11 of AR 635-200 appears proper and equitable.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 her characterization of service. The governing regulation provides that a separation will be described as an entry-level separation, with service uncharacterized, if the separation action is initiated while a Soldier is in entry-level status. Upon review of the applicant's request, available military records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed post-discharge through the VA with three potentially mitigating BH conditions, PTSD, MDD, and GAD.

2. The Board agreed that the preponderance of evidence available does not indicate the applicant had a condition at the time of discharge that would have required disposition through medical channels, a referral to IDES for further processing is not warranted and his uncharacterized separation under provisions of Chapter 11 of AR 635-200 appears proper. The opine noted, in-service records show he was diagnosed with adjustment disorder (with Disturbance of Emotions; with Anxiety); however, it is of note that adjustment disorders that are acute (i.e., lasting less than 6 months) do not constitute mitigating conditions and fall under the purview of administrative separations. Although there is evidence that the applicant has been diagnosed and service-connected through the VA post-discharge with several potentially mitigating BH conditions, this Advisor contends that his discharge under the provisions of AR 635-200, Chapter 11 was fair and equitable.

3. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been 100% service-connected through the VA for PTSD with MDD and GAD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been 100% service-connected through the VA for PTSD with MDD and GAD.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Review of the available in-service medical records show the applicant was diagnosed with adjustment disorder (with Disturbance of Emotions; with Anxiety). There is no documentation in the available in-service medical records indicating the applicant was diagnosed with a BH condition that fell below medical retention standards IAW AR 40-501 (e.g., no evidence of a BH profile or need for extended or recurrent hospitalization for any BH conditions). Furthermore, it is of note that adjustment disorders that are acute (i.e., lasting less than 6 months) do not constitute mitigating conditions and fall

under the purview of administrative separations. Since being discharged from the military, the applicant has been diagnosed and 100% service-connected through the VA for PTSD with MDD and GAD.

- a.) It is of note that VA examinations are based on different standards and parameters, they do not address whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating does not imply failure to meet Army retention standards at the time of service or that a different diagnosis rendered on active duty is inaccurate. Thus, subsequent diagnoses of PTSD, MDD, and/or GAD through the VA is not indicative of misdiagnosis or other injustice at the time of service.
- b.) Furthermore, even in-service diagnoses of PTSD, MDD and/or GAD are not automatically unfitting per AR 40-501 and would not automatically result in medical separation processing. Given that the preponderance of evidence available does not indicate the applicant had a condition at the time of discharge that would have required disposition through medical channels, a referral to IDCS for further processing is not warranted and his Uncharacterized separation under provisions of Chapter 11 of AR 635-200 appears proper

4. The Board determined the applicant was unable to adapt socially and emotionally to the demands of military life. His behavior was deemed incompatible with continued service, and he failed to benefit from counseling interventions. The Board considered the applicant's personal statement and civilian behavioral health documentation, which included serious allegations of mistreatment during basic training, these claims were not supported by his military records. There is no indication that the allegations were formally investigated or substantiated. Due to the applicant's brief period of service, the nature of his separation, and the absence of compelling evidence to challenge regulatory standards, the Board found the uncharacterized discharge was appropriate and agreed there is insufficient evidence to support granting relief.

5. An uncharacterized discharge is given to individuals on active duty who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. This type of discharge does not attempt to characterize service as good or bad. Through no fault of his own, he simply had a medical condition which was, unfortunately, not within enlistment standards.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

CHAIRPERSON

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, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) 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.

b. Paragraph 3-7b (General Discharge) 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. Chapter 11 sets policy and provides guidance for the separation of personnel because of unsatisfactory performance or conduct (or both) while in an entry-level status. It states when separation of a member in entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both) as evidenced by inability, lack of reasonable effort, or failure to adapt to the military environment, the member normally will be separated per this chapter. This separation policy applies to Soldiers who enlisted in the Regular Army, Army National Guard, or U.S. Army Reserve who are in entry level status and, before the date of initiation of separation action, have completed no more than 180 days of creditable continuous active duty or IADT by the date of separation and have demonstrated they are not qualified for retention for one or more of the following reasons:

- cannot or will not adapt socially or emotionally to military life
- cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation or self-discipline
- have demonstrated character and behavior characteristics not compatible with satisfactory continued service
- failed to respond to counseling

3. Army Regulation 635-8 (Separation and Processing Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

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 post-traumatic stress disorder (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. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, 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.

6. 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 (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 based on equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

7. 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//