

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 January 2025

DOCKET NUMBER: AR20240007487

APPLICANT REQUESTS: reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge, and a disability retirement. Additionally, he requests an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- two self-authored statements, dated 5 March 2024 and 4 November 2024
- letter, Department of Rehabilitation Services, Office of Disability Determination Services, dated 19 February 1999
- letter, Social Security Administration, dated 5 November 2024
- visit notes, Bienville Orthopedic Services, dated 18 September 2024 and 3 October 2024
- medical documentation, Department of Veterans Affairs (VA), printed on 24 October 2024
- correspondence, KRW Lawyers, Asbestos Division, dated 27 June 2024 to 1 August 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous considerations of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Numbers AR2000047555 on 13 March 2001 and AR20230006438 on 5 January 2024.

2. The applicant states, in effect:

a. He reviewed the 11- page decision from AR20230006438. He is deeply disturbed by the one-sided finding. He questions whether the lie-detector test, which he passed with flying colors while at Fort Knox, KY, was used in the ABCMR's findings. He was falsely accused of sexual harassment without any proof or evidence of violations. He did request advance pay before going to Fort Knox. His wife stole all of his money. The Army has not used the truth to prove his innocence.

b. He is a Gulf War Disabled Veteran. He had hospital stays while in the Army and was in a U.S. Navy Mental Hospital. He was injured in combat. He has not worked in 23 years. He went crazy during and after the Gulf War. He needed crack-cocaine just to do his job. He was homeless in Milwaukee, not sleeping and not getting any help. None of this is being reported or recorded by the ABCMR. None of his injuries or disabilities are mentioned in his report. He was hospitalized three times during combat and did not get a medical board retirement.

c. The applicant notes post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), and other mental health as conditions related to his request.

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

a. He enlisted in the Regular Army on 1 August 1989, for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 71L (Administrative Specialist). The highest rank he attained was specialist (SPC)/E-4.

b. He served in Southwest Asia from 25 January 1991 to 5 May 1991 and subsequently reenlisted on 20 September 1993.

c. During a routine urinalysis on 22 February 1996, the applicant submitted a urine sample which tested positive for marijuana.

d. On 12 March 1996, the applicant was given a direct order to have no contact with a female SPC. On 14 March 1996, the female SPC filed a written complaint against the applicant for sexual harassment.

e. On the same date, the applicant requested to speak with his commander. He was read his rights, and he elected to answer questions without an attorney present. He admitted to smoking marijuana while on leave at the end of January/beginning of February 1996. He denied sexually harassing anyone.

f. The applicant accepted nonjudicial punishment on 15 March 1996 under the provisions of Article 15 of the Uniform Code of Military Justice, for wrongfully using marijuana. His punishment included reduction to private/E-2.

g. The applicant underwent a mental status evaluation on 19 March 1996. The evaluating provider determined he was mentally responsible with the mental capability to understand and participate in proceedings. He was psychiatrically cleared for any action deemed appropriate by his command.

h. The applicant was formally counseled on 21 March 1996, for perpetrating a fraud against the Government on 22 February 1996 by informing the local finance office that

he did not receive a \$1,000.00 check, sent to him on 3 February 1996, and that he did not endorse such a check. He signed an official document to that effect. He was also counseled at this time for making unauthorized personal calls on a military phone.

i. On 26 March 1996, the Post Equal Opportunity (EO) Advisor conducted an inquiry into complaints against the applicant and found a pattern of misconduct that disturbed the good order and discipline of the female Soldiers who came in contact with the applicant. The EO advisor opined that the applicant's behavior demonstrated that he could be charged with cruelty and maltreatment, extortion, assault, and communicating a threat and recommended that the applicant be separated without delay.

j. On 28 March 1996, the unit commander signed a memorandum indicating the applicant had been command referred and enrolled in the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) for alcohol addiction. He successfully completed the program on 21 December 1993. He was again command referred and enrolled in ADAPCP for alcohol addiction on 28 May 1994 and successfully completed the program on 27 October 1994. He was command referred and enrolled for marijuana use following his positive urinalysis. A separation, for drug/alcohol rehabilitation failure, was not appropriate at the time as he was not enrolled in the program when he tested positive.

k. On 1 April 1996, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation 635-200 (Personnel Separations), Chapter 14, by reason of misconduct-commission of a serious offense. As specific reasons for the action, the commander noted the applicant's use of illegal drugs (marijuana); attempted fraud; disobeying a commissioned officer; making a false official statement; communicating threats; solicitation of prostitution; and indecent language by making sexual comments.

l. The applicant consulted with legal counsel. He was advised of the basis for the contemplated separation action and its effects; of the rights available to him; and the effect of waiving his rights. He voluntarily waived consideration of his case by an administrative separation board contingent upon receiving a characterization of service no less favorable than under honorable conditions (general). He elected not to submit a statement in his own behalf.

m. The unit commander subsequently recommended separation from the service, with a UOTHC character of service, and waiver of further rehabilitative efforts. The applicant's intermediate commanders reviewed the recommended action and further recommended approval with a UOTHC discharge.

n. On 13 May 1996, the applicant again consulted with legal counsel and waived consideration of his case by an administrative separation board.

o. The separation authority approved the separation action on 31 May 1996, waived further rehabilitative efforts and directed the issuance of a UOTHC character of service.

p. The applicant was discharged on 5 June 1996, under the provisions of Army Regulation 635-200, paragraph 14-12c, by reason of misconduct. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his character of service was UOTHC, with separation code JKQ and reentry code 3. He completed 6 years, 10 months, and 5 days of net active service. He was awarded or authorized:

- Southwest Asia Service Medal with three bronze stars
- Army Achievement Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon (3rd award)
- Kuwait Liberation Medal (SA)
- Kuwait Liberation Medal (KU)
- Expert Marksmanship Qualification Badge with Rifle bar (M-16)

4. The Army Discharge Review Board considered the applicant's request for a change to his character and/or reason for his discharge on 19 January 2001. The Board determined the applicant was properly and equitably discharged and denied his request for relief.

5. On 13 March 2001, the ABCMR considered the applicant's request for an upgrade of his character of service and restoration of his rank/grade. The Board stated:

a. There was no evidence that the applicant was in the physical disability processing system at any time. Even if he had been in the physical disability processing system, once action was started to separate him under Army Regulation 635-200, Chapter 14, which authorized a UOTHC characterization of service, it would have been appropriate to stop that processing.

b. The Board acknowledged that the misconduct, resulting in the applicant's discharge occurred during his last assignment, in a relatively short period of time. However, considering the nature of the misconduct, a UOTHC character of service was appropriate. The Board also acknowledged that he completed his first term of service honorably. However, he abused alcohol and drugs throughout the period from his reenlistment on 20 September 1993 to January 1996, when his misconduct at Fort Knox started. The Board concluded that such behavior did not warrant an upgrade.

c. Additionally, his reduction to private/E-1, due to his UOTHC character of service was appropriate. In view of the foregoing, there was no basis to grant the applicant's

request. There was no sufficient relevant evidence to demonstrate the existence of a probable error or injustice.

6. On 5 January 2024, the ABCMR considered the applicant's request for correction of his narrative reason for separation to show "disability retirement."

a. In the processing of this case, the Army Review Boards Agency (ARBA) Medical Advisor provided a medical advisory opinion. The applicant was granted a 100 percent (%) service-connected disability rating from the Department of Veterans Affairs (VA) for neurosis. He has been diagnosed with personality disorder and reports difficulty with anxiety, depression, insomnia, substance abuse, and symptoms of head injury since his discharge. Although he engaged in substance abuse and avoidant self-medicating behavior, which can be a natural sequelae to anxiety, depression and PTSD; there is no nexus between the misconduct of attempted fraud, making a false official statement, communicating threats, solicitation of prostitution, and indecent language given that these types of misconduct are not part of the natural sequelae of his reported conditions. Nor do his reported conditions prevent him from distinguishing right from wrong.

b. After careful consideration, the Board determined the applicant was properly and equitably discharged. However, the Board found that the applicant's DD Form 214 was missing several administrative entries that may affect his ability to receive post-service benefits.

c. On 20 February 2024, the applicant was issued a DD Form 215 (Correction to DD Form 214) which added the following statements to item 18 (Remarks) of his DD Form 214:

- MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE ACTIVE SERVICE; 890801-930919

7. The applicant provides:

a. Two letters from the Department of Rehabilitation Services, dated 19 February 1999, and the Social Security Administration, dated 5 November 2024, show the applicant's social security benefit.

b. Visit notes from Bienville Orthopedic Services, dated 18 September 2024 and 3 October 2024, show the applicant underwent a left knee arthroscopy with partial lateral meniscectomy and was treated for Achilles tendinitis, left, and medial meniscus tear, acute, right.

c. Medical documentation from the VA, printed on 24 October 2024, shows the applicant has a 100% service-connected disability rating, with the following service-connected disabilities:

- Eczema
- Fibromyalgia
- Migraine headaches
- Neurosis
- Superficial scars
- Third degree burns
- Impairment of sphincter control
- Sleep apnea syndrome
- Surgery of the breast
- Chest muscle impairment
- Synovitis

d. Correspondence from KRW Lawyers, Asbestos Division, dated 27 June 2024 to 1 August 2024, shows the applicant is receiving settlement disbursements for asbestos exposure.

e. A filing with the U.S. Court of Appeals Veterans Claims requesting a buy-out settlement with retroactive back payment, made-out in the next 30 days, dated 21 February 2025.

8. The applicant does not provide nor does his record include the results of a lie detector test, which the applicant states was administered at Fort Knox, KY, by the Criminal Investigation Division.

9. Regulatory guidance provides when an individual is discharged under the provisions of Army Regulation 635-200, Chapter 14, the separation authority may direct a general discharge if such is merited by the Soldier's overall record. A characterization of honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

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

11. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable and a disability retirement. He contends he

experienced an undiagnosed mental health condition, including PTSD, and Traumatic Brain Injury (TBI) 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 enlisted into the Regular Army on 1 August 1989. He served in Southwest Asia from 25 January 1991 to 5 May 1991 and subsequently reenlisted on 20 September 1993.
- The applicant accepted NJP on 15 March 1996 for wrongfully using marijuana.
- On 1 April 1996, the applicant's immediate commander notified the applicant of his intent to initiate separation action against him under the provisions of Army Regulation 635-200, Chapter 14, by reason of misconduct-commission of a serious offense. As specific reasons for the action, the commander noted the applicant's use of illegal drugs (marijuana); attempted fraud; disobeying a commissioned officer; making a false official statement; communicating threats; solicitation of prostitution; and indecent language by making sexual comments.
- The applicant was discharged on 5 June 1996 and completed 6 years, 10 months, and 5 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he was falsely accused of sexual harassment, and he, essentially, disagrees with the decision from ABCMR case number AR20230006438. He provided additional documentation, including a letter from the Department of Rehabilitation Services dated 19 February 1999, which showed more information was needed to process the applicant's claim, and a letter from the Social Security Administration dated 5 November 2024 showed he is the recipient of benefits, which began on 7 June 2000. Medical records from VA showed the applicant is 100% service connected for Neurosis, and the applicant also included additional medical records from Bienville. The ROP from AR20230006438 provided a Medical Review, which referenced review of a Mental Status Evaluation on 19 March 1996 showing the applicant was psychiatrically cleared for any action deemed appropriate by command. There was also reference to enrollment and completion of an alcohol addiction program in December 1993 and a second enrollment and completion in October 1994 as well as a third enrollment secondary to a positive marijuana drug test. The BH Medical Advisor concluded there was insufficient evidence to support a referral to IDES and insufficient evidence of a mitigating mental health condition. The application contained insufficient evidence of a diagnosis of PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed a history of Compensation and Pension (C&P) evaluations in 1996, 2012, 2015, 2016, and 2018, and he is 100% service connected for Neurosis. His most recent C&P exam found a diagnosis of

Unspecified Anxiety Disorder but noted the applicant's noncompliance with the interview process and findings primarily being based on record review. Results from the C&P exam in 2016 showed a diagnosis of Unspecified Neurocognitive Disorder based on his report of a tractor trailer accident in 1998 and evidence of mild impairment in aspects of delayed memory and executive functioning. The additional evaluations noted Unspecified Anxiety Disorder, possible Somatic Symptom Disorder, and documentation of a history of diagnosis of Personality Disorder. VA treatment records show engagement with mental health dating back to October 1999, and his most recent encounter was in August 2022. Documentation indicated complaints about his treatment by VA and the Regional Office and his exacerbated mental health symptoms secondary to his medical problems.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. There is also insufficient evidence to warrant a referral to IDES.

f. 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, including PTSD, at the time of the misconduct. The applicant has been diagnosed with Neurosis and is 100% service connected for this condition.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the available military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. Based on review of a previous ABCMR case, the applicant had an in-service history of substance abuse (alcohol and marijuana) referrals and treatment, and a Mental Status Evaluation that showed he was psychiatrically cleared for administrative separation. There was insufficient evidence to support the need for a behavioral health referral to IDES during his time in service. While substance abuse can be a self-medicating behavior used to avoid uncomfortable emotions, including anxiety, the applicant's misconduct related to attempting fraud, making a false statement, communicating threats, and solicitation of prostitution, and indecent language is not part of the natural history or sequelae of his reported mental health condition. Additionally, his asserted mental health condition does not affect one's ability to distinguish right from wrong and act in the accordance with the right.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. There is also insufficient evidence to warrant a referral to IDES.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. The applicant has been diagnosed with Neurosis and is 100% service connected for this condition.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the available military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. Based on review of a previous ABCMR case, the applicant had an in-service history of substance abuse (alcohol and marijuana) referrals and treatment, and a Mental Status Evaluation that showed he was psychiatrically cleared for administrative separation. There was insufficient evidence to support the need for a behavioral health referral to IDES during his time in service. While substance abuse can be a self-medicating behavior used to avoid uncomfortable emotions, including anxiety, the applicant's misconduct related to attempting fraud, making a false statement, communicating threats, and solicitation of prostitution, and indecent language is not part of the natural history or sequelae of his reported mental health condition. Additionally, his asserted mental health condition does not affect one's ability to distinguish right from wrong and act in the accordance with the right.

3. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct that warrants an upgrade. The Board noted, the applicant was discharged under other than honorable conditions (UOTHC) on 5 June 1996 following a pattern of serious misconduct. Evidence shows offenses included illegal drug use (marijuana), attempted fraud against the government, disobeying a commissioned officer, making a false official statement, communicating threats, solicitation of prostitution, and using indecent language through sexual comments. These actions were substantiated through urinalysis, official counseling, and Equal Opportunity investigations, which revealed a disturbing impact on unit morale and discipline.

4. The Board acknowledged the applicant completed his first term of service honorably and served in Southwest Asia, however, his conduct following reenlistment in 1993 reflected a consistent disregard for military standards. Furthermore, the Board determined there is no evidence that the applicant was ever in the physical disability evaluation system, nor is there justification for a disability retirement. The nature and severity of the applicant’s misconduct fully support the characterization of service he received. Based on this, the Board denied the applicant’s request for upgrade and disability retirement.

5. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR2000047555 on 13 March 2001 and AR20230006438 on 5 January 2024.

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. Section 1556 of Title 10, U.S. Code (USC), requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions, and reviews to the Army Board for Correction of Military Records (ABCMR) applicants prior to adjudication.
2. 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 (%).
3. 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.

4. 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 ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

5. 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 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 and Army National Guard members, these standards are applicable during the enlistee's first period of active duty for training (ADT).

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Physical Disability Evaluation System (PDES) 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 or her office, grade, rank, or rating. It provides for a medical evaluation board that is convened to document a Soldier's medical status and duty limitations as far as duty is affected by the Soldier's status. A decision is made as to the Soldier's medical qualifications for retention based on the criteria in Army Regulation 40-501 (Standards of Medical Fitness), Chapter 3. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in service.

a. Paragraph 2-1 provides that the mere presence of impairment does not of itself justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade, or rating. The Army must find that a service member is physically unfit to reasonably perform his or her duties and assign an appropriate disability rating before he or she can be medically retired or separated.

b. Paragraph 2-2b (1) provides that when a member is being processed for separation for reasons other than physical disability (e.g., retirement, resignation, reduction in force, relief from active duty, administrative separation, discharge, etc.), his or her continued performance of duty (until he or she is referred to the PDES for evaluation for separation for reasons indicated above) creates a presumption that the member is fit for duty. Except for a member who was previously found unfit and retained in a limited assignment duty status in accordance with chapter 6 of this regulation, such a member should not be referred to the PDES unless his or her physical defects raise substantial doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank, or rating.

c. Paragraph 2-2b (2) provides that when a member is being processed for separation for reasons other than physical disability, the presumption of fitness may be overcome if the evidence establishes that the member, in fact, was physically unable to adequately perform the duties of his or her office, grade, rank, or rating even though he

or she was improperly retained in that office, grade, rank, or rating for a period of time and/or acute, grave illness or injury or other deterioration of physical condition that occurred immediately prior to or coincidentally with the member's separation for reasons other than physical disability rendered him or her unfit for further duty.

d. The DES consists of three systems:

(1) Legacy DES for cases referred under the duty-related process, the PEB determines fitness and determines the disability rating percentages using the VA Schedule for Rating Disabilities (VARSD).

(2) Integrated DES (IDES), effective 1 October 2011, features a single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit. A single set of disability ratings provided by the VA for use by both departments. The DES applies these ratings to the conditions it determines to be unfitting and compensable. The Soldier receives preliminary ratings for their VA compensation before the Soldier is separated or retired for disability.

(3) Expedited DES is a voluntary process for Soldiers unfit for catastrophic injuries or diseases in which the U.S. Army Physical Disability Agency may permanently retire the Soldier without referral to the PEB based on the medical treatment facility (MTF) narrative summary.

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

a. Paragraph 3-7a provides that an honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions (a pattern of misconduct consisting solely of minor military disciplinary infractions), a pattern of misconduct (consisting of discreditable involvement with civil or military authorities or conduct prejudicial to good order and discipline). Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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 merited by the Soldier's overall record.

8. 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.

9. 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.

10. On 4 April 2024, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for eligibility for medical

retirement or separation benefits. This guidance is being promulgated in light of Doyon v. United States and is consistent with that decision. Accordingly, the BCM/NR will apply liberal consideration to the eligible applicant's assertion that combat- or military sexual trauma -related post-traumatic stress disorder or traumatic brain injury potentially contributed to the circumstances resulting in their discharge or dismissal to determine whether any discharge relief is appropriate. After making that determination, the BCM/NR will then separately assess the individual's claim of medical unfitness for continued service due to that post-traumatic stress disorder or traumatic brain injury condition as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

//NOTHING FOLLOWS//