

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 November 2024

DOCKET NUMBER: AR20240005639

APPLICANT REQUESTS: in effect, a change to the narrative reason for separation to medical disability separation.

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

- Counsel Statement in lieu of DD Form 149 (Application for Correction of Military Record), 13 May 2024
- DA Form 2166-9-2, (Non-Commissioned Officer (NCO) Evaluation Report (NCOER) Staff Sergeant (SSG) thru First Sergeant (1SG/MSG), 17 September 2022 - 27 November 2023
- Applicant's Statement, Qualitative Management Program (QMP) Board, 28 September 2023
- Counsel's Legal Position Paper, 28 September 2023
- Memorandum For Record, DPR____, 2 February 2024, subject: Support of (Applicant) Continued Active Duty Service
- 10 Letters of Support, QMP Board

FACTS:

1. The applicant states, through counsel,

a. He is requesting a comprehensive review of his medical records. He has been diagnosed with multiple behavioral health disorders, which align with existing military policies concerning discharges and mental health issues. These policies encompass the influential Wilkie memorandum as well as the Kennedy settlement. Taking significant strides towards the path of a Medical Evaluation Board (MEB), he requests the opportunity to present this option as a means of separation. His hope is to find a suitable resolution that takes into consideration his personal wellbeing and his commitment to serving his country.

b. He was recently denied continued service by the QMP Board and subsequently a final out date. He disagreed with the QMP Board and requested reconsideration, which was returned with a determination that there was no error. This was an unjust result and should be looked at for both procedural and equitable considerations.

c. It is crucial that he was diagnosed with post-traumatic stress disorder (PTSD), which is directly related to his combat experiences. He is a highly decorated infantryman and should be given additional time to work with medical providers to start a MEB. This should be considered when determining the appropriate disposition of his case.

d. He requests a review based on the Kennedy Settlement and the Kurta memorandum. He is being separated due to nonjudicial punishment related to substance abuse, which stemmed from service connected PTSD. After the passing of his father, he had to leave the Senior Leadership Course (SLC) after Phase I. He returned to complete his studies and achieved a nearly perfect 4.0 grade point average. However, he was struggling with anxiety and depression and was diagnosed with PTSD, and Persistent Complex Bereavement Disorder (PCBD). The nearest behavior health facility was Fort Knox. He resorted to alcohol as a coping mechanism.

e. He self-enrolled at an intensive 28-day inpatient facility specializing in behavioral health rehabilitation. Following this he received nonjudicial punishment. Despite his attempts to seek help from his primary care manager, all network therapists were unavailable, making it challenging to find professional support locally.

2. The applicant provides a written statement, which he provided to the QMP Board, he stated:

a. He has served in almost every capacity as an Infantryman, from rifleman to platoon sergeant, observer, coach, and trainer, as well as acting first sergeant. He took pride in his military career and had more to give to his country. He was consistently sought out by seniors, peers, and subordinates for guidance on an array of uncommon challenges.

b. From 2006 to 2008 he was deployed to Iraq. The 15 months he was there were incredibly challenging. Every day was a relentless battle fought door to door, house to house, and street to street. His task force experienced 83 casualties, and it was devastating to lose so many close friends. The intensity of combat was overwhelming, witnessing death and having to handle the aftermath of unimaginable destruction. His close friend who had been by his side since basic training was shot just two weeks into his deployment. It is through these experiences that he believes his PTSD originated.

c. At first, he was indifferent to it but as time went on its impact grew stronger. He endured multiple explosions which probably caused traumatic brain disorder (TBI). After being deployed to Iraq for a short period, he deployed again to Iraq for a second time. That deployment was almost as bad as the first one. He returned home and got promoted quickly to sergeant. Afterwards he deployed to Iraq a third time as part of a recurring cycle of deployments. His unit would return for a 10 month period, redeploy,

and then come back for another 12 months. The incidents his unit encountered were mostly surprise attacks or nightly inaccurate indirect with unclear origins.

d. He served as a Personal Security Detail for his battalion commander. Unfortunately, he took his own life due to the immense trauma he witnessed since 2001.

e. He spent 2 years at Fort Drum but most of that time was spent in Afghanistan. The experience was quite dynamic and a fast-paced 9 month tour. His unit was involved with incoming firefights from the mountains almost every night. The routine involved constantly running to the bunkers for safety.

f. Afterwards, he was stationed at Fort Campbell for a consecutive 5 year period serving as a platoon sergeant. He was in the significant role and higher ranking NCOs were reassigned to other battalions so he could remain the platoon sergeant.

g. In 2019 he deployed to Iraq and served at a remote fire base along the Syrian border. His platoon was chosen to advance further. His platoon accomplished significant feats, including the eradication of the Islamic State Caliphate and the fall of Al-Baghoudz.

h. He was reassigned to Camp Atterbury in the role of observer, coach, and trainer with his National Guard and Reserve partners. Due to the COVID-19 pandemic his work schedule was greatly affected. Telework became the normal and his unit was rarely physically present at camp.\

i. He experienced the signs and symptoms related to his mental health. After his father passed, he had to leave SLC after Phase 1. He buried his father and returned to complete his studies. He was diagnosed with PTSD and persistent complex bereavement disorder, and acute anxiety. He attempted to get help with his primary care manager, but all the network therapists were not taking new clients. Finding professional help was challenging. The nearest behavioral health facility was located near Fort Knox.

j. One day while feeling overwhelmed he resorted to alcohol as a coping mechanism just to get through the day. Someone intervened. His chain of command drove him to an intense 28 day inpatient facility. As a result of the incident, he received nonjudicial punishment. Despite this he has many people who can attest to his character and willingness to demonstrate leadership qualities among future generations of Soldiers.

3. The applicant provides:

a. A legal position paper, which he presented to the QMP Board, available for Board review.

b. His NCOER for the period 17 September 2022 thru 27 November 2023, in the rank of sergeant first class (SFC), and showing the rater noted he exceeded standards and was highly qualified for this role.

c. Letters of support from 11 Soldiers who served with him. Which were presented to the QMP Board.

4. A review of the applicant's service records show:

a. On 25 August 2006, he enlisted in the Regular Army.

b. He was deployed to Iraq during the periods:

- 4 October 2006—10 December 2007; 2 months and 6 days
- 15 December 2008—15 December 2009; 1 year and 1 day

c. He reenlisted on 11 June 2010 for 3 years in the rank/grade of sergeant/E-5.

d. He was deployed to:

- Iraq 2 February 2011—27 December 2011; 10 months and 26 days
- Afghanistan 24 January 2013—9 October 2013; 7 months and 16 days

e. He reenlisted a fourth time on 6 October 2014 for 3 years in the rank of SSG/E-6.

f. He reenlisted on 4 October 2018 for an indefinite period of service.

g. On 2 July 2019, in Department of the Army Suitability Evaluation Board Case Number AR2018001184, the Board voted to grant part of the applicant's request to transfer a General Officer Memorandum of Reprimand (GOMOR), dated 30 July 2010, to the restricted portion of his Army Military Human Resource Record (AMHRR) based on the purpose of the GOMOR having been served. This administrative GOMOR, which at the time of the Department of the Army Suitability Evaluation Board (DASEB) decision, was issued to him 9 years earlier, involved a 19 February 2010 incident in which he was pulled over while driving his privately owned vehicle (POV) while under the influence, driving with expired insurance, and uncooperative behavior at the military police station by refusing to give a breath sample.

h. On 1 October 2021, he was promoted to SFC/E-7.

i. A (County) Sheriff's Office Incident Report (Number J23xxxxxx), dated 17 January 2023, reflects civil authorities were called to the main gate of Camp Atterbury, and released the applicant to a member of his command.

j. A memorandum for record, dated 17 January 2023, reflects while the battalion was conducting a driver's training with the applicant as the master driver, he was observed:

(1) on or about 1100 hours taking a sip from what appeared to be a liquor bottle in his POV on Camp Atterbury; he had slurred speech, and he smelled of alcohol.

(2) On or about 1140 hours, he was escorted to battalion headquarters where he remained under supervision. The command sergeant major observed the applicant smelled of alcohol and slurred speech.

(3) on or about 1145 hours, legal was consulted for searching his POV and administering a sample collection versus a breathalyzer from law enforcement.

(4) On or about 1400 hours, probable cause existed to request a breathalyzer be administered by the (County) Sheriff's Department. The (County) police officer administered a breathalyzer to the applicant and provided case number J23xxxxxx.

(5) On or about 1700 hours, a search of the applicant's POV resulted in several liqueur items, including cans, and a small bottle of liquor.

(6) He was taken home and referred to behavior health and treatment at Fort Knox.

k. On 27 March 2023, he accepted field grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice for being drunk on duty while assigned as the battalion master driver conducting driver training, at Camp Atterbury on or about 17 January 2023. His punishment consisted of forfeiture of \$2,629.00 pay for 2 months, suspended; 45 days of extra duty; and filing of the NJP in the performance section of his AMHRR. He appealed this punishment and his commanding officer agreed to place this NJP in the restricted file of his AMHRR and the rest of the punishment was affirmed.

l. The QMP Board determinations and findings are not contained in the available record.

m. On 5 February 2024, Headquarters (HQ), U.S. Army Garrison Command, Fort Knox, Orders 036-0158 transferred the applicant to the U.S. Army transition point for separation with a date of discharge of 30 June 2024.

n. On 6 May 2024, HQ, U.S. Army Garrison Command, Fort Knox, amended orders 036-0158 with a new discharge date of 17 May 2024.

o. On 30 June 2024, the applicant was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged after having completed 17 years, 10 months, and 6 days of active service. It further shows in:

(1) block 13 (Decorations, Medal, Badges, Citations and Campaign Ribbons Awarded or Authorized):

- Army Commendation Medal with C Device (Seventh Award)
- Army Achievement Medal (Seventh Award)
- Meritorious Unit Commendation (Third Award)
- Valorous Unit Award (Second Award)
- Army Good Conduct Medal (Fifth Award)
- National Defense Service Medal
- Afghanistan Campaign Medal with Campaign Star
- Iraq Campaign Medal with 4 Campaign Stars
- Global War on Terrorism Service Medal
- Noncommissioned Officer Professional Development Ribbon (Numeral 3)
- Overseas Service Ribbon (Fifth Award)
- Combat Infantryman Badge
- Expert Infantryman Badge
- Air Assault Badge
- Inherent resolve Campaign Medal with Campaign Star
- Driver and Mechanic Badge with "W" Clasp

(2) Block 18 (Remarks), in part, service in:

- Iraq: 20061004—20071210; 20081215—20091215; 20110202—20111217; 20190105—20190903
- Afghanistan: 20130124—20131009

(3) Block 24 (Character of Service) – Honorable.

(4) Block 25 (Separation Authority) – Army Regulation 635-200 (Active Duty Enlisted Administrative Separations).

(5) Block 26 (Separation Code) – JGH.

(6) Block 27 (Reenlistment Code) – 1.

(7) Block 28 (Narrative Reason for Separation) – Non-retention on Active Duty.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting a change to the narrative reason for separation to medical disability separation. He contends PTSD as related to his request.

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 25 August 2006. He reenlisted on 11 June 2010, 6 October 2014, and 4 October 2018.
- He was deployed to:
 - Iraq from 4 October 2006 - 10 December 2007; 2 months and 6 days
 - Iraq from 15 December 2008 - 15 December 2009; 1 year and 1 day
 - Iraq from 2 February 2011 - 27 December 2011; 10 months and 26 days
 - Afghanistan from 24 January 2013 - 9 October 2013; 7 months and 16 days
- On 2 July 2019, in Department of the Army Suitability Evaluation Board Case Number AR2018001184, the Board voted to grant part of the applicant's request to transfer a General Officer Memorandum of Reprimand (GOMOR), dated 30 July 2010, to the restricted portion of his Army Military Human Resource Record (AMHRR) based on the purpose of the GOMOR having been served. This administrative GOMOR, which at the time of the Department of the Army Suitability Evaluation Board (DASEB) decision, was issued to him 9 years earlier, involved a 19 February 2010 incident in which he was pulled over while driving his privately owned vehicle (POV) while under the influence, driving with expired insurance, and uncooperative behavior at the military police station by refusing to give a breath sample.
- A (County) Sheriff's Office Incident Report (Number J23xxxxxx), dated 17 January 2023, reflects civil authorities were called to the main gate of Camp Atterbury, and released the applicant to a member of his command.
- On 27 March 2023, he accepted field grade nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice for being drunk on duty while assigned as the battalion master driver conducting driver training, at Camp Atterbury on or about 17 January 2023. His punishment consisted of forfeiture of \$2,629.00 pay for 2 months, suspended; 45 days of extra duty; and filing of the NJP in the performance section of his AMHRR. He appealed this punishment, and his commanding officer agreed to place this NJP in the restricted file of his AMHRR and the rest of the punishment was affirmed.
- On 30 June 2024, the applicant was discharged. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably discharged after having completed 17 years, 10 months, and 6 days of net active service this period. His narrative reason for separation – Non-retention on Active Duty, with separation code – JGH, and reenlistment code – 1.

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 states, through counsel, he is requesting a comprehensive review of his medical records. He has been diagnosed with multiple behavioral health disorders, which align with existing military policies concerning discharges and mental health issues. These policies encompass the influential Wilkie memorandum as well as the Kennedy settlement. Taking significant strides towards the path of a Medical Evaluation Board (MEB), he requests the opportunity to present this option as a means of separation. His hope is to find a suitable resolution that takes into consideration his personal wellbeing and his commitment to serving his country. He was recently denied continued service by the QMP Board and subsequently a final out date. He disagreed with the QMP Board and requested reconsideration, which was returned with a determination that there was no error. This was an unjust result and should be looked at for both procedural and equitable considerations. It is crucial that he was diagnosed with post-traumatic stress disorder (PTSD), which is directly related to his combat experiences. He is a highly decorated infantryman and should be given additional time to work with medical providers to start a MEB. This should be considered when determining the appropriate disposition of his case.

d. Active-duty electronic medical records available for review indicate the applicant has only been diagnosed with Insomnia and Alcohol related issues but does not evidence the applicant has been diagnosed with PTSD or any other behavioral health condition. The applicant did not provide any medical documentation substantiating his assertion of PTSD. Per the active-duty electronic medical record, on 16 April 2008, the applicant participated in a post-deployment assessment and presented "as a healthy adult with no psychiatric or cognitive limitations". He was cleared for sniper school. The applicant was seen in theater by medical staff on 6 March 2009 and 26 April 2009 and was diagnosed with Insomnia, he was encouraged to attend a sleep hygiene course and was provided medication to aid sleep. From 1 October to 1 December 2010, the applicant participated in 10 sessions via ASAP due to a DUI that was eventually resolved. He was diagnosed with Alcohol Abuse. The applicant was command referred to Substance Use Disorder Clinical Care (SUDCC) and participated in an in-depth assessment on 25 January 2018. He was screened for depression, anxiety, PTSD, and relationship issues; all were negative. The applicant participated in 6 sessions via ASAP from 31 January 2018 to 12 March 2018 and was diagnosed with Alcohol Dependence, Uncomplicated. On 4 January 2021, he presented to the mental health clinic at Ft. Campbell, even though he was stationed at Camp Atterbury, following being released from BACH Emergency Room after vomiting blood for three days due to onset of alcohol use. He reported drinking 6-8 beers daily since returning from his deployment in September 2019. He endorsed experiencing depressive and anxious symptoms (mind racing, feeling anxious/nervous, difficulty sleeping/insomnia, withdrawn, anger/irritability, and poor appetite) which he reported were alleviated by drinking. He was diagnosed with Alcohol Dependence, Uncomplicated. He was offered inpatient treatment near his

station and coordination with his command team. However, he was reluctant of inpatient treatment and reported he planned to engage with outpatient services. He reported excitement related to starting a new job position and believed it would reduce his symptoms of anxiety and depression. He indicated he was not interested in any services from Ft. Campbell and since he denied any safety concerns no further services were provided.

e. In January 2023, the applicant participated in inpatient detox at Lincoln Trail Behavioral Health related to his alcohol abuse. Upon discharge, he was command directed for a SUDCC evaluation. He reported achieving and maintaining sobriety for 2 years "but relapsed after his father died in June 2022 and then when notified of tombstone delivery he drank during lunch. He was breathalyzed at work and had BAC of .248 at about 1300 in afternoon." The applicant screened negative for TBI, but presented with mild anxiety, some symptoms of PTSD, along with relationship issues and severe insomnia. He was enrolled in the SUDCC treatment program and participated in 16 sessions between 25 January to 25 May 2023. He was diagnosed with Alcohol Dependence, Uncomplicated. On 16 June 2023, the applicant participated in a SUDCC discharge session and reported continuing sobriety. He was diagnosed with Alcohol Dependence, in Remission, it was recommended he continue processing issues related to his deployments with a behavioral health therapist, and an aftercare plan was developed identifying risk/protection factors to avoid relapse. The provider agreed to reach out to command to discuss closure of his SUDCC case.

f. Overall, the available service record indicates the applicant has been diagnosed with Insomnia; Alcohol Abuse; and Alcohol Dependence. The record did not contain a DA Form 199 (Physical Evaluation Board Proceedings). In addition, the service record does not indicate his military career was shortened due to a medical or mental health condition but evidences the applicant received an honorable discharge, successfully completed Senior Leadership Course (SLC) and "achieved a nearly perfect 4.0 grade point average," and his NCOER for the period of 17 September 2022 thru 27 November 2023, shows the rater noted he exceeded standards and was highly qualified for his role.

g. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the IDES process at this time. Although the applicant asserts PTSD, the record indicates he has been diagnosed with Insomnia, Alcohol Abuse, and Alcohol Dependence. The available active-duty electronic medical record shows upon assessment the applicant did not meet diagnostic criteria for PTSD. In addition, there is no evidence he failed Army retention criteria or had a ratable condition during the period of service. Furthermore, even if he had been diagnosed with PTSD, an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the documentation available for review, there is no

indication that an omission or error occurred that would warrant a referral to the IDES process at this time.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

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 record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. A review of the evidence shows the applicant was honorably discharged for non-retention on active duty after 17 years, 10 months, and 6 days of active duty service. The Board noted the applicant's contention of post-traumatic stress disorder; however, reviewed and concurred with the medical advisor's review finding insufficient evidence to support referral to the Disability Evaluation System for the applicant's request for amendment of his narrative reason for separation to medical disability separation. The Board noted the applicant's diagnosis of insomnia, alcohol abuse, and alcohol dependence and noted there is no evidence he failed the Army retention standards in accordance with regulatory guidance. Additionally, the Board noted the Department of Veterans Affairs rating determinations are based on the roles and authorities granted by Congress to the Department of Veterans Affairs and executed under a different set of laws. Based on this, the Board determined referral of his case to the Disability Evaluation System is 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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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. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), currently in effect, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 19. This chapter contains policies and procedures for voluntary and involuntary separation, for the convenience of the Government, of Regular Army noncommissioned officers and U.S. Army Reserve noncommissioned officers serving in Active Guard Reserve status, under the Qualitative Management Program (QMP).

b. Paragraph 19-1 reads, the service of a Soldier discharged under this chapter will be characterized as honorable.

c. Paragraph 19-2 reads, noncommissioned officers whose performance, conduct, and/or potential for advancement do not meet Army standards, as determined by the approved recommendations of Headquarters Department of the Army (HQDA) centralized selection boards responsible for QMP screening, will be denied continued service.

d. Paragraph 19-7, reads, QMP selection criteria include, but are not limited to: Moral or ethical conduct incompatible with the values of the NCO corps and the Army ethic; lack of potential to perform NCO duties in current grade; decline in efficiency and performance over a continuing period, as reflected by noncommissioned officer evaluation report or failure of Noncommissioned Officer Education System (NCOES) courses; recent or continuing disciplinary problems, as evidenced by conviction by court-martial, nonjudicial punishment, or administrative reprimand. Other discriminators may include imposition of a field commander's bar to re-enlistment, inability to meet physical fitness standards, and failure to comply with requirements of the Army body composition program.

e. Paragraph 19-11, appeal provisions, reads a Soldier denied continued service under the QMP may appeal the determination and request retention on active duty on the basis of improved performance and/or presence of material error in the Soldier's record when reviewed by the selection board. A Soldier may submit only one appeal, and requests for reconsideration of denied appeals are not authorized. The Soldier may submit any relevant material in support of the appeal.

2. Army Regulation 600-200 (Enlisted Personnel Management System), chapter 4, in effect at the time set forth policy and prescribed procedures for denying reenlistment under the QMP. That program was based on the premise that reenlistment was a privilege for those whose performance, conduct, attitude, and potential for advancement

met Army standards. It was designed to enhance the quality of the career enlisted force, selectively retain the best qualified Soldiers to 30 years of active duty, deny reenlistment to non-progressive and nonproductive Soldiers, and encourage Soldiers to maintain their eligibility for further service.

3. Army Regulation 635-5-1 (Personnel Separation – Separation Program Designator (SPD) Codes) appendix c shows regulatory authority Army Regulation 635-200, paragraph 19-2a, as narrative reason for QMP.

4. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), establishes the Army Physical Disability Evaluation System according to the provisions of chapter 61 of Title 10 U.S. Code and DOD Directive 1332.18. It sets forth policies, responsibilities, and procedures that apply in determining whether a member is unfit because of physical disability to perform the duties of his office, grade, rank, or rating. If a member is found unfit because of physical disability, it provides for disposition of the member according to applicable laws and policies.

a. Paragraph 4-1 provided the case of a member charged with an offense, or is under investigation for an offense which could result in dismissal or punitive discharge, may not be referred for disability processing unless:

(1) The investigation ends without charges.

(2) The officer exercising proper court-martial jurisdiction dismisses the charge.

(3) The officer exercising proper court-martial jurisdiction refers the charge for trial to a court-martial that cannot adjudge such a sentence.

b. Paragraph 4-2 provided, a member may not be referred for disability processing if he is under sentence of dismissal or punitive discharge. If the sentence is suspended, the member's case may then be referred for disability processing. A copy of the order suspending the sentence must be included in the member's records. If action to vacate the suspension, is started after the case is forwarded for disability processing, notify the Physical Evaluation Board (PEB) serving the area promptly. Stop disability processing. Do not resume processing unless the PEB is certain that the suspension will not be vacated.

c. Paragraph 4-3 provided enlisted members who may be separated under other than honorable conditions. An enlisted member may not be referred for physical disability processing when action has been started that may result in his administrative separation with a discharge under other than honorable conditions.

d. Paragraph 4-24 provided the U.S. Army; Human Resources Command will dispose of the case by publishing orders or issuing proper instructions to subordinate headquarters or return any disability evaluation case to U. S. Army Physical Disability Agency (USAPDA) for clarification or reconsideration when newly discovered evidence becomes available and is not reflected in the findings and recommendations.

e. Actions based upon modification by Army Disability Appeal Board (APDAB). When APDAB changes the disposition of the Soldier or lowers the disability rating, USA HRC will:

(1) Notify the Soldier (or next-of-kin, counsel, or guardian) of the changes by certified mail, return receipt.

(2) Furnish a copy of the notification to USAPDA, the PEB, and the PEB Liaison Officer of the MTF concerned.

(3) Advise the Soldier that his or her concurrence or rebuttal to the findings by the APDAB must be received by Army Human Resources Command (AHRC) within 10 days of the receipt of the notification letter (based upon date of the certified return receipt) unless AHRC has approved an extension of time. Failure to respond within the allotted time will result in waiver of right to file a rebuttal to the new findings.

(4) If timely rebuttal is received, forward it and the proceedings to APDAB for reconsideration.

f. Final disposition. Based upon the final decision of USAPDA or APDAB, AHRC will issue retirement orders or other disposition instructions as follows:

(1) Permanent retirement for physical disability (see 10 USC 1201 or 1204).

(2) Placement on the TDRL (see 10 USC 1202 or 1205).

(3) Separation for physical disability with severance pay (10 USC 1203 or 1206).

(4) Separation for physical disability without severance pay (Title 10, U.S. Code, Sections 630, 12681, 1165, or 1169, (10 USC 630, 12681, 1165, or 1169)).

(5) Transfer of a Soldier who has completed at least 20 qualifying years of Reserve service, and otherwise qualifies for transfer as described in paragraph 8–9, to the Inactive Reserve on the Soldier's request (section 1209, title 10, U.S. Code (10 USC 1209)).

(6) Separation for physical disability without severance pay when the disability was incurred as a result of intentional misconduct, willful neglect, or during a period of unauthorized absence (Title 10, United States Code, 1207).

(7) Release from active duty and return to retired status of retired Soldiers serving on active duty who are found physically unfit.

(8) Return of the Soldier to duty when he or she is determined physically fit.

5. On 3 September 2014 the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

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

8. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//