

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 February 2025

DOCKET NUMBER: AR20240005151

APPLICANT REQUESTS:

- reversal of his Article 15 for the incident that occurred on 9 November 1994
- restoration to the rank/grade of private first class (PFC)/E-3
- promotion to the rank/grade of specialist (SPC)/E-4, effective 28 July 1994
- removal of documents from his Official Military Personnel File (OMPF)
 - three DA Forms 4856 (General Counseling Form), monthly counseling statements for March, April, and May 1994
 - one DA Form 2823 (Sworn Statement), dated 13 May 1994
 - two additional statements written by the applicant, one undated the other dated 13 May 1994
- addition of the Humanitarian Service Medal and Joint Meritorious Unit Award to his DD Form 214 (Certificate of Release or Discharge from Active Duty) for his participation in Operation Safe Haven, Republic of Panama, 26 August 1994 to 1 March 1995
- award of the Army Good Conduct Medal
- and upgrade of his under honorable conditions (general) character of service

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

- Online Application
- letter, amended request, dated 9 July 2024
- self-authored statement (two)
- Exhibits 1 and 2, Army Service Records (50 pages), dated 31 March 1993 to 21 March 1995
- Exhibit 3, Tropic Times, Volume VII, Number 38, dated 23 September 1994
- Exhibit 4, Monograph, Camp Riots During Operation Safe Haven, dated 27 May 1997
- Exhibit 5, article, Brutality of 1994 Panama Fight..., Stars and Stripes, published 7 December 2011
- Exhibit 6, Personal Information Report, My HealtheVet, Department of Veterans Affairs (VA), dated 26 April 2024
- Exhibit 7, letter, VA Rating Decision, dated 27 July 2021

- Exhibit 8, Official Transcript, University of Southern Maine (USM), printed 30 September 2019
- Exhibit 9, Academic Transcript, Western Governors University (WGU), dated 4 August 2021
- Exhibit 10, statement of support, dated 21 June 2021
- Exhibit 11 to Exhibit 13, VA Annual Proficiency Reports (three), dated 15 March 2020 to 14 March 2024
- Exhibit 14, Personal Information Report, My HealtheVet, VA, dated 4 June 2020
- Exhibit 15, Psychiatry/Mental Health Note, VA, dated 3 April 2014
- Exhibit 16, Registered Nurse License, Maine State Board of Nursing, expiration date 18 November 2024
- Exhibit 17, Certification of Investigation, U.S. Office of Personnel Management, dated 11 March 2020
- Exhibit 18, Background Check, American Databank, LLC, dated 17 May 2011
- Exhibit 19, Standard Form (SF) 558 (Emergency Care and Treatment Record), dated 12 April 1993
- Exhibit 20 to Exhibit 30, Army Service Records, dated 30 August 1993 to 24 June 1997
- Exhibit 31, Service Treatment Records (6 pages)
- Exhibit 32, Stress Fractures, National Center for Biotechnology Information (NCBI) Bookshelf, dated 10 July 2023
- Exhibit 34, SF 600 (Health Record – Chronological Record of Medical Care), dated 15 November 1993
- Exhibit 35 to Exhibit 42, Army Service Records, dated 10 February 1993 to 28 September 1999
- Exhibit 43, thesis, Physical Fitness and the 75th Ranger Regiment, Major (MAJ), M.D.P., U.S. Army Command and General Staff College, dated 4 June 1999
- Exhibit 44, High Standards and Discipline; The 75th Ranger Regiment, Sergeant Major (SGM) L.A.S., U.S. Army Sergeants Major Academy, dated 15 August 2009

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. He submitted his case on 26 April 2024. On 22 June 2024, he sent an email requesting his case be withdrawn as he attained information that would impact the case.

No response from the Army Review Boards Agency (ARBA) was received. He asks that his submission be amended to incorporate additional exhibits and that his letter, dated 9 July 2024, replace the initial statement of support which was included in his first application package. The documents from both submissions are included in the supporting documents of this Record of Proceedings (ROP).

b. In addition to the above requests, he further requests the Board examine the regulatory defects in his separation proceedings; considers his testimony regarding missing information in his OMPF; considers the nature of his service in context to his mental health, his leadership's lack of response to his mental health, and the ramifications of that; and considers how his medical evidence shows he was giving every reasonable effort.

c. His difficulty in the Army started after arriving to his first duty station. He was approached by his team leader at the enlisted club. His team leader was intoxicated and invited the applicant back to his room. The applicant was very unsettled, declined the offer, and went into the latrine. His team leader followed him, yelling and kicked the stall door open, lacerating the applicant's finger. Staff duty arrived and restrained the team leader. After leaving the latrine, the applicant contacted the Provost Marshal's Office. He was approached by the charge of quarters and his acting platoon sergeant, who told him it was a company issue, and he was not to contact the Military Police (MP) again. He was escorted to the aid station for treatment and subsequently moved to a different team.

d. He was found drunk on several occasions. On 22 May 1993, he was counseled and threatened with court-martial. He was only in the unit 90 days, and he was sent to a different squad. He requested permission to seek counseling regarding the issue with his previous team leader. He was advised to speak with the chaplain. Neither request for mental health nor spiritual counseling were fulfilled. Throughout the year, he was counseled for alcohol use. He developed some self-harming behavior and expressed a desire to end his life, yet he received no substance abuse or mental health counseling.

e. In April 1994, he was apprehended in a highly intoxicated state by the MPs for urinating on a bush. He was struggling with alcohol use and made the decision to stop drinking. He began experiencing increasing pain and difficulty with his legs. He tried to "suck it up" and did physical training (PT) twice daily to overcome perceived PT deficiencies. At his 24-month in service mark, he had 12 months' time in grade (TIG) as a PFC/E-3. He was eligible for advancement to SPC/E-4; however, he was not formally counseled as to why he was not promoted. He was simply told "You're not ready."

f. He was transferred to another platoon for "rehabilitation." He believed the move was designed to build a case for his separation. The atmosphere in the new platoon was adversarial, and he felt like a target. In September 1994, he lost a friend and fellow

squad member to an automobile crash. It was a devastating loss. On 9 November 1994, he was confronted by his team leader, who denigrated him for being weak. At that point, he expressed a desire "to end it all." He declared, "I can't take this. Fxxx this life and everything about it," or words to that affect. He was overheard by his squad leader and was given nonjudicial punishment (NJP) for violating Article 91.

g. He was counseled for falling out of two PT runs. It is important to note that the standards being enforced in his unit were consistent with those being enforced by the 75th Ranger Regiment, a highly specialized and elite unit, not a light infantry unit. The standard exceeded the Army minimum. It was an unfair standard to hold him to and inequitable to discipline him or refer punitive action towards him for failing to meet those standards. The result of his efforts to overcome what his command perceived as a deficiency resulted in "extreme stress reactions" which developed into full stress fractures.

h. In December 1994, he was engaged in Operation Safe Haven. He was part of the Quick Reaction Force who was called upon to quell a riot in the camp. Upon entering the camp, they were met with a deluge of softball-sized rocks. They were trapped, outnumbered, and taking heavy casualties. He was scraped and bruised; and witnessed his friends and brethren as their bones were being broken, while enduring the punishing impact of the rocks showering down on them.

i. He was separated in March 1995. His separation physical shows he complained of depression and sleep disturbances and was diagnosed with pes planus and stress fractures. In 1996, he did some alcohol and depression counseling. In 1997, he joined the U.S. Army Reserve (USAR) and was immediately promoted to PFC. He was assigned to a Drill Sergeant Slot and promoted to Corporal/E-4 in August 1998. In September, he requested to be transferred to the Inactive Ready Reserve (IRR) and was subsequently honorably discharged from the USAR.

j. He earned his bachelor's degree in nursing and gained employment at the VA. His performance is exemplary. He earned his master's degree. He volunteers as the webmaster for the West Gardiner Garden Club website. They provide annual scholarships for students pursuing agricultural or horticultural degrees. He maintains his family property, Tucker Farm, where they grow and preserve vegetables, jams, relishes, and pickles. They also grow seedlings which they sell at cost to the elderly and those in need. He maintains a problem free life and a nursing license free of complaints or adverse action.

k. His discharge shows clear evidence malice and malfeasance. Felonious acts were committed to smear his record. Negative counseling statements were forged. His commander failed to properly transfer him for rehabilitative purposes. No waiver was sought or granted. Counseling was inadequate and did not meet regulatory

requirements. His diagnosis of PTSD shows the VA determined his service experience caused him permanent harm. He asked for help, his leaders documented the requests, and never provided help. He believes his issues stem back to his confrontation with his team leader in April 1993.

3. In support of his request, the applicant provides the following issues for the Boards consideration:

a. There are flaws in his OMPF and documents used in his Chapter 13 proceedings.

(1) The monthly counseling statements from April to May 1994 were removed from his record and replaced with statements signed by someone else. References to his accomplishments were removed. There is a false reference that he was on leave the entire month of May. He was on leave for two weeks. The signatures bear no resemblance to his. They are forgeries. (see Exhibit 21) He asks that these counseling statements be removed.

(2) The sworn statement from PFC C.E.P. (Exhibit 22), shows that his commander was considering separation action against him 10 months before executing it. He was not aware of the accusations made. Nor was he made aware of his Article 31 rights. He was ordered to write down what happened, potentially incriminating himself, which was an unlawful order. PFC C.E.P.'s statement and his accompanying statement (Exhibit 23) have no place in his OMPF.

(3) The third statement (Exhibit 24) pertains to the incident on 1 April 1994, where he was seen urinating on a bush. The inclusion of this statement was not done in accordance with Army Regulation (AR) 600-37 (Unfavorable Information). He was neither informed of its inclusion, nor was it marked "AR 600-37 complied with."

b. There were serious regulatory defects in his chapter proceedings.

(1) In accordance with AR 635-200 (Personnel Separations – Enlisted Personnel), rehabilitative reassignment should be between battalion/brigade sized units or larger when considered necessary, which can be waived for small or remote units. The regulation further states "Waiver of rehabilitative transfer may be granted at any time on or before the date the separation authority approves or disapproves the separation proceedings. Decisions to withhold waiver authority will be done in writing." No such waiver was granted. His reassignments were done at the lowest possible level. Rehabilitative transfer congruent with the regulation simply was not attempted.

(2) AR 635-200 requires that Soldiers be advised of the benefits of an honorable discharge. Specifically, upon completion of six months of service and after any act of alleged misconduct. His counseling statements do not include the requisite verbiage,

nor does his DA Form 2-1 (Personnel Qualification Record – Part II) show that “Benefits of Honorable Discharge” training was completed. Additionally, the general tone of his counseling statements are generalized admonishments. They are void of specific action plans and follow-up.

(3) The number of enclosures listed in his separation packet do not add up. The entire separation packet is full of irregularities.

(4) AR 635-200, paragraph 1-34 provides that processing under the Disability Evaluation System (DES) takes precedence over administrative separation processing. Prior to his separation, he was diagnosed with pes plenum. AR 40-501 (Standards of Medical Fitness) provides pes planus, when symptomatic, is cause for referral to the DES. His diagnosis was not fully evaluated nor documented. It should have short-circuited his chapter 13 separation.

c. There are flaws with his Article 15.

(1) He had difficulty dealing with the death of his friend. He was confronted by his team leader and denigrated for being weak. In response, the applicant expressed a desire “to end it all.” He declared, “I can’t take this. Fxxx this life and everything about it,” or words to that affect. He was overheard by his squad leader, which resulted in NJP. He was not advised of his Article 31 rights. The charge was inequitable. He was speaking to a SPC, while vaguely aware that his non-commissioned officer (NCO) was in the vicinity. The language was not directed at his NCO.

(2) He was told he could only consult counsel if he chose to take the action to court-martial and if he lost, he would have a felony record. This was a fabrication and violation of his right to legal counsel. He was instructed to make his decision based solely on what was told to him, and he had to sign the form on the spot.

(3) He was in an Infantry Company. Four letter words are more common than boot laces. They are used in basically every sentence uttered. The charge did not pass the straight face test; his language was not out of place or particularly offensive. He asks that the Board overturn the NJP for failing to meet the elements of the offense, he was not advised of his Article 31 rights, and his punishment was inequitable.

d. Counseling statements from his high-achieving months, orders awarding him the Expert Infantryman Badge (EIB), and a recommendation for the Army Achievement Medal for his performance during Operations Safe Haven are missing from his OMPF. He believes these documents were removed because they did not support the separation action that the commander wanted to initiate.

e. He has mental health considerations. It is the responsibility of the commander to recognize, identify, and respond to signs and symptoms of mental health concerns. He asked for help, on 22 May and 30 June 1993 and was ignored. On 9 November 1994, he was given NJP instead of help. After his discharge, he received psychiatric treatment and was diagnosed with service-connected post-traumatic stress disorder (PTSD). There is a Report of Mental Status Evaluation (Exhibit 2) in his OMPF, which cleared him for separation. It is not included in his Service Treatment Record. He has never seen it before, and his information is conspicuously typed in.

f. There is medical evidence that mitigates the evidence used in his discharge. November 1993 was the first time he was seen for pain related to running. By the time he was discharged, both of his arches were flat, and he was diagnosed with pes planus. In October 1994, he injured his back. He continued to do PT twice daily. He was eventually diagnosed with "severe stress reaction" which became stress fractures. These are not the injuries of someone who is not putting in effort. He is service connected by the VA for bilateral pes planus.

g. There are awards not currently on record. Around 1997, he received a package containing a Humanitarian Service Medal, awarded to him for his participation in Operation Safe Haven. Since his discharge, the Joint Meritorious Unit Award has been awarded to all units assigned to Joint Task Force Safe Haven, per Department of the Army General Order (DAGO) 2018-19. Should the Board remove his NJP and upgrade his character of service, he requests award of the Army Good Conduct Medal.

4. The applicant enlisted in the Regular Army on 28 July 1992 in the rank/grade of private/E-2. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman). He was stationed in Panama from 8 February 1993 to 24 March 1995.

5. He was formally counseled on ten occasions between 19 February and 30 July 1993. Areas of emphasis covered in the counseling included:

- initial counseling
- financial management
- outstanding preparation for the organizational inspection
- below average common courtesy, self-discipline, and military knowledge
- failure to follow instruction by consuming alcohol
- removal from his position as radio telephone operator (RTO)
- poor performance/missing formation
- substandard performance/transfer to a different squad for rehabilitation
- initial counseling in new squad
- not considered for promotion due to performance
- request to speak to Chaplain; Chaplain on leave (30 June 1993)

- hard work, successful completion of mission, professional performance

6. He was advanced to the rank/grade of PFC/E-3, effective 1 August 1993.

7. The applicant was formally counseled on seven occasions between 30 August 1993 and 28 March 1994. Areas of emphasis covered in the counseling included:

- improve PT on two occasions
- EIB proficiency/good overall performance August through October
- completion of 20 mile road march
- medical profile and leave during the middle of November
- great job at the National Training Center (NTC)
- preparation for EIB
- marginal performance, lack of motivation, falling out of road march and PT runs during the month of March

8. On 3 April 1994, the applicant was formally counseled for being caught by the MPs, urinating on a bush, outside of the enlisted club. At the time of the incident, the applicant was under the influence of alcohol. He was encouraged to stop drinking completely due to his inability to control himself when he was drinking. In response to the counseling, the applicant provided a six page statement entitled, "Public Indecencies," wherein he expressed regret and further stated his behavior was inexcusable and showed a lack of discipline.

9. There are two statements dated 13 May 1994 included in the applicant's OMPF as a part of his case files for approved separations. The statements reference an incident of alleged harassment which took place between the applicant and PFC C.E.P., on or about 10 May and 11 May 1994.

a. In a sworn statement, PFC C.E.P. stated that after telling the applicant she did not want a romantic relationship, he was seen banging on her door and throwing rocks at her window. The MPs were called, and he was escorted to bed. The following night, he returned to her room twice. She did not let him in. A report was made to her first sergeant. The applicant's chain of command was notified. PFC C.E.P. was told to go to the MP station to complete a statement. Her first sergeant informed her the applicant was pulled off of leave, locked down, and his separation was going to be initiated.

b. The applicant stated he and PFC C.E.P. spent a substantial amount of time together and expressed mutual interest in one another. She eventually chose to date his friend. He held no ill will towards them. On 10 May 1994, he was watching a movie with her when "tickling" came into play. He asked her to stop for which she requested an explanation. He told her it might lead to something they would regret. She resumed the behavior, and they wound up in bed (fully clothed). He got the impression it was a game

to her. He got up, removed his hand cuffs from her wrists, put on his boots and left. He returned the following night to explain to her that he felt she was playing games. He asked that she never speak to him again. After leaving, he remembered he loaned her cassettes and compact discs. He went back to retrieve them multiple times. However, she did not answer the door, and he left as he was disturbing others.

10. The applicant was formally counseled on ten additional occasions between 19 May and 31 October 1994. Areas of emphasis covered in the counseling included:

- improving PT/failure to meet platoon PT standards
- leave status entire month of May
- refusal to train/falling out of road march
- failure to be at proper place which could lead to action under the Uniform Code of Military Justice (UCMJ)
- falling out of brigade run
- rehabilitative transfer to different platoon
- unsatisfactory performance
- initial counseling (new squad leader)
- falling out of platoon run
- individual requirement to conduct PT twice daily and on weekends
- participation in Operation Safe Haven
- failure to meet company PT standards

11. The applicant's immediate commander considered NJP against the applicant, under the provisions of Article 15 of the UCMJ, on 18 November 1984, for being disrespectful in language to an NCO, who was in the execution of his office, on or about 9 November 1984. His punishment consisted of reduction to private/E-2, 14 days of extra duty, and 14 days of restriction. His appeal was denied.

12. The applicant underwent a medical examination on 27 January 1995. The relevant Standard Form (SF) 93 (Report of Medical History) and corresponding SF 88 (Report of Medical Examination) show the applicant reported frequent trouble sleeping and depression or excessive worry. He also noted he was undergoing treatment for severe stress reactions in his right tibiae and disintegrating bone condition in the tarsal region of his right foot. The examining provider noted pes planus, stress fracture, and recommended the applicant to orthopedics. The applicant was deemed qualified for separation.

13. On 7 February 1995, the applicant underwent a Mental Status Evaluation. No mental health diagnosis was diagnosed, and the applicant was cleared to participate in any administrative action deemed appropriate by his command.

14. The applicant's commander notified the applicant on 23 February 1995 of his intent to initiate administrative action to separate him under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance. The commander noted the applicant was counseled on numerous occasions and had not made any effort to overcome his deficiencies. The applicant acknowledged receipt of the notification on that same date.

15. The applicant consulted counsel on 7 March 1995. He was advised of the basis for the contemplated separation action, and its effects; of the rights available to him; and the effect of any action taken to waive his rights. He had the option to submit statements in his own behalf.

16. The applicant's immediate commander formally recommended his separation, prior to his expiration term of service, under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance.

17. On 13 March 1995, the separation authority approved the recommended separation action, and directed the issuance of a DD Form 257A (General Discharge Certificate) and that the applicant be transferred to the IRR.

18. The applicant was discharged on 29 March 1995, in the rank/grade of private/E-2, under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his service was characterized as under honorable conditions (general), with separation code LHJ and reentry code 3. He completed 2 years, 8 months, and 2 days of net active service. He was awarded or authorized the following:

- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle bar (M-16)
- Sharpshooter Marksmanship Qualification Badge with Grenade bar
- Expert Infantryman Badge

19. Orders C-06-724416, issued by the U.S. Army Reserve Personnel Center, St. Louis, MO, on 24 June 1997, show the applicant was voluntarily transferred from the IRR to the 405th Medical Hospital, effective 19 June 1997.

20. The applicant provides personnel records, not included in his OMPF, which show the following:

- 19 June 1997, advancement to PFC/E-3

- 5 April 1998, release from the 405th Medical Hospital and transfer to Company C, 2nd Battalion, 304th Regiment, 4th Brigade
- 3 May 1998, promotion to Corporal/E-4
- 1 December 1998, voluntarily release from unit and transfer to IRR
- 28 September 1999, honorable discharge from the USAR

21. The applicant further provides:

a. Exhibits 1-2, 20-30, and 35-42, which contain Army Service Records summarized, in pertinent part, in the Record of Proceedings (ROP) above.

b. Exhibit 3, Tropic Times, Volume VII, Number 38, dated 23 September 1994, page 4, reports the death of the applicant's friend, V.M., on 18 September 1994.

c. Exhibit 4, Monograph, Camp Riots During Operation Safe Haven, dated 27 May 1997, page 5, shows that Company C, 5th Battalion, 87th Infantry Regiment, Fort Davis, was deployed to respond to a riot at Camp Three, on the afternoon of 7 December 1994. Companies B and C attempted to secure a foothold inside the camp. However, they were unsuccessful due to the massive rock bombardments thrown by over 100 rioters.

d. Exhibit 5, article, Brutality of 1994 Panama Fight..., Stars and Stripes, published 7 December 2011, discusses the terror and ferocity of the riot, which lasted 20 minutes. Although there were no deaths in the battle, the individuals involved report being unsure if they would emerge alive. It was unlike anything they had ever faced.

e. Exhibit 8 and Exhibit 9 contain the applicant's transcripts from USM, printed 30 September 2019 and WGU, dated 4 August 2021.

f. Exhibit 10, contains a statement of support, dated 21 June 202, wherein the author attests to their shared experiences while in the same unit in Panama. He states the applicant began drinking a lot and seemed to struggle following the attack by his NCO which resulted in a couple of stitches in his hand. He was moved from one squad to another. Things got ugly after the death of their friend. The applicant was a mess. He went to talk to his chain of command and was yelled at and put in the front leaning rest. He felt like everyone was out to get him. They both participated in the response to the camp riot. Everyone who entered the camp was hurt in some way. The carnage was unreal. Afterwards, the applicant would not hang out outside; he freaked out a couple times; and began doing impulsive things. He married a Panamanian girl and spent most of his time off post. He asked for help a few times, but they were told you would be taken out of your squad and placed on full-time charge of quarters.

g. Exhibits 11 to 13, contain three VA Annual Proficiency Reports, which show the applicants outstanding evaluations as a Caregiver Support Coordinator at the VA, from dated 15 March 2020 to 14 March 2024.

h. Exhibit 16, contains his Registered Nurse License, from the Maine State Board of Nursing, with an expiration date of 18 November 2024.

i. Exhibits 17 and 18 contain a Certification of Investigation, from the Office of Personnel Management, dated 11 March 2020, and a background check from American Databank, LLC, dated 17 May 2011, show he passed a background check to obtain his nursing license and an investigation for employment at the VA.

j. Exhibits 43 and 44, contain two theses, entitled, "Physical Fitness and the 75th Ranger Regiment," written by Major (MAJ), M.D.P., dated 4 June 1999, and "High Standards and Discipline; The 75th Ranger Regiment," by SGM L.A.S, dated 15 August 2009, which discuss the high physical standards required of the 75th Ranger Regiment

k. The remaining exhibits are health records and will be reviewed and summarized in the "MEDICAL REVIEW" portion of this ROP. These documents include:

- Exhibit 6, VA records, dated 26 April 2024
- Exhibit 7, VA Rating Decision, dated 27 July 2021
- Exhibit 14, VA records, dated 4 June 2020
- Exhibit 15, VA Psychiatry Note, dated 3 April 2014
- Exhibit 19, Emergency Care and Treatment Record, dated 12 April 1993
- Exhibit 31, Service Treatment Records
- Exhibit 32, Stress Fractures, NCBI Bookshelf, dated 10 July 2023
- Exhibit 34, SF 600, dated 15 November 1993

22. The applicant does not provide nor does his record contain documentation which shows he was awarded the Humanitarian Service Medal or Joint Meritorious Unit Award.

23. In the processing of this case, the Army Review Boards Agency (ARBA) Security Manager conducted a review of documents provided by the applicant which contained CONFIDENTIAL markings. The Security Manager determined, beyond a reasonable doubt, that the markings are for medical privacy reasons. The documentation does not appear to contain classified information.

24. Soldiers may be separated under the provision of AR 635-200, Chapter 13 when it is determined that they are unqualified for further military service because of unsatisfactory performance.

25. The Board should consider the applicant's argument and/or evidence in accordance with the published equity, injustice, or clemency determination guidance.

26. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) character of service. His requests for reversal of an Article 15, restoration of his rank to PFC/E-3, promotion to E-4, removal of documents from his OMPF, and the addition of medals and awards are outside of the scope of this Advisory and will not be addressed. On his application, he indicated that Posttraumatic Stress Disorder (PTSD) is related to his request. More specifically, he stated that due to exposure to deaths of fellow Service Members and violent engagements related to the Cuban Migrant Relief efforts of Operation Safe Haven, he was suffering from undiagnosed PTSD.

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 28 July 1992, 2) he was formally counseled on ten occasions between 19 February and 30 July 1993 with the following areas of emphasis: initial counseling, financial management, outstanding preparation for the organizational inspection, below average common courtesy, self-discipline, and military knowledge, failure to follow instruction by consuming alcohol, removal from his position as radio telephone operator (RTO), poor performance/missing formation, substandard performance/transfer to a different squad for rehabilitation, initial counseling in new squad, not considered for promotion due to performance, request to speak to Chaplain; Chaplain on leave (30 June 1993) and hard work, successful completion of mission, professional performance 3) The applicant was formally counseled on seven occasions between 30 August 1993 and 28 March 1994 with the areas of emphasis noted as: improve PT on two occasions, EIB proficiency/good overall performance August through October, completion of 20 mile road march, medical profile and leave during the middle of November, great job at the National Training Center (NTC), preparation for EIB, marginal performance, lack of motivation, and falling out of road march and PT runs during the month of March, 4) on 3 April 1994, the applicant was formally counseled for being caught by the MPs, urinating on a bush, outside of the enlisted club. At the time of the incident, the applicant was under the influence of alcohol. He was encouraged to stop drinking completely due to his inability to control himself when he was drinking. In response to the counseling, the applicant provided a six-page statement entitled, "Public Indecencies," wherein he expressed regret and further stated his behavior was inexcusable and showed a lack of discipline, 5) there are two statements dated 13 May 1994 included in the applicant's OMPF as a part of his case files for approved separations. The statements reference an incident of alleged harassment which took place between the applicant and another Service Member, on or about 10 May and 11 May 1994, 6) The applicant was formally counseled on ten additional occasions

between 19 May and 31 October 1994 with areas of emphasis noted as improving PT/failure to meet platoon PT standards, leave status entire month of May, refusal to train/falling out of road march, failure to be at proper place which could lead to action under the Uniform Code of Military Justice (UCMJ), falling out of brigade run, rehabilitative transfer to different platoon, unsatisfactory performance, initial counseling (new squad leader), falling out of platoon run, individual requirement to conduct PT twice daily and on weekends, participation in Operation Safe Haven, and failure to meet company PT standards, 7) the applicant received an Article 15 on 18 November 1994 for being disrespectful in language to an NCO, 8) The applicant underwent a medical examination on 27 January 1995 and was deemed qualified for separation, 9) On 7 February 1995, the applicant underwent a Mental Status Evaluation (MSE) AND was cleared to participate in any administrative action deemed appropriate by his command, 10) The applicant's commander notified the applicant on 23 February 1995 of his intent to initiate administrative action to separate him under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance.

The commander noted the applicant was counseled on numerous occasions and had not made any effort to overcome his deficiencies, 11) the applicant was discharged on 29 March 1995 under the provisions of AR 635-200, Chapter 13, by reason of unsatisfactory performance with separation code or LHJ and reentry code of 3, 12) the applicant was voluntarily transferred from the IRR to the 405th Medical Hospital, effective 19 June 1997 and was honorably discharged from the U.S. Army Reserves (USAR) on 28 September 1999.

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

c. In-service medical records included as part of his application were reviewed. It is of note that some of the records were illegible to this Advisor. An Emergency Care and Treatment (SF 558) note dated 12 April 1993 was reviewed though it is of note that it was not fully legible to this Advisor. It appears that the applicant presented due to a fight with his superior and had a right index finger laceration. The applicant's Report of Medical History dated 27 January 1995 for the purposes of Chapter shows he endorsed frequent trouble sleeping, depression or excessive worry, and head injury. The associated Report of Medical Examination shows item number 42, psychiatric, as 'normal' on clinical evaluation. The applicant underwent an MSE for the purposes of Chapter 13 separation on 07 February 1995. All domains of the MSE were within normal limits (WNL). It was documented that he did not have a mental health diagnosis and was cleared for whatever action was deemed appropriate by command.

d. A review of JLV shows the applicant is 90% service-connected through the VA for several medical conditions, to include 50% for PTSD. The VA Compensation and Pension (C&P) evaluation was not available for review to this Advisor. A BH treatment note dated 31 January 2007 shows the applicant reported experiencing trauma-related symptoms following a Blackhawk incident that occurred in Somalia (1993) noting bad memories, intrusive thoughts, and later drinking heavily. The provider noted the applicant's diagnosis as PTSD. A psychiatry note dated 03 April 2014 shows the applicant presented as a transfer from his previous provider noting a history of PTSD, Major Depressive Disorder (MDD), and anxiety. It was documented that he reported a history of combat trauma from Somalia. Although not documented in the clinical note, the treating provider added a diagnosis of PTSD, Chronic to the applicant's problem list in JLV.

e. The applicant's DA Form 2-1 shows he was stationed in Panama from 08 February 1993 through 24 March 1995.

f. As part of his application, the applicant included an undated self-authored statement regarding some of the events that occurred during his military career. He stated that his difficulties in the Army started upon arrival to his first duty station wherein on 11 April 1993 his first team leader made unwanted advances toward the applicant, which he believed to be sexual in nature, to include following him and kicking a door open in the bathroom stall resulting in a laceration to the applicant's right index finger. The applicant stated he had engaged in self-injurious behaviors and had expressed a desire to end his life throughout the following year in addition to being counseled on numerous occasions for alcohol use, though was never referred for BH or alcohol-related treatment. The application also reported several additional traumatic experiences to include the loss of a close friend due to an accident, and events that occurred as part of his service during Operation Safe Haven.

g. 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 and service-connected through the VA with a potentially mitigating BH condition: PTSD. It is the opinion of this Advisor that the totality of his unsatisfactory performance that led to his discharge is mitigated by his diagnosis of PTSD.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 50% service-connected through the VA for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 50% service-connected through the VA for PTSD. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of the applicant's available in-service medical records were void of any BH diagnosis or treatment history; however, his separation physical does indicate he endorsed experiencing frequent trouble sleeping, depression or excessive worry, and head injury. Since being discharged from the military, the applicant has been diagnosed and service-connected through the VA with PTSD. Excessive alcohol use is a common form of self-medicating, used to cope and mask symptoms, and can be associated with the natural history and sequelae of numerous disorders, to include trauma. As there is an association between motivation, difficulty with authority figures, decreased concentration, excessive alcohol use, poor decision making and poor/decreased performance, there is a nexus between the totality of the applicant's unsatisfactory performance that led to his discharge and his diagnosis of PTSD. As such, BH mitigation is supported.

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 his characterization of service. One potential outcome was to grant relief based on the advising opine finding sufficient evidence the applicant had BH conditions. However, upon review of the applicant's petition, available military records and medical review, the Board considered the advising opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed and service-connected through the VA with a potentially mitigating BH condition: PTSD.

2. The Board determined after a comprehensive review of the entire record, including the applicant's submissions, supporting exhibits, and service history, there is insufficient evidence to support the applicants' s contentions for relief of his **Article 15 and rank restoration**, the Board acknowledged the applicant's contentions that his nonjudicial punishment (NJP) was unjust, citing emotional distress, lack of Article 31 rights advisement, and disproportionate punishment. However, the record clearly reflects that the NJP was administered in accordance with the Uniform Code of Military Justice (UCMJ). The applicant was found to have used disrespectful language toward a noncommissioned officer in the execution of official duties. The punishment reduction in rank, extra duty, and restriction was within regulatory authority and proportionate to the

offense. His appeal was denied at the time, and the Board found no compelling evidence to overturn the NJP, restore his rank to PFC/E-3, or promote him retroactively to SPC/E-4.

3. OMPF Document Removal – The Board noted the applicant's request for removal of multiple documents from his OMPF, including counseling statements and sworn statements, alleging forgery and regulatory violations. While the applicant raises concerns about the authenticity and procedural handling of these documents, the Board found no credible evidence that the documents were falsified or improperly included. The applicant's records reflect a consistent and documented pattern of performance and conduct deficiencies that formed the basis for his separation. The Board determined there is no regulatory or factual evidence to support their removal.

4. Award additions and Army Good Conduct Medal- The Board acknowledged the applicant's contentions for retroactive addition of the Humanitarian Service Medal and Joint Meritorious Unit Award for his participation in Operation Safe Haven. While the applicant may have served in a qualifying operation, the Board found no official documentation verifying that these awards were approved or issued during his period of active duty. Additionally, the Army Good Conduct Medal requires three years of honorable service without disciplinary action. Given the applicant's NJP and documented performance issues, the applicant does not meet the eligibility criteria. The Board agreed there is no basis to amend the applicant's DD Form 214 to reflect these awards.

5. Discharge Upgrade- The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant requests an upgrade of his general discharge based on mitigating mental health conditions, leadership failures, and post-service accomplishments. The Board acknowledged the applicant's later diagnosis of post-traumatic stress disorder (PTSD) and his commendable post-service conduct, including his professional achievements and community involvement. However, the discharge was based on a sustained record of unsatisfactory performance, including repeated counseling, failure to meet physical standards, and disciplinary infractions. The separation was conducted in accordance with AR 635-200, Chapter 13, and the characterization of service as under honorable conditions (general) was appropriate and warranted at the time. While the Board considered the advisory opinion noting that PTSD may have mitigated his performance, the evidence does not establish that his condition was improperly diagnosed or ignored during service, nor does it outweigh the documented basis for separation. Furthermore, the Board found the applicant's discharge and associated administrative actions were executed in accordance with applicable regulations and were supported by a clear and sustained record of

performance and conduct deficiencies. The evidence provided does not support reversal of the Article 15, restoration or promotion of rank, removal of documents from the OMPF, retroactive award additions, or upgrade of discharge. As such, relief is denied.

6. Consideration was given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed and 50% service-connected through the VA for PTSD.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed and 50% service-connected through the VA for PTSD. Service connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of the applicant's available in-service medical records were void of any BH diagnosis or treatment history; however, his separation physical does indicate he endorsed experiencing frequent trouble sleeping, depression or excessive worry, and head injury. Since being discharged from the military, the applicant has been diagnosed and service-connected through the VA with PTSD. Excessive alcohol use is a common form of self-medicating, used to cope and mask symptoms, and can be associated with the natural history and sequelae of numerous disorders, to include trauma. As there is an association between motivation, difficulty with authority figures, decreased concentration, excessive alcohol use, poor decision making and poor/decreased performance, there is a nexus between the totality of the applicant's unsatisfactory performance that led to his discharge and his diagnosis of PTSD. As such, BH mitigation is supported.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
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 (USC), 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. Section 1556 of Title 10, USC, 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 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, and reviews to ABCMR applicants prior to adjudication.
3. Army Regulation 27-10 (Military Justice) prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial. It provides that a commander should use nonpunitive administrative measures to the fullest extent to further the efficiency of the command before resorting to nonjudicial punishment (NJP) under the Uniform Code of Military Justice (UCMJ). Use of NJP is proper in all cases involving minor offenses in which nonpunitive measures are considered inadequate or inappropriate. NJP may be imposed to correct, educate,

and reform offenders who the imposing commander determines cannot benefit from less stringent measures; to preserve a Soldier's record of service from unnecessary stigma by record of court-martial conviction; and to further military efficiency by disposing of minor offenses in a manner requiring less time and personnel than trial by court-martial.

a. Paragraph 3-6a provides that a commander's decision whether to file a record of NJP in the performance folder of a Soldier's Army Military Human Resource Record (AMHRR) is as important as the decision relating to imposition of the NJP itself. In making a filing determination, the imposing commander must carefully weigh the interests of the Soldier's career against those of the Army to produce and advance only the most qualified personnel for positions of leadership, trust, and responsibility. In this regard, the imposing commander should consider the Soldier's age, grade, total service (with particular attention to the Soldier's recent performance and past misconduct), and whether the Soldier has more than one record of NJP directed for filing in the restricted folder. However, the interests of the Army are compelling when the record of NJP reflects unmitigated moral turpitude or lack of integrity, patterns of misconduct, or evidence of serious character deficiency or substantial breach of military discipline. In such cases, the record should be filed in the performance folder.

b. Paragraph 3-37b(2) states that for Soldiers in the ranks of Sergeant and above, the original DA Form 2627 will be sent to the appropriate custodian for filing in the OPMF. The decision to file the original DA Form 2627 in the performance folder or restricted folder of the OPMF will be made by the imposing commander at the time punishment is imposed. The filing decision of the imposing commander is subject to review by superior authority. However, the superior authority cannot direct filing a DA Form 2627 in the performance folder that the imposing commander directed to be filed in the restricted folder.

c. Paragraph 3-43 contains guidance for transfer or removal of DA Forms 2627 (Record of Proceedings Under Article 15 (UCMJ)) from the AMHRR. Applications for removal of a DA Form 2627 from the AMHRR based on an error or injustice will be made to the ABCMR. There must be clear and compelling evidence to support removal of a properly completed, facially valid DA Form 2627 from a Soldier's record by the ABCMR.

4. Army Regulation 340-21 (The Army Privacy Program) paragraph 2-10 (Amendment of Records) states individuals may request the amendment of their records, in writing, when such records are believed to be inaccurate as a matter of fact rather than judgement, irrelevant, untimely, or incomplete. Consideration of a request for amendment would be appropriate if it can be shown that circumstances leading up to the event recorded on the document were challenged through administrative procedures and found to be inaccurately described.

5. Army Regulation 600-8-22 (Military Awards) prescribes policy, criteria, and procedures for individual and unit military awards, foreign decorations, and badges.

a. The Humanitarian Service Medal (HSM) is awarded to Servicemembers of the Armed Forces of the United States who, after 1 April 1975, distinguished themselves by meritorious direct participation in an approved significant military act or operation of a humanitarian nature. After 1 April 1975, but on or before 6 January 2016, the recipient must have been physically present at the designated location, having directly contributed to and influenced the action. The Chairman of the Joint Chiefs of Staff is the approval authority for recommendations of the HSM for military acts or operations of a humanitarian nature led by an organization reporting to or through the Chairman of the Joint Chiefs of Staff. The Secretary of the Army (SECARMY) is the approval authority for recommendations of the HSM originating within the Army when the humanitarian operations involves only Servicemembers from the Army. The ASA (M&RA) has the authority to disapprove recommendations for the HSM being forwarded to the SECARMY. Recommendations for the HSM involving unified combatant commands will be submitted to the Director, Joint Staff. A list of operations approved for award of the HSM from the Office of the Under Secretary for Personnel Readiness, Officer and Enlisted Personnel Management, last published on 14 February 2022, includes operation Joint Task Force SAFE HAVEN, from 26 August 1994 to 3 March 1995, in the geographic area of Panama.

b. The Army Good Conduct Medal (AGCM) is awarded to individuals who distinguish themselves by their conduct, efficiency, and fidelity during a qualifying period of active-duty enlisted service. This period is 3 years except in those cases when the period for the first award ends with the termination of a period of Federal military service. Although there is no automatic entitlement to the AGCM, disqualification must be justified. While any record of nonjudicial punishment could be in conflict with recognizing the Soldier's service as exemplary, such record should not be viewed as automatically disqualifying. The commander analyzes the record, giving consideration to the nature of the infraction, the circumstances under which it occurred, and when. Conviction by courts-martial terminates a period of qualifying service; a new period begins the following day after completion of the sentence imposed by the court-martial. Individuals for whom a bar to reenlistment has been approved are not eligible for award of the AGCM. Disqualification for an award of the AGCM can occur at any time during a qualifying period.

6. Department of Defense 1348.33-M (Manual of Military Decorations & Awards) provides, in pertinent part, that the Joint Meritorious Unit Award (JMUA) is awarded in the name of the Secretary of Defense and is intended to recognize joint units and activities for meritorious achievement or service, superior to that which is normally expected. All joint units and activities are eligible for award of the JMUA in recognition of exceptionally meritorious conduct in the performance of outstanding service.

7. Department of the Army General Orders (DAGO) Number 2018-19, issued on 13 September 2018, awarded the Joint Meritorious Unit Award to Joint Task Force Safe Haven for the period 26 August 1994 to 1 March 1995.

8. Army Regulation 600-37 (Unfavorable Information) sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's AMHRR.

a. Paragraph 3–2 provides that unfavorable information will not be filed in the AMHRR unless the recipient has been given the opportunity to review the documentation that serves as the basis for the proposed filing. The documentation will be reviewed by the release authority prior to forwarding to the recipient to ensure personally identifying information and other sensitive information has been redacted. A reasonable amount of time will be afforded to make a written statement in response. The recipient may also elect to decline, in writing, the opportunity to provide a written response. Unfavorable information filed in the AMHRR must meet Title 5, USC, Section 552a, standards of accuracy, relevance, timeliness, and completeness.

b. Paragraph 3–3 provides that unfavorable information of which the recipient had prior official knowledge and an adequate opportunity to refute may be filed in the performance portion of the AMHRR without further referral to the recipient. The notation "Army Regulation 600 – 37 complied with" will be entered below the filing authority on unfavorable information.

c. Paragraph 3–7 states that except as provided in paragraph 3 – 3, unfavorable information will be shared with the recipient for acknowledgment of his or her rebuttal opportunity, prior to filing. Recipients will be provided 7 calendar days (active duty Soldiers (all components)) to make a statement, or to decline, in writing, to make such a statement. The notice will state the date by which the statement must be provided. The statement may include evidence that rebuts, explains, or mitigates the unfavorable information.

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

a. Chapter 13 of this regulation provides for separation due to unsatisfactory performance when, in the commander's judgment, the individual will not become a satisfactory Soldier; retention will have an adverse impact on military discipline, good order and morale; the service member will be a disruptive influence in the future; the basis for separation will continue or recur; and/or the ability of the service member to perform effectively in the future, including potential for advancement or leadership, is

unlikely. Service of Soldiers separated because of unsatisfactory performance under this regulation will be characterized as honorable or under honorable conditions.

b. 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.

c. 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.

10. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

11. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

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

//NOTHING FOLLOWS//