

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 February 2025

DOCKET NUMBER: AR20240005372

APPLICANT REQUESTS: in effect, correction of his DD Form 214, Certificate of Release or Discharge from active duty to show he was discharged due to disability with the applicable separation program designator (SPD) code and reentry code.

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

- DD Form 293, Application for Review of Discharge
- DD Form 214
- Department of Veterans Affairs (VA) letter

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 indicates his request is related to post-traumatic stress disorder (PTSD). He states, in effect:

a. His referral to the Army Substance Abuse Program (ASAP) was in error. His undiagnosed PTSD symptoms were the true cause for his discharge. He contends that his chain of command did not offer him counseling or explain the chapter process even though they were aware of his mental health struggles. He further contends he is an outstanding citizen and has never had an alcohol related incident, aside from the separation action, of any kind. The VA diagnosed him with PTSD after his discharge.

b. Upon returning from deployment in 2014 he requested to go to mental health. Instead, he was sent to ASAP for reasons unknown to him because he did not have an issue with alcohol. He was made to fill out paperwork despite having no alcohol related incidents. He was denied the right to seek legal counsel. While in ASAP his best friend committed suicide which sent him into a deep depression. He had no support system

and his mind completely shut down. He went to his ASAP counselor and told her he had taken a drink but only because he was struggling with his mental health. This was a cry for help. He was young, immature, medicated, and suffering from PTSD.

c. His commander felt it would be better for him to recover at home with his parents and told him that he could always reenlist. He agreed to be chaptered out of the service. He had a clean record and was doing well in his unit prior to these circumstances. He was given an honorable characterization of service, but he had no idea the chapter would say alcohol rehabilitation failure, or that he would be barred from service. He was destroyed. His whole life, all he wanted to do was be a Ranger. He swears before GOD he was not an alcoholic. His discharge was related to his PTSD and not alcohol.

d. He sought mental health counseling at the VA after his separation. Because of the suicide incident and deployment incidents, he was given a disability rating of 100% for his PTSD. His post-service accomplishments include starting an organization that provides over \$80,000 for veterans in the Care Coalition program, he became a Dolphin and Sea Lion Handler for the Navy, volunteers with Operation Enduring Warrior helping physically disabled veterans, instructed a K9 Handler course, volunteered for conservation projects in Africa, and tries to love and help others.

e. His PTSD has improved. He has grown in his faith, has a spouse and is involved in his community. He has developed coping skills that have successfully kept him healthy and positive in the face of ongoing adversity. He has lost other friends to suicide and each time he has gotten better and more understanding with how to deal with grief. He took in a struggling veteran into his home until he got back on his feet.

3. The applicant enlisted in the Regular Army on 14 November 2012. He held military occupational specialty 11B, infantryman.

4. His Enlisted Record Brief shows he served in Afghanistan from 22 March 2014 to 4 July 2014.

5. On 31 December 2013, the ASAP Clinical Director, informed the applicant's commander that the applicant was a rehabilitation failure. This official further stated:

a. The applicant was command referred for evaluation on 1 October 2014 and he failed to make satisfactory progress toward achieving the criteria for successful rehabilitation.

b. Further rehabilitation efforts in a military environment were not justified considering the Soldier's lack of progress. He should be discharged from the service.

c. The applicant reported continued use of alcohol despite being under the legal age and enrolled in ASAP. He reported his date of last use was 17 December 2014. He was offered continued treatment during the separation process; however, he declined any type of substance abuse treatment.

d. In view of his failure to display significant progress toward rehabilitation, it was the considered opinion of the commander that the applicant had exhausted his resources for achieving successful rehabilitation. The ASAP staff concurred with the commander's decision to declare the individual a rehabilitation failure and initiate discharge action.

e. The applicant met the diagnostic criteria for 303.90, alcohol dependence, and thus was eligible for transfer to the VA for continued substance abuse treatment as a part of the separation proceedings.

6. On 21 January 2015, the applicant underwent a mental health evaluation which found no psychiatric diagnosis on the Axis I; he was diagnosed with insomnia, depression, and anxiety.

a. A clinical interview, review of his service medical records, and screening for PTSD/traumatic brain injury indicate past treatment for insomnia, depression, and anxiety. He was subsequently prescribed Zoloft in September 2014. The applicant reported all psychiatric conditions had resolved and he stopped taking the medication in approximately October 2014. He denied any current symptoms.

b. The applicant denied use of illegal/illicit drugs or abuse of prescription medications. The applicant reported heavy drinking since joining the Army, resulting in the ASAP referral.

c. As it related to his behavioral health functioning, the applicant was cleared for Chapter 9 proceedings.

d. The applicant met medical retention requirements and did not qualify for a Medical Evaluation Board.

7. The applicant underwent a separation physical on 3 February 2015. He reported being in good health; however, he also indicated having had problems with nervousness, frequent trouble sleeping, depression, excessive worry, and having been evaluated for a mental health condition. He was found qualified for service.

8. The applicant's immediate commander notified the applicant on 7 April 2015 that he was being recommended for separation from service under the provisions of Army Regulation (AR) 635-200, Personnel Separations-Active Duty Enlisted Administrative

Separations, Chapter 9, based on the applicant's being deemed an ASAP rehabilitation failure. He recommended the applicant's characterization of service be honorable.

9. The applicant consulted with counsel on 8 April 2015 and was advised of the basis for the contemplated action to separate him and of the rights available to him. He acknowledged his understanding, waived his rights, and declined to submit a statement in his own behalf.

10. On 9 April 2015, the applicant's commander formally recommended his separation from service under the provisions of AR 635-200, Chapter 9, by reason of alcohol rehabilitation failure.

11. The separation authority approved the discharge recommendation and directed the applicant's service be characterized as honorable.

12. The applicant was discharged on 24 April 2015, under the provisions of AR 635-200, Chapter 9, by reason of alcohol rehabilitation failure. He completed 2 years, 5 months, and 11 days of net active service. His DD Form 214 confirms his service was characterized as honorable with a separation code of "JPD" and a Reentry Code of "4."

13. The applicant provides a VA benefits letter which shows he is receiving disability compensation at the 100% rate.

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

15. By regulation:

a. The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. All relevant evidence must be considered in evaluating the fitness of a Soldier. Findings with respect to fitness or unfitness for military service will be made on the basis of the preponderance of the evidence. Thus, if the preponderance of evidence indicates unfitness, a finding to that effect will be made.

c. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

d. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with his or her rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit.

16. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of a correction of his DD Form 214 to show he was discharged due to disability with the applicable separation program designator (SPD) code and reentry code. He contends he experienced PTSD that mitigates his discharge.

b. 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:

- The applicant enlisted into the Regular Army on 14 November 2012, and he served in Afghanistan from 22 March to 4 July 2014.
- The applicant was command referred to the Army Substance Abuse Program (ASAP) and ultimately was determined to be a rehabilitation failure.
- The applicant's immediate commander notified the applicant on 7 April 2015 that he was being recommended for separation from service under the provisions of Army Regulation (AR) 635-200, Chapter 9, based on the applicant's being deemed an ASAP rehabilitation failure.
- The applicant was discharged on 24 April 2015 and completed 2 years, 5 months, and 11 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts his undiagnosed PTSD symptoms were the cause for his discharge. A VA Summary of Benefits letter dated 7 January 2019 showed the applicant has a combined 100% service connection. A memorandum to the commander dated 31 December 2014 showed the applicant was command referred to ASAP on 1 October 2014 and was determined to have a problem with alcohol significant enough to warrant outpatient treatment. He engaged in individual and group therapies and attended Alcohol Anonymous, but at a treatment team meeting on 22 December 2014, it was determined that he had not made satisfactory progress toward achieving the criteria for successful rehabilitation. The document indicates the applicant, who was under the legal drinking age, had continued to use alcohol while enrolled in ASAP, and discharge was recommended. His diagnosis was Alcohol Dependence, and he was offered continued treatment until his discharge was processed. A Mental Status Evaluation dated 21 January 2015 showed that the applicant met retention standards and was considered fit for full duty, including deployment. It was noted that he was diagnosed with insomnia, depression, and anxiety with a history of an antidepressant prescription,

and his self-report screening measure for PTSD was subthreshold for indication of the condition. Notably, the examination is absent any alcohol related diagnoses but does indicate heaving drinking since joining the Army and drinking while enrolled in ASAP. A Report of Medical History dated 3 February 2015 showed the applicant reported a history of anxiety/panic attacks, trouble sleeping, depression, excessive worry, and having been evaluated for a mental condition. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed DoD documentation dated 16 September 2014 noting the applicant was command referred to ASAP for underaged drinking. He reported problems with anxiety, panic attacks, and sleeplessness over the previous two months, and at a follow up visit on 24 September 2014, he was started on an antidepressant medication. Documentation indicated the applicant was referred by command as a "preventative measure" following a conversation with his first sergeant where he expressed a need for help in dealing with family issues by using alcohol. During the ASAP assessment, the applicant reported drinking on weekends and to deal with stress associated with a recent death in the family and feelings of depression. He voluntarily enrolled in the ASAP outpatient program and was diagnosed with Alcohol Related Disorder not otherwise specified (NOS). The applicant routinely engaged in outpatient group sessions with noted improvement, but at an individual session on 26 November 2014, he reported having consumed alcohol four days prior and discussed the challenges of being around alcohol in the barracks as well as feelings of loneliness and isolation. He was warned that further alcohol use would result in command contact, and he continued in group and individual sessions maintaining abstinence. At a session on 18 December 2014, he reported anger and frustration toward the Army and grief related to the suicide of a fellow soldier, and he admitted to having consumed alcohol. The counselor discussed the option of treatment failure as an avenue toward discharge from the military, which he agreed to. An ASAP discharge summary dated 22 December 2014 noted that the applicant was utilizing alcohol to cope with personal issues, was supported by command, and had satisfactory work performance, but he was being recommended for a Chapter 9 discharge due to two relapses while enrolled in ASAP.

e. The applicant initiated mental health treatment through the VA on 25 February 2016 and reported symptoms of depression and anxiety associated with the suicide of a friend. Documentation noted he denied history of traumatic incidents while working in the military and denied current PTSD symptoms. He was started on an antidepressant medication and indicated he would consider psychotherapy services through the Vet Center. A follow up note in May 2016 indicated stability and positive response to medication, and his diagnoses were Unspecified Depressive Disorder and Unspecified Anxiety Disorder. An Initial PTSD Disability Benefits Questionnaire (DBQ) as related to a Compensation and Pension (C&P) examination was conducted on 14 October 2016.

The applicant reported deployment related trauma exposure, including witnessing live video feeds of drone strikes, indirect mortar attacks, and witnessing the death of combat insurgents, and he also discussed the suicide of his friend in December 2014 and the death of a friend from an IED blast in 2012. However, he did not endorse the requisite number of symptoms to warrant a diagnosis of PTSD and was diagnosed with Unspecified Depressive Disorder with anxious distress. The evaluator noted inconsistencies in report of symptoms via the medical record review versus his current report, which contributed to the Depressive Disorder diagnosis and inability to conclude PTSD. VA records indicate the applicant was seen by psychiatry with additional medications added or changed through 2017.

f. A second C&P DBQ titled Initial PTSD dated 8 December 2016 was obtained, and this examination was conducted by a non-VA contracted psychologist. The evaluation concluded diagnoses of PTSD, Alcohol Use Disorder, and Bipolar II Disorder. In this evaluation he reported stressors as: 1) exposure to drone strikes that killed Afghanistan civilians and being threatened by friends of those killed; 2) frequent mortar attacks with one striking a helicopter and another “dud” being close to his quarters; 3) a close friend killed in combat in 2012 at the same base where the applicant was stationed in 2014; 4) guilt over the suicide of a friend in December 2014. The applicant endorsed PTSD related symptoms and indicated social and occupational impairment. Notably, the evaluator discussed behavioral observations consistent with altered or impaired thought process and cognitive functioning. A third C&P examination (review of PTSD DBQ) from 12 September 2022 was also reviewed, and the applicant reported continued symptoms of PTSD. The evaluator concluded diagnoses of PTSD and Bipolar II Disorder but removed the Alcohol Use Disorder diagnosis as he no longer met criteria.

g. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a medically disabling mental health condition while on active service. The documentation during the applicant’s time in service does not support that the applicant was psychiatrically unfit at the time of discharge for any boardable mental health condition as he did not have persistent or reoccurring symptoms requiring extended or recurrent psychiatric hospitalization or persistent and reoccurring symptoms that interfered with duty performance or necessitated duty limitations (AR 40-501, para 3-33c). Documentation from ASAP records indicate his command reported he had satisfactory performance, and there were no indications of necessity of any duty limitations.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had undiagnosed PTSD at the time of his ASAP failure and discharge. DoD records indicated that the applicant did report mental health symptoms, including anxiety, depression, and sleep difficulty, and it was

documented that he was using alcohol to cope with these symptoms as well as psychosocial stressors (i.e. suicide of a friend; death of a grandparent/family difficulties). VA records show the applicant initiated mental health services in 2015 and is 100% service connected for PTSD and Bipolar II Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. Documentation from his time in service showed that he reported mental health symptoms, and he engaged in alcohol abuse treatment through ASAP.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed documentation of mental health symptoms while on active service, but he was not diagnosed with a mental health condition. His treatment primarily focused on his use of alcohol to cope with stress, and ultimately, he was deemed to be a rehabilitation failure secondary to two alcohol use relapses (the second following the suicide of his friend). Substance abuse is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. Documentation from his ASAP records showed that the applicant requested discharge following his second relapse and in conjunction with several co-occurring life stressors. Given his young age, lack of coping mechanisms, strong need to be closer to his family, and recent return from deployment, it is logical that he would pursue a path toward discharge. However, there is insufficient evidence to support the necessity of consideration of discharge via medical channels at the time. The Disability Evaluation System (DES) compensates an individual only for service incurred medical condition(s) that have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

i. In accordance with Liberal Consideration, a change to the narrative reason for discharge to something more favorable, such as AR 635-200, Chapter 5-14, "other designated physical or mental condition" could be considered by the board.

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. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a medically disabling mental health condition while on active service. The documentation during the applicant's time in service does not support that the applicant was psychiatrically unfit at the time of discharge for any boardable mental health condition as he did not have persistent or reoccurring symptoms requiring extended or recurrent psychiatric hospitalization or persistent and reoccurring symptoms that interfered with duty performance or necessitated duty limitations (AR 40-501, para 3-33c). Documentation from ASAP records indicate his command reported he had satisfactory performance, and there were no indications of necessity of any duty limitations.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had undiagnosed PTSD at the time of his ASAP failure and discharge. DoD records indicated that the applicant did report mental health symptoms, including anxiety, depression, and sleep difficulty, and it was documented that he was using alcohol to cope with these symptoms as well as psychosocial stressors (i.e. suicide of a friend; death of a grandparent/family difficulties). VA records show the applicant initiated mental health services in 2015 and is 100% service connected for PTSD and Bipolar II Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service. Documentation from his time in service showed that he reported mental health symptoms, and he engaged in alcohol abuse treatment through ASAP.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partial. A review of military medical and mental health records revealed documentation of mental health symptoms while on active service, but he was not diagnosed with a mental health condition. His treatment primarily focused on his use of alcohol to cope with stress, and ultimately, he was deemed to be a rehabilitation failure secondary to two alcohol use relapses (the second following the suicide of his friend). Substance abuse is a common self-medicating strategy for avoiding uncomfortable emotions and memories related to trauma exposure, and substance use can be a natural sequela to

mental health conditions associated with exposure to traumatic and stressful events. Documentation from his ASAP records showed that the applicant requested discharge following his second relapse and in conjunction with several co-occurring life stressors. Given his young age, lack of coping mechanisms, strong need to be closer to his family, and recent return from deployment, it is logical that he would pursue a path toward discharge. However, there is insufficient evidence to support the necessity of consideration of discharge via medical channels at the time. The Disability Evaluation System (DES) compensates an individual only for service incurred medical condition(s) that have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

3. The Board determined the evidence of shows that the applicant was command-referred to ASAP, diagnosed with alcohol dependence, and failed to make satisfactory progress in rehabilitation. The applicant continued to use alcohol while enrolled in the program, declined further treatment, and was deemed a rehabilitation failure. The Board noted a mental health evaluation conducted prior to separation found no psychiatric diagnosis warranting a medical discharge and confirmed that the applicant met medical retention standards. While the Board acknowledged the applicant's post-service diagnosis of PTSD and his commendable contributions to the veteran community, these developments occurred after his discharge and do not alter the basis for separation at the time. The applicant's discharge under the provisions of AR 635-200, Chapter 9, with an honorable characterization of service, SPD code "JPD," and RE code "4" was administratively and medically appropriate. Therefore, the Board determined that there is insufficient evidence to warrant relief.

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 (AR) 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, sets forth the basic authority for the separation of enlisted personnel. Chapter 9 contains the authority and outlines the procedures for discharging Soldiers because of alcohol or other drug abuse. A member who has been referred to the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program if there is a lack of potential for continued Army service and rehabilitation efforts are no longer practical. Nothing in this chapter prevents separation of a Soldier who has been referred to such a program under any other provisions of this regulation. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures. The service of Soldiers discharged under this chapter will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status.

3. AR 635-40, Personnel Separations-Physical Evaluation for Retention, Retirement, or Separation, establishes the Army Physical Disability Evaluation System. It states:
 - a. The mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the

Soldier reasonably may be expected to perform because of their office, grade, rank, or rating.

b. All relevant evidence must be considered in evaluating the fitness of a Soldier. Findings with respect to fitness or unfitness for military service will be made on the basis of the preponderance of the evidence. Thus, if the preponderance of evidence indicates unfitness, a finding to that effect will be made.

c. The following presumptions will apply to physical disability evaluation before and during active service.

(1) A Soldier was in sound physical and mental condition upon entering active service except for physical disabilities noted and recorded at the time of entry.

(2) Any disease or injury discovered after a Soldier entered active service, with the exception of congenital and hereditary conditions, was not due to the Soldier's intentional misconduct or willful neglect and was incurred in line of duty (LD).

(3) The foregoing presumptions may be overcome only by a preponderance of the evidence, which differs from personal opinion, speculation, or conjecture. When reasonable doubt exists about a Soldier's condition, an attempt should be made to resolve the doubt by further clinical investigation and observation and by consideration of any other evidence that may apply. In the absence of such proof by the preponderance of the evidence, reasonable doubt should be resolved in favor of the Soldier.

d. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and they can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

e. When a Soldier is being processed for separation or retirement for reasons other than physical disability, continued performance of assigned duty commensurate with their rank or grade until the Soldier is scheduled for separation or retirement, creates a presumption that the Soldier is fit. An enlisted Soldier whose reenlistment has been approved before the end of their current enlistment, is not processing for separation; therefore, this rule does not apply. The presumption of fitness may be overcome if the evidence establishes that -

(1) The Soldier was, in fact, physically unable to perform adequately the duties of their office, grade, rank or rating for a period of time because of disability. There must be a causative relationship between the less than adequate duty performance and the unfitting medical condition or conditions.

(2) An acute, grave illness or injury or other significant deterioration of the Soldier's physical condition occurred immediately prior to, or coincident with processing for separation or retirement for reasons other than physical disability and which rendered the Soldier unfit for further duty.

4. Title 38, U.S. Code, section 1110, General - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

6. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

7. AR 15-185 (ABCMR), states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//