

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 February 2025

DOCKET NUMBER: AR20240006683

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 24 June 2021 to show:

- upgrade of his dishonorable character of service to honorable
- change in his narrative reason for separation to Secretarial Authority with a corresponding separation program designator (SPD) code
- and placement on the retired list

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief (16 pages)
- Enclosure 1 - DD Form 214 and Officer Record Brief (ORB)
- Enclosure 2 - memorandum, Humanitarian Service Medal Recommendation, dated 28 November 1994
- Enclosure 3 - statements of support (5)
- Enclosure 4 - Distinguished Flying Cross narrative
- Enclosure 5 - Awards (14), DA Form 2166-7 (Noncommissioned Officer Evaluation Report) (2), DA Form 67-9 (Officer Evaluation Report) (13)
- Enclosure 6 - Department of Veterans Affairs (VA) records (68 pages), dated 4 January 2023 to 4 January 2024
- Enclosure 7 - Mental Health records, dated 2 September 2007 to 9 June 2017
- Enclosure 8 - Court-martial documents (20 pages), dated 30 March 2017 to 7 August 2017
- Enclosure 9 - letters to Convening Authority (4), dated 27 April 2017 to 2 May 2017
- Enclosure 10, similar cases (16 pages)
- Enclosure 11, Affidavit, dated 25 March 2024
- Enclosure 12, Forensic Report, A.N.D., Doctor of Psychology (PsyD), Licensed Clinical Psychologist, dated 15 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 that since his time on active duty, he is a consultant with the U.S. Marine Force Reserve Headquarters. He was by-name requested by Marine Corps leadership to continue in his role when the contract changed. His role involves planning and managing the military construction needed to grow the Marine Corps Reserve Fleet. He teaches jiu-jitsu to local children and is a regular member of his church. He is in a happy, stable, long-term relationship with his fiancé. He had no other misconduct or legal issues while he was in the Army or since leaving the military.
3. Counsel states, in pertinent part:
 - a. The applicant served this nation honorably and with distinction for two decades. His punishment was much harsher than other similarly situated servicemembers. His service-connected post-traumatic stress disorder (PTSD) mitigates and outweighs his discharge. Numerous provisions within the liberal consideration guidance entitle him to relief. His post-military conduct has been outstanding.
 - b. After five years as an enlisted Soldier, he was commissioned in 2001. He attended flight school and was trained as an Apache helicopter pilot. He was ordered to the 82nd Airborne Division, which is notorious for its high operational tempo. In June 2006, he deployed to Iraq in support of Operation Iraqi Freedom. According to his battalion commander, the applicant "personally saved the lives of countless Americans in combat." He was nominated for the Distinguished Flying Cross, later downgraded, for his action in a nine-hour engagement near Baqubah in which he flew into action "200 feet off the ground, killing countless insurgents" while "taking fire the entire time."
 - c. In May 2009, he deployed to Afghanistan. The applicant's combat experience was critical to the unit's mission. Though he served as the Headquarters Company commander, he continued to fly missions. He was described as an approachable, competent, intense, and outstanding company commander. He regularly and repeatedly put his life on the line for his fellow Soldiers. He earned many awards and his noncommissioned officer and officer evaluation reports (NCOERs and OERs) demonstrate his dedication to excellence over his long career.
 - d. In May 2015, the applicant met Ms. H.M. She was an exercise instructor at the Joint Base Lewis McChord (JBLM) gym. She told him she was single. Having no reason to disbelieve her, the two started a romantic relationship. Regrettably, she was married

to Sergeant First Class (SFC) A.M., an enlisted Special Forces Soldier who was deployed to Afghanistan. Unaware that she was married, the applicant saw her both privately and publicly. In July 2015, she publicly proposed to him. He accepted and, for a time, believed himself to be engaged. In October 2015, the applicant's supervisor informed him that Ms. H.M. was married, and he forbid the applicant from having further contact with her. One week later, the applicant reported that he broke off the relationship. Within a short time, he renewed the relationship.

e. In December 2015, Ms. H.M. began to grow distant as her husband was to return home. The applicant lashed out in a series of angry, offensive, and hurtful text messages. She falsely accused him of sexual assault which led to a month's long investigation, with the allegations shown to be false. On 13 February 2017, the applicant was charged with adultery and disobeying a lawful command. He submitted an offer to plead guilty. The quantum portion of the offer included a provision limiting confinement to no more than 119 days. There were no other sentence limitations. The convening authority accepted the offer. He was sentenced to forfeit \$3,000.00 pay per month for three months, 30 days restriction, and dismissal from service.

f. The backlash to the extremely harsh sentence was immediate. Numerous witnesses wrote letters to the convening authority, voicing their disbelief at the harshness. A canvas of publicly available courts-marital results from 2017 to 2022, reveals not a single officer, O-3 and above, or NCO, E-8 and above, received a dismissal or discharge for adultery. In comparison to these court-martial results, the applicant's dismissal was highly unfair and an unjust disparity and treatment.

g. The applicant has been diagnosed with PTSD, which developed as a direct result of his experiences in the military, and major depressive disorder. He has been living with PTSD for more than a decade. There is sufficient evidence that his mental health condition compromised his ability to make good decisions.

h. His post-military conduct is outstanding. He continues to contribute to the nation's armed forces through his civilian employment. He continues to develop and grow as an individual. He volunteers his time teaching jiu-jitsu to local children, many of whom come from homes without strong family structure. He is a faithful member of his church. He is in a stable and loving relationship and has worked hard to secure his future.

4. The applicant served an honorable period of enlisted service in the Regular Army, from 21 April 1992 through 20 April 1997. He was awarded the military occupational specialty 62E (Heavy Construction Equipment Operator). The highest rank he attained was sergeant/E-5.

5. He enlisted in the Army National Guard of the United States on 24 February 1997 and subsequently reenlisted on 14 October 2000.

6. On or about 2 June 2001, he accepted an appointment as a Reserve Officer of the Army. He entered active duty on 27 September 2001 and subsequently graduated from the Aviation Officer Basic Course. He was awarded the Army Aviator Badge on 18 December 2002.
7. The applicant served in Iraq from 17 July 2006 to 25 September 2007 and in Afghanistan from 5 May 2009 to 24 April 2010.
8. Before a general court-martial, at JBLM, WA, on 12 April 2017, the applicant pled guilty to and was found guilty of failure to obey a lawful order, by wrongfully having contact with Mrs. H.M., on divers occasions between on or about 30 October 2015 and 29 February 2016, and wrongfully having sexual intercourse with Mrs. H.M., a woman not his wife, on divers occasions between on or about 1 May 2015 and 15 February 2016. He was sentenced to 30 days restriction, forfeiture of \$3,000.00 pay per month for three months, and dismissal from the U.S. Army. The sentence was approved on 7 August 2017 and except for the part of the sentence extending to dismissal from service, was ordered executed.
9. On 30 October 2018, the U.S. Army Court of Criminal Appeals affirmed the findings of guilty. However, they were unable to affirm the sentence without additional fact finding. The record of trial was returned to The Judge Advocate General to conduct a hearing to answer questions regarding witnesses listed in the applicant's affidavit and whether or not there was a strategic reason not to call the witnesses to testify during pre-sentencing proceedings. Upon completion of the hearing, the record was returned to the court for further review.
10. On 13 March 2019, the U.S. Army Court of Criminal Appeals affirmed the findings of guilty and the sentence as approved by the convening authority.
11. The conviction became final on 26 March 2021, when the U.S. Court of Appeals for the Armed Forces affirmed the judgment of the U.S. Army Court of Criminal Appeals. The sentence was approved, and the dismissal was ordered executed on 24 June 2021.
12. The applicant was dismissed from active duty on 24 June 2021, under the provisions of Army Regulation 600-8-24 (Officer Transfers and Discharges), by reason of court-martial (other). His DD Form 214 shows his character of service was dishonorable with separation code JJD. He completed 19 years, 8 months, and 28 days of net active service. He was authorized or awarded the following:
 - Bronze Star Medal
 - Air Medal (3rd award)
 - Army Commendation Medal (3rd award)
 - Army Achievement Medal (4th award)

- Joint Meritorious Unit Award (2nd award)
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Afghanistan Campaign Medal with two campaign stars
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Overseas Service Ribbon (2nd award)
- North Atlantic Treaty Organization Medal
- Combat Action Badge
- Basic Aviator Badge
- Parachutist Badge
- Air Assault Badge

13. The applicant provides the following:

a. Enclosures 2 and 5 contain 15 awards, two NCOERs, and 13 OERs which highlight his performance, duties, and accomplishments throughout the length of his military career.

b. Enclosure 3 contains five undated statements of support, wherein the authors state they were not called on to testify at his court-martial, which they would have gladly done. They attest to his competency as a pilot, officer, and commander. He was a hardworking, intense, honorable, and trustworthy man, who was highly regarded by all who knew him. He had extremely high rehabilitative potential. He was not a perfect man, but his offenses did not change their opinion of him. He had the highest level of military character and motivated those around him to be the best they could be. He loved Soldiers and being a Soldier. They would gladly serve with him again.

c. Enclosure 4 contains a Distinguished Flying Cross narrative which states the applicant distinguished himself by exceptionally meritorious conduct in the performance of outstanding achievement to the United States as an Attack Weapons Team Co-Pilot/Gunner while flying with the Attack Reconnaissance Battalion, on 16 November 2006, during Operation Iraqi Freedom.

d. Enclosures 6 and 7 contain 68 pages of VA records, dated 4 January 2023 to 4 January 2024, and eleven pages of in-service mental health records, dated 2 September 2007 to 9 June 2017, which will be summarized, in pertinent part, in the "MEDICAL REVIEW" section of this Record of Proceedings (ROP).

e. Enclosures 8 and 9 contain 20 pages of court-martial documents dated 30 March 2017 to 7 August 2017, and subsequent letters to the convening authority, dated

27 April 2017 to 2 May 2017, wherein the authors opine that the applicant's punishment was excessive in light of the nature of his offenses and the quality of his lengthy service. He was a good leader, who demonstrated impeccable military bearing. He mentored and motivated his subordinates and demonstrated his trustworthiness time and time again. He was remorseful and admitted guilt to his infraction. He did not deserve to be dismissed from the Army. He earned his retirement and deserved to be allowed to seek benefits from the VA for his in-service emotional and physical injuries.

f. Enclosure 10 includes 16 pages of similar courts-martial cases which counsel states show the applicant's dismissal from service was highly unfair and an unjust disparity in treatment.

g. Enclosure 11 contains an affidavit from the applicant, dated 25 March 2024, which is summarized, in pertinent part, in paragraph 2 of this ROP.

h. Enclosure 12 contains a Forensic Report, from A.N.D., PsyD, Licensed Clinical Psychologist, dated 15 February 2024, which will be summarized, in pertinent part, in the "MEDICAL REVIEW" section of this ROP.

14. In the processing of this case, the Army Review Boards Agency (ARBA) Security Manager conducted a review of the medical documents, provided by the applicant, which were marked CONFIDENTIAL. After a thorough review, the Security Manager was convinced, beyond a reasonable doubt, that the CONFIDENTIAL markings were for privacy reasons only. The documents do not appear to contain classified information.

15. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

16. Regulatory guidance provides a Soldier will receive a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed, and the affirmed sentence ordered duly executed.

17. In reaching its determination, the Board can consider the applicant's petition, his service record, and his statements in light of the published guidance on equity, injustice, or clemency.

18. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from dishonorable conditions to honorable, change in narrative reason to Secretarial Authority, SPD code and placement on the retired list. He contends he experienced undiagnosed PTSD that mitigates his misconduct.

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 was initially enlisted in the Regular Army on 21 Apr 1992 and was honorably discharged on 20 Apr 1997. He subsequently enlisted in the Army National Guard on 24 Feb 1997 and reenlisted on 14 Oct 2000. He was appointed as a Reserve officer of the Army on 2 Jun 2001 and entered active duty on 27 Sep 2001.
- The applicant served in Iraq from 17 July 2006 to 25 September 2007 and in Afghanistan from 5 May 2009 to 24 April 2010.
- Before a general court-martial, at JBLM, WA, on 12 April 2017, the applicant pled guilty to and was found guilty of failure to obey a lawful order, by wrongfully having contact with Mrs. H.M., on divers occasions between on or about 30 October 2015 and 29 February 2016, and wrongfully having sexual intercourse with Mrs. H.M., a woman not his wife, on divers occasions between on or about 1 May 2015 and 15 February 2016.
- U.S Army Court of Appeals affirmed findings of guilt (30 Oct 2018) but needed additional fact finding. The conviction was made final on 26 Mar 2021 and sentence was approved.
- The applicant was dismissed from active duty on 24 June 2021, and he was credited with 19 years, 8 months and 28 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts that he experienced PTSD during his time in service, which mitigates his misconduct. The applicant submitted mental health documentation with his application that contained numerous pages of DoD and VA treatment notes which in large part are elucidated in the JLV section. A Post-Deployment Health Re-Assessment (16 Feb 2009) indicated some depressive symptoms, conflicts with his spouse and PTSD related symptoms (i.e. nightmares, avoidant behavior, hypervigilance and emotional numbness). A VA consult note in the supporting documents (12 Jan 2023) referenced his severe combat-related nightmares, excessive anger and history of flashbacks from his experiences as an Apache helicopter pilot. It was also noted that he experienced side effects from his medications for depression and PTSD-related symptoms. The provider diagnosed him with PTSD, chronic. An independent

psychologist, Dr. [REDACTED] who conducted an evaluation (15 Feb 2024) opined that the applicant's misconduct was more likely than not the result of his PTSD as his judgment and management of interpersonal relationships was adversely impacted. The confusion he encountered in the relationship was further aggravated by his claim of being deceived in the beginning that she was not married. There was sufficient evidence that the applicant was diagnosed with a mental health condition while on active service.

d. The VA's Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed considerable history of mental health related treatment or diagnoses. There were not any identified service-connected disability(s). An initial BH entry (17 Sep 2010) was on a walk-in basis where there were concerns of self-harm based on statements he made to his estranged spouse. He acknowledged marital distress and a pending divorce which he hoped could be reversed. He denied any suicidal or homicidal ideation. He did report combat experiences that still bothered him. Provider wanted to follow-up for possible PTSD. A DoD behavioral health (BH) encounter (26 Feb 2016) was oriented to crisis intervention due to high distress following an accusation of sexual assault of a civilian married woman he had been seeing. He denied being suicidal and was diagnosed with Adjustment Disorder with Anxiety. He had two follow-up sessions before a break of a year. On 19 Apr 2017, applicant voluntarily came to the BH clinic to address high stress, anxiety and depression in the wake of a court-martial decision forcing him to leave the Army without benefits due to his involvement with a married woman, even though exonerated from the rape charges. On 08 May 2017, he started attending anger management groups. A BH encounter note (15 May 2017) indicated a missed group appointment and a diagnosis of Adjustment Disorder with Anxiety. The third encounter note a week later (22 May 2017) confirmed his attendance at an anger management group and his complaint of excessive stress and irritability/anger impacting his ability to function well at work. During his fourth anger management group on 6 Jun 2021, he reported anger about what he experienced and a lack of certainty about his future.

e. The applicant initiated BH services with the VA in Oct 2021. A mental health intake (telehealth) occurred on 01 Nov 2021 during which applicant expressed considerable trouble coping with the civilian world following 25 years of military service as an Apache helicopter pilot with exposure to "heavy fighting." He further noted hating the world and people around him, using exercise to sheer exhaustion. He reported being in anger management classes some three years ago following the accusation of dating a married woman, his attorney stealing his money and losing his license. He confirmed being angry about what happened since many other soldiers do the same thing with no consequences. The psychologist provided a diagnostic impression of "irritability and anger." Applicant started up with anger management groups on 24 Jan 2022 and went to one more session before no contact for the next ten months. A BH evaluation (07 Dec 2022) noted that applicant was seeking services for experiences in

Iraq where friends were killed and having repetitive dreams of getting shot down and captured as a POW. He denied any MSTs but endorsed several PTSD related symptoms. He was diagnosed with Other Specified Trauma-and Stressor-Related Disorder, rule out PTSD and Depressive Disorder, Unspecified. He was referred to the PTSD clinic for further assessment and therapy. Six months went by (15 May 2023) before he followed up with further assessment (telehealth) for PTSD and other potential conditions. He reported witnessing the aftermath of the 1994 "Green Ramp Disaster" where 23 paratroopers were killed. He was one of the first on the scene to assist following the mid-air collision between two planes. He also referred to an intense helicopter battle where he was exposed to suffering and a near death experience. The psychologist concluded he met the criteria for PTSD and Major Depressive Disorder, recurrent episode, moderate. Applicant indicated a desire to engage in specialized treatment for PTSD. Applicant started attending Prolonged Exposure (PE) sessions on 16 Aug 2023 and completed the sequence of eleven sessions on 13 Dec 2023, noting improvement with avoidant responses.

f. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support that the applicant had a mental health condition, Adjustment Disorder with Anxiety, while on active service. VA providers conducted in depth evaluations that later established the presence of PTSD, and the applicant completed a trauma-focused, evidence-based treatment protocol for PTSD. However, the misconduct of continuing a sexual relationship with a married woman after being directly ordered to avoid any further contact cannot be mitigated by the presence of an Adjustment Disorder with Anxiety or PTSD.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, PTSD, at the time of the misconduct. He was diagnosed with Adjustment Disorder with Anxiety during his time in service. A PTSD diagnosis and Major Depressive Disorder were diagnosed by the VA following his discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced a behavioral health condition while on active service. He had a deployment history as an Apache pilot serving in Iraq from 17 July 2006 to 25 September 2007 and in Afghanistan from 5 May 2009 to 24 April 2010.

(3) Does the condition or experience excuse or mitigate the discharge? No. While the applicant was diagnosed with an Adjustment Disorder and displayed symptoms of PTSD while on active service, there is no nexus between his disregard of a direct order to discontinue an adulterous relationship and his behavioral health condition. However, per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the following findings outlined in the medical review:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes

(2) Did the condition exist or experience occur during military service? Yes

(3) Does the condition or experience excuse or mitigate the discharge? No,

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service and/or narrative reason for separation.

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 (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. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 600-8-24 (Officer Transfers and Discharges), in effect at the time prescribed policy and procedure governing transfer and discharge of Army officer personnel.
 - a. Paragraph 1-16 states an officer pending court-martial charges or investigation with a review toward court-martial will not be separated without Headquarters, Department of the Army approval.
 - b. Paragraph 1-22(a) states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance for reasons that do not involve acts of misconduct, for an officer.

c. Paragraph 1-22(b) states an officer will normally receive an under honorable conditions characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. Chapter 4 (Eliminations) of the regulation prescribes the process for elimination of an officer in the Army. Paragraph 4-1 (Overview) states an officer is permitted to serve in the Army because of the special trust and confidence the President and the nation have placed in the officer's patriotism, valor, fidelity, and competence. An officer is expected to display responsibility commensurate to this special trust and confidence and to act with the highest integrity at all times. However, an officer who will not or cannot maintain those standards will be separated.

e. Paragraph 5-17 states an officer convicted and sentenced to dismissal as a result of general court-martial proceedings will be processed pending appellate review. A Reserve Component officer may be released from active duty pending completion of the appellate review or placed on excess leave in lieu of release from active duty.

4. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

5. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Paragraph 2-4 provides that RE codes are determined by the separation authority and reason for separation, not the character of separation. RE codes are placed on military discharge documents and determine whether or not one may reenlist or enlist in a Military Service at a later time. RE codes should be used in relation to the reason for separation for enlisted personnel in accordance with Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program). Officers do not have RE codes

and reentry/future appointments are determined by Human Resources Command during the reappointment process.

c. Paragraph 2-6 provides the SPDs and narrative reasons for separation that are applicable to officer personnel. It shows, in part, SPD JJD is the appropriate code to assign to an officer who is separated as a result of Court-Martial (Other). KFF is the appropriate SPD to assign to officers who are voluntarily discharged under Secretarial authority.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

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.

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

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses

or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//