

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 December 2024

DOCKET NUMBER: AR20240005493

APPLICANT REQUESTS:

- an upgrade of his under honorable conditions (General) discharge from the Army National Guard (ARNG) to honorable or a medical discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Memorandum, Camp Shelby Joint Forces Training Center, Camp Shelby, MS, dated 13 November 2008
- Military Medical Support Office (MMSO) Form 2 (Pre-Authorization Request for Medical Care – Reserve Component), dated 11 August 2009
- Department of Veterans Affairs (VA) Decision Review, dated 2 June 2020
- Memorandum, Office of The Adjutant General, [REDACTED]  
[REDACTED] dated 7 February 2024

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states:
  - a. He was misdiagnosed with mental illness to include depression, anxiety, and anorexia. Prior to his discharge for a positive drug test, he was awaiting a medical board for an injury he sustained while on active duty. Had he been diagnosed properly and had an opportunity to meet the medical board, he would have received a medical discharge.

b. He would like to express his sincere commitment to the ARNG and the values it upholds. The circumstances surrounding his positive drug test do not accurately represent his character. The positive result occurred during a period when he was grappling with mental health challenges and had not yet received a proper diagnosis or treatment plan. It seems unjust to have discharged him prior to the completion of a medical board for a torn meniscus, especially when the underlying cause of his positive drug test was directly related to mental health and pain management.

c. He deeply regrets any deviation from the standards set by the ARNG. He continues to undergo treatment for his mental health issues. He has been committed to rehabilitating and served for more than nine years in a Federal organization within the U.S. Treasury. He notes post-traumatic stress disorder (PTSD) as a condition related to his request.

3. The applicant enlisted in the Army National Guard (ARNG) on 10 September 2007. He was ordered to initial active duty for training (IADT) on 20 November 2007. The highest rank he achieved was specialist/E-4.

4. Upon completion of training, the applicant was released from active duty (REFRAD) and returned to [REDACTED] ARNG ([REDACTED] ARNG), on 19 April 2008, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 4, by reason of completion of required active service. His service was uncharacterized with separation code MBK. He completed 5 months of active service. He was awarded military occupational specialty (MOS) 42F (Human Resources Information Systems Management Specialist) (See Administrative Notes).

5. On 4 August 2008, the applicant was ordered to active duty, in support of Operation Iraqi Freedom, for a period not to exceed 400 days. His report date to home station was 19 September 2008.

6. A DA Form 2173 (Statement of Medical Examination and Duty Status) shows the applicant injured his knee at Camp Shelby, MS, during land navigation training, on or about 21 October 2008. He underwent an MRI [magnetic resonance imaging] on his left knee [REDACTED] Clinic, on 29 October 2008, which revealed degenerative changes in the medial compartment, a small joint effusion, and some type of artifact along the medial and lateral femoral condyles and the medial aspect of the patella.

7. A memorandum from the Director of Personnel, Camp Shelby Joint Forces Training Center, dated 13 November 2008, shows the applicant was going to be REFRAD and returned to his original assignment due to a preexisting medical condition which failed to meet medical retention standards. It was recommended that a Medical Evaluation Board (MEB) be initiated.

8. The applicant was REFRAD and returned to the [REDACTED] ARNG, on 16 November 2008, under the provisions of Army Regulation 635-200, Chapter 4, by reason of completion of required active service. His DD Form 214 (Certificate of Release from Active Duty) shows his character of service was honorable with separation code MBK. He completed 1 month and 28 days of active service this period. He was authorized or awarded the Global War on Terrorism Service Medal and Armed Forces Reserve Medal with "M" device.

9. On 8 July 2009, the applicant's commander was notified by The Adjutant General's Office (TAG), [REDACTED] that a urine sample, collected from the applicant on 12 June 2009, tested positive for tetrahydrocannabinol (THC).

10. The applicant's commander initiated a Report to Suspend Favorable Personnel Actions (FLAG), by reason of adverse action – abuse of illegal drugs, effective 8 July 2009.

11. The applicant was formally counseled by his commander on 16 July 2009. Areas of emphasis covered in the counseling included, but were not limited to, the applicant's positive urinalysis results; the initiation of a FLAG and suspension of his security clearance; the rights available to him; the commander's intent to initiate separation action against him; and available treatment and rehabilitation services near him.

12. On the same date, the applicant's commander notified the applicant of his intent to initiate action to separate him from the [REDACTED] ARNG and Reserve of the Army, under the provisions of Army Regulation 135-178 (ARNG and Reserve Enlisted Administrative Separations), Chapter 12, by reason of misconduct. As the specific reason for the proposed action, the commander noted the applicant's positive urinalysis.

13. The applicant acknowledged receipt of the proposed separation action. He was advised by counsel of the basis for the contemplated action, and its effects; of the rights available to him; and the effect of waiving his rights. He requested counsel for further representation and elected to submit statements in his own behalf. The applicant's service record does not contain a statement.

14. The applicant's commander formally recommended the applicant be separated from the [REDACTED] ARNG and the Reserve of the Army, on 8 July 2009, prior to the expiration of his term of service, under the provisions of Army Regulation 135-178, Chapter 12, by reason of misconduct (positive urinalysis). The commander further recommended the applicant's service be characterized as under honorable conditions (General).

15. An MMSO Form 2 was prepared on 11 August 2009 to request pre-authorization for medical care for a meniscus tear in the applicant's left knee. Subsequently, a Line of Duty (LOD) Determination shows the applicant's knee injury from October 2008, "post-

traumatic arthritis, left knee," was determined to be "IN THE LINE OF DUTY-EXISTED PRIOR TO SERVICE (EPTS)-SERVICE AGGRAVATED.'

16. A memorandum from the applicant's immediate commander to the 28th Infantry Division Commander, dated 28 September 2009, shows the applicant's commander wished to change his recommendation and request the applicant be retained. The commander noted the applicant made a bad decision with bad advice from outside peers. The commander was confident the applicant could be rehabilitated. He conducted his duties in an exceptional manner. He continuously volunteered his own free time, was eager to learn, and demonstrated ability to accept greater challenges. He kept the commander updated on his counseling, and his commitment to the program reflected his desire to continue serving.

17. The applicant's brigade commander non-concurred with the recommendation of the company commander. In an additional memorandum to the 28th Infantry Division Commander, dated 2 October 2009, the brigade commander noted the applicant should be separated from the █ARNG, based upon the following reasons:

- a. The company commander was taking advantage of the applicant's willingness to volunteer by having him perform duties while not in a drilling status or on orders.
- b. Neither the applicant nor the company commander provided any evidence to show the applicant was currently undergoing or had undergone any recognized rehabilitation program.
- c. The applicant indicated he would submit statements in his own behalf; no such statement was submitted. Additionally, the applicant was supposed to meet with the brigade commander on 1 October 2009 to discuss the packet; however, he did not present himself.

18. A Notice of Administrative Separation Board and a new separation packet were sent to the applicant via certified mail on 13 January 2010. An administrative separation board was scheduled to convene on 20 February 2010 to consider his involuntary separation under the provisions of Army Regulation 135-178, Chapter 12, due to misconduct – positive urinalysis.

19. The Administrative Separation Board convened on 20 February 2010. The board determined the applicant committed misconduct by using illegal drugs; the board recommended the applicant be discharged from the █ARNG with a service characterization of under honorable conditions (General).

20. On 15 April 2010, the applicant was discharged from the ARNGUS and █ARNG under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel

Management), paragraph 6-35i(1), by reason of acts or patterns of misconduct under the Uniform Code of Military Justice, State Military Code, or similar laws. His National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows his service was characterized as under honorable conditions (General) with reenlistment code RE-3. He completed 2 years, 7 months, and 6 days of net active service this period.

21. A memorandum from the Office of The Adjutant General [REDACTED] dated 7 February 2024, shows the TAG disapproved the applicant's request to have the authority and reason for his separation from the [REDACTED] ARNG changed or the character of his service upgraded. The TAG determined there was not sufficient evidence to demonstrate a change or upgrade was warranted.
22. As additional evidence, the applicant provides a copy of his VA Decision Review, dated 2 June 2020, which shows that service connection for persistent adjustment disorder with mixed anxiety and depressed mood (also claimed as PTSD anorexia) had been established as related to the applicant's service-connected disability of left knee, torn meniscus NOW with osteoarthritis and residuals of a preexisting tibia/fibula fracture.
23. Title 38, USC, Sections 1110 and 1131, permit the VA to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career.
24. The authority granted by Title 10, USC, Section 1552 (Correction of Military or Naval Records) is not unlimited. The ABCMR has the authority to correct only Army records. The Board has no authority to correct records created by the Department of Defense, other branches of the Services, VA, or any other governmental agency. ARNG discharges, as documented on NGB Form 22, are functions of the State under the legal authority of Title 32 and are not Federal actions. As such, they are primarily under the control of the State Adjutant General. The ABCMR may only recommend possible actions.
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 Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and

accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has applied to the ABCMR in essence requesting a referral to the Disability Evaluation System (DES) and a discharge upgrade. He has indicated on his DD 149 that PTSD is an issue related to his request. He states:

“At the time, I was misdiagnosed with mental illness to include depression, anxiety and anorexia. I was also waiting to see Med board [medical evaluation board] for another injury I sustained while on active duty. However, my readiness NCO decided to keep pushing my meeting to a further date.

In this time, I was afforded no medical attention. I practiced holocausted {sic} healing and provided positive drug test. I do believe if I was diagnosed properly and met with the med board, I would have received a medical discharge.”

c. The Record of Proceedings details the applicant's service and the circumstances of the case. The applicant's Report of Separation and Record of Service (NGB Form 22) for the period of service under consideration shows he entered the Army National Guard on 7 September 2007 and received an under honorable conditions (general) discharge from [REDACTED] Army National Guard ( [REDACTED] ARNG) on 15 April 2010 under provisions provided in paragraph 6-35i(1) of NGR 600-200, Enlisted Personnel Management (31 July 2009): Acts or patterns of misconduct under the UCMJ, State Military Code or similar laws.

d. Orders published by the [REDACTED] ARNG on 4 August 2008 show the applicant was mobilized in support of Operation Iraqi Freedom and was to report to Camp Shelby, MS, with a report date of 22 September 2008. The applicant presented with left knee pain on 27 October 2008 requesting a referral to orthopedics, stating he had an injury treated with reconstructive surgery as a child.

e. The applicant was seen by a civilian provider off-post and their report is not available for review. The Deputy Commander for Clinical Services at Eisenhower Army Medical Center (EAMC) requested that the Orthopedic Surgeon opine on the applicant's deployability. From the nurse case manager's 13 November 2008 encounter:

"21-year-old male with history of left lower extremity, stuck by car and dragged. Multiple surgeries in 1996 with extensive rehabilitation. Cleared by Ortho consult from MEPS [military entrance processing station]. Had trouble marching, ruck marching, and running during training earlier this year. Patient had multiple profiles and was seen by Physical Therapy for several sessions between BCT [basic combat training] and AIT [advanced individual training] in Jan and Feb. 2008 ...

Assessment/Plan:

1. Traumatic arthritis left knee ...
2. Soldier Fails to meet MOD 9 PPG - Tab A #7 c, d [Modification 9 of the Department of the Army Personnel Policy Guidance (PPG) for Overseas Contingency Operations – PPG-TAB A: Amplification of the Minimal Standards of Fitness for Deployment to the CENTCOM AOR (Central Command Area of Responsibility); To Accompany Mod 9 To USCENTCOM Individual Protection And Individual/Unit Deployment Policy]
3. Pre-existing Medical Conditions of which this was not profiled appropriately as to his repeated visits during BCT and AIT to TMC [troop medical clinic] for eval and treatment to include Physical Therapy.
4. [REDACTED] Physician with impression of posttraumatic arthritis with some ? meniscal damage and in their assessment he has a permanent disability and needs to be profiled and will not be able to do the walk or the run APFT.
5. Soldier continues to have pain although he has finished his training will continue to have problems even with limitations provided.
6. REFRAD [release from active duty] to his unit to undergo a non-duty related MEB/PEB [medical evaluation board/physical evaluating board].
  - f. On 16 November 2008, the applicant was REFRAD from the mobilization and returned to the [REDACTED] ARNG for this pre-existing duty limiting knee condition.
  - g. There are no behavioral health related encounters in the EMR.
  - h. The applicant tested positive for tetrahydrocannabinol (THC) 205 on a 12 June 2009 unit urinalysis. In an 8 July 2009 memorandum, his [REDACTED] ARNG counterdrug Coordinator notified him of the positive test. The 3-page memorandum discusses the process moving forward and his options. He was so counseled by his company

commander on 16 July 2009 and concurred with the counseling without comment. Also on 12 July 2009, his company commander informed the applicant of his initiation of action to separate him with a "General (Under Honorable Conditions)" characterization of service under provisions in chapter 12 of AR 135-178 for his positive urinalysis.

i. A Board of Officers convened on 20 February 2010 and found the applicant "did commit misconduct by using illegal drugs" and recommended to the Adjutant General of the [REDACTED] NG the applicant be discharged from the [REDACTED] RNG with an under honorable conditions characterization of service.

j. There is no evidence the applicant had any additional duty incurred medical condition which would have failed the medical retention standards of chapter 3 of AR 40-501, Standards of Medical Fitness, prior to his discharge. Thus, there was no cause for referral to the Disability Evaluation System.

k. JLV shows he has been awarded several VA service-connected disability ratings, including ratings for chronic adjustment disorder, limited extension of left knee, and left knee condition. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. 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. It is the opinion of the ARBA medical advisor that a referral of his case to the DES is unwarranted.

I. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? YES: Chronic adjustment disorder

(2) Did the condition exist or experience occur during military service? YES: The condition has been service connected by the VA

(3) Does the condition or experience actually excuse or mitigate the discharge? YES: As the condition is associated with self-medication with alcohol and/or illicit drugs, it fully mitigates the UCMJ violation for which he was involuntarily separated.

**BOARD DISCUSSION:**

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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for misconduct. The Board found no error or injustice in the separation proceedings and designated characterization of service assigned during separation. The Board noted the medical advisor's review; however, found the characterization of service assigned during separation processing appropriate and determined relief was not warranted.

**BOARD VOTE:**

Mbr 1    Mbr 2    Mbr 3

:        :        :        GRANT FULL RELIEF

:        :        :        GRANT PARTIAL RELIEF

:        :        :        GRANT FORMAL HEARING

            DENY APPLICATION

**BOARD DETERMINATION/RECOMMENDATION:**

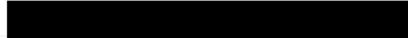
The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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3/25/2025



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.

**ADMINISTRATIVE NOTE(S):**

The applicant completed a period of IADT. He was awarded an MOS at the completion of training and returned to the control of the [REDACTED]ARNG. Regulatory guidance provides that when a Reserve Component Soldier successfully completes IADT, the characterization of service is honorable unless directed otherwise by the separation authority. Please reissue him a DD Form 214 for the period ending 19 April 2008, showing his character of service as honorable.

**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 ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to ABCMR applicants (and/or their counsel) prior to adjudication.
3. Title 10, USC, Section 1203 provides for the physical disability separation of a member who has less than 20 years of service and a disability rating at less than 30 percent (%).
4. Title 38, USC, Sections 1110 and 1131, permit the Department of Veterans Affairs (VA) to award compensation for disabilities which were incurred in or aggravated by active military service. However, an award of a VA rating does not establish an error or injustice on the part of the Army.
  - a. The Army rates only conditions determined to be physically unfitting at the time of discharge which disqualify the Soldier from further military service. The Army disability rating is to compensate the individual for the loss of a military career.
  - b. The VA does not have authority or responsibility for determining physical fitness for military service. The VA awards disability ratings to veterans for service-connected conditions, including those conditions detected after discharge, to compensate the individual for loss of civilian employability. As a result, the VA, operating under different policies, may award a disability rating where the Army did not find the member to be unfit to perform his duties. Unlike the Army, the VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.
5. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.

The regulation provides that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

6. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of physical unfitness is made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 2, provides physical standards for enlistment, appointment, and induction with the purpose to ensure members medically qualified are medically capable of completing required to training, adapt to a military environment without geographical limitations, perform duties without aggravation of existing physical defects or medical conditions.

b. The standards in Chapter 2 are applicable to individuals who enlist in the Regular Army - for medical conditions or physical defects pre-dating original enlistment, standards are applicable for enlistee's first 6 months of active duty. It states that enlisted Soldiers identified within the first 6 months of active duty with a condition that existed prior to service that does not meet the physical standards may be separated following an evaluation by an Entrance Physical Standards Board, under the provisions of Army Regulation 635-200, Chapter 5; for Reserve Component members, these standards are applicable during the enlistee's first period of active duty for training (ADT).

7. Army Regulation 135-178 (Army National Guard (ARNG) and Reserve Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted Reserve Component (RC) personnel.

a. Paragraph 2-9a provides that an honorable characterization of service is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 2-9b provides that a general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

8. Army Regulation 635-8 (Separation Processing and Documents), currently in effect, prescribes the transition processing function of the military personnel system. It states a DD Form 214 (Certificate of Release or Discharge from Active Duty) will be prepared for RC Soldiers awarded a military occupational specialty (MOS) even if active duty is less

than 90 days. When a RC Soldier successfully completes IADT the character of service is Honorable unless directed otherwise by the separation approval authority.

9. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System (DES) and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. It states, in part:

- a. Only the unfitting conditions or defects and those that contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. The mere presence of impairment does not, in and of itself, justify a finding of unfitness because of physical disability.
- b. The PEB-appointed counsel advises the Soldier of the Informal PEB (IPEB) findings and recommendations and ensures the Soldier knows and understands his or her rights. The Soldier records his or her election to the PEB on the DA Form 199 and has 10 calendar days from the date of receiving the PEB determination to make the election, submit a rebuttal, or request an extension.

10. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel. Chapter 4 of that regulation provides, in pertinent part, a Soldier will be separated upon expiration of enlistment or fulfillment of service obligation.

11. National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), in effect at the time, established the standards, policies, and procedures for the management of ARNG Enlisted Soldiers. Both NGR 600-200 and Army Regulation 135-178, provided for the separation of RC enlisted personnel for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, unsatisfactory participation, commission of a serious offense, and convictions by civil authorities. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or unlikely to succeed and an unfit medical condition is not the direct or substantial contributing cause of his or her misconduct. A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

12. 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.

13. 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//