

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE:

DOCKET NUMBER: AR20240010627

APPLICANT REQUESTS: correction of his DD Form 214 (Certificate of Release or Discharge) to show the following:

- an upgrade of his under other than honorable conditions (UOTHC) character of service to honorable
- a change in his narrative reason for separation to "Secretarial Authority"
- a change in his type of separation to "Medical Retirement" or in the alternative referral to the Medical Evaluation Board
- his rank/grade be reinstated to Major (MAJ)/O-4 or in the alternative Captain (CPT)/O-3
- and receipt of all backpay and entitlements

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

- DD Form 149 (Application for Correction of Military Record), with self-authored statement
- Legal Brief (25 pages)
- Exhibit 1, DD Form 214, for the period ending 7 January 2019
- Exhibits 2-14, Medical Records (116 pages), dated 22 October 2018
- Exhibit 15, General Court-Martial Orders Number 3, Headquarters, U.S. Army Medical Department Center and School, Joint Base San Antonio (JBSA) Fort Sam Houston, TX, dated 8 September 2017
- Exhibit 16, General Court-Martial Orders Number 6, Headquarters, U.S. Army Medical Department Center and School, JBSA Fort Sam Houston, TX, dated 19 December 2017
- Exhibit 17, Therapeutic Notes, Department of Veterans Affairs (VA), dated 26 January 2018
- Exhibit 18, Medical Record, Behavioral Health, dated 2018
- Exhibit 19, letter, Office of the Judge Advocate General, Criminal Law Division, Washington, D.C., dated 8 August 2018
- Exhibit 20, letter, Office of the Judge Advocate General, Criminal Law Division, Washington, D.C., dated 9 August 2018

- Exhibit 21, memorandum, Subject: Officer Resignation..., dated 20 November 2018
- Exhibit 22, facsimile transmittal form, dated 14 November 2018
- Exhibit 23, Army Discharge Review Board (ADRB), Docket Number AR20210015342, dated 17 July 2023
- Exhibit 24, memorandum, Office of the Under Secretary of Defense, A.M. Kurta, dated 25 August 2017
- Exhibit 25, Character References (4), dated 14 April 2016 to 11 May 2016
- Exhibit 26, letter to the ADRB, dated 9 August 2019
- Exhibit 27, Orders 006-1100, Headquarters, U.S. Army North (Fifth Army), JBSA Fort Sam Houston, TX, dated 6 January 2016
- Exhibit 28, Orders 014-1102, Headquarters, U.S. Army North (Fifth Army), JBSA Fort Sam Houston, TX, dated 14 January 2016
- Exhibit 29, Transcript (excerpt), undated
- Exhibit 30, Transcript (excerpt), ADRB, dated 17 July 2023
- Exhibit 31, Medical Record, dated September 2016

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he was sent to a Warrior Transition Unit (WTU) for mental wounds. The WTU chain of command tormented him. They found ways to punish and harass him for almost three years. He was denied promotion to MAJ because he was illegally flagged. He was prescribed 13 different opioids simultaneously which degraded his ability to make rational decisions. The abuse he suffered from his chain of command exacerbated his anxiety, depression, and suicidal ideation. He succumbed to the allure of getting relief from methamphetamines. Since his discharge, he rid himself of drug addiction and is working towards becoming a productive and responsible citizen. He notes post-traumatic stress disorder (PTSD) as a condition related to his request.
3. In a 25-page legal brief, which is available for review in the supporting documents, counsel states:
 - a. The applicant deployed six times. He did not experience nor demonstrate any behavioral health concerns prior to his first deployment. He gradually developed complex and escalating physical and behavioral health conditions, to include PTSD and traumatic brain injury (TBI), which ultimately caused his discharge.

b. Counsel argues the applicant's discharge is inequitable. His mental health conditions and experience outweigh his discharge. There is no evidence of premeditated conduct, and his service to his country, prior to PTSD and TBI, was impeccable. He followed all medical advice and protocol. Yet, he could not recover. He faces a lifetime of physical pain without the compensation and support his faithful service deserves.

4. A review of the applicant's service record shows:

a. Following an honorable enlisted period of service in the Army National Guard of the United States, he accepted an appointment as a Reserve Commissioned Officer in the Army of the United States on 8 May 2004. He subsequently entered active duty in the Regular Army on 28 June 2004.

b. He served in Iraq from 1 February 2008 to 9 July 2008 and 3 October 2008 to 4 April 2009. He served in Qatar from 5 January 2013 to 28 July 2013.

c. A Report to Suspend Favorable Personnel Actions (FLAG) was initiated on 18 November 2014, by reason of law enforcement investigation. It was removed, effective 18 March 2015.

d. He received a General Officer Letter of Concern, dated 9 March 2015, for disorderly conduct, failure to obey a lawful order, and resisting arrest after being stopped by JBSA Security Forces on 19 November 2014.

e. Two Reports to Suspend Favorable Personnel Actions were initiated on 17 July 2015 (law enforcement investigation) and 23 July 2015 (adverse action).

f. He received a General Officer Memorandum of Reprimand, dated 16 September 2015, for disorderly conduct, failure to obey a lawful order from a Security Force Officer, resisting arrest, failure to pay court-ordered child support, violating a court ordered restraining order, for having a relationship with a woman not his wife, sexually assaulting this same woman on two separate occasions, and domestic violence.

g. Elimination action was initiated on 7 October 2015. The Commanding General (CG), recommended he be discharged with an UOTHC character of service. The applicant elected to submit a request for a Board of Inquiry.

h. A DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), shows a PEB convened on 1 December 2015. The applicant was found physically unfit, with a disability rating of 50 percent (%), for anxiety disorder with comorbid depressive

disorder. The board further recommended he be placed on the Temporary Disability Retired List (TDRL). He concurred with the findings and waived a formal hearing.

i. In a Rebuttal for Show Cause, dated 4 December 2015, he requested to remain on active duty for the completion of the Medical Evaluation Board.

j. On 11 December 2015, he voluntarily tendered his resignation in lieu of further elimination proceedings, further requesting the issuance of an under honorable conditions (general) character of service.

k. On 8 January 2016, the CG recommended the resignation in lieu of elimination be approved, with an under honorable conditions (general) character of service.

l. General Court-Martial Order Number 3, dated 8 September 2017, shows he was found guilty of the following offenses:

- absent without leave (AWOL), from on or about 29 January 2016 thru 30 January 2016
- AWOL, from on or about 4 March 2016 thru 14 March 2016
- willfully disobeying a lawful command from a superior commissioned officer not to possess firearms, weapons, or ammunition, on or about 17 March 2016
- disobeying a lawful order issued by a law enforcement officer, on or about 18 November 2014
- resisting apprehension, on or about 18 November 2014
- wrongfully using methamphetamine, between on or about 15 March 2016 and 18 March 2016

m. On 31 August 2016, he was sentenced to be confined for three months and reprimanded. On 8 September 2017, the sentence was approved and ordered executed.

n. General Court-Martial Order Number 6, dated 19 December 2017, shows he was found guilty of the following offenses:

- assault consummated by battery, on or about 17 March 2016
- unlawfully shoving, hitting, grabbing, pulling, and squeezing Miss A.C.B., with his hands, on or about 17 March 2016
- unlawfully striking Miss P.K.B. on her face with his hand, between on or about 15 May 2012 and 18 May 2012
- unlawfully striking, dragging, and pulling Miss P.K.B. with his hands, between on or about 6 September 2012 and 7 September 2012

- wrongfully communicating to Miss P.K.B. a threat to kill her or words to that effect, between on or about 1 February 2014 and 31 March 2014
- o. On 21 April 2017, he was sentenced to be confined for 11 months. On 19 December 2017, the sentence was approved and ordered executed.
- p. On 7 May 2018, the Secretary of the Army removed him from the Fiscal Year 2014 Major/O-4 promotion list.
- q. On 19 December 2018, the Army Ad Hoc Review Board reviewed his resignation for the good of the service in lieu of General Court-Martial. The Deputy Assistant Secretary (Army Review Boards) accepted his resignation and directed he be discharged with an UOTHC character of service.
- r. He was discharged on 7 January 2019, in lieu of trial by court-martial. His character of service was UOTHC, with separation code DFS. He completed 13 years, 9 months, and 26 days of net active service.
- s. The ADRB reviewed his request for a change in his character of service and narrative reason for separation on 4 August 2021. After liberally considering all of the evidence, the Board determined that the misconduct which led to his voluntary resignation outweighed his contentions of PTSD and TBI. The Board denied his request for relief.
- t. The ADRB reconsidered his request on 17 July 2023:
 - (1) The Board's Medical Advisor applied liberal consideration and opined that there was sufficient evidence the applicant was diagnosed with unspecified anxiety disorder, depression with anxiety, major depression, dysthymia, bipolar disorder, and PTSD. Although he asserted that TBI was also a mitigating factor in his misconduct, he was repeatedly evaluated for residual symptoms associated with a TBI, but there was insufficient evidence to support this conclusion. It was consistently reported that his primary diagnosis was narcissistic personality disorder, which is a preexisting diagnosis that does not fall under the purview of liberal consideration. There was sufficient evidence to suggest the symptomology associated with bipolar disorder better accounted for the his repeated methamphetamine abuse, misuse of prescribed psychiatric medication, and other mental health conditions.
 - (2) Lastly, there was no nexus between the mental health conditions the applicant met criteria for and his misconduct of resisting arrest, failing to pay child support, violating restraining orders, adultery, domestic violence, assault, and going AWOL given that these conditions do not affect one's ability to distinguish right from wrong and act in accordance with the right. The Board denied his request for relief.

5. The applicant provides:

a. 42 pages of Army Service Records are summarized, in pertinent part, in the Record of Proceedings (ROP) above.

b. 137 pages of medical documentation will be reviewed and summarized, in pertinent part, in the "Medical Review" section of this ROP.

c. The Kurta Memorandum provides clarifying guidance to Military Discharge Review Boards and Boards for the Correction of Military Records on liberal consideration and requests by Veterans for modification of their discharge due to mental health conditions, sexual assault/harassment, PTSD, and TBI.

d. In four character references, dated 14 April 2016 to 11 May 2016, the authors attest to the applicant's character. His military service was exemplary, and he always exemplified the highest moral conduct and ethical behavior. He was mentally wounded on his deployments. He deserves the special care required to recover from those wounds.

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

7. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR through his counsel requesting "his characterization of service be upgraded to "Honorable" and that his narrative reason of separation be changed to "Secretarial Authority." He also requests that his rank be reinstated to Major, and in the alternative that his rank be reinstated to Captain as reflected on his retirement orders, and that he receive all backpay and entitlements. His previous application to ARBA AR20240010627

c. The applicant's medical evidence to support his request are as follows:

d. The dates of AWOL are as follows: (1) 20 December 2003 - 26 January 2004; (2) 30 January 2004 - 16 February 2004; and (3) 5 March 2004 - 1 June 2004. For each of the AWOL periods, the Applicant was on quarters. Notwithstanding the medical orders, the Applicant's command erroneously put him in AWOL status.

e. In the applicant's supporting document show the following documentations:

f. Excuse from Work or School from VA Eastern Kansas Health Care System dated 6 NOV 03 with "Additional comments/ instructions: Light duty x 1 week (until 14NOV 03)."

g. Excuse from Work or School from VA Eastern Kansas Health Care System dated 18 NOV 03 with comments: "[REDACTED] needs to be excused from work for the following dates: 16-21 NOV 03. He may return to work but still avoid physical activity as of : Need to be evaluated by primary care physician. He may return to physical activity as of Needs to be evaluated by primary care physician."

h. Excuse from Work or School from VA Eastern Kansas Health Care System dated 21 NOV 03 with comments: "[REDACTED] needs to be excused from work for the following dates: 21 NOV to 5 DEC 03. He may return to work but still avoid physical activity as of : 6 DEC 3. He may return to physical activity as of uncertain. Additional comments/ instructions: Subacromial bursitis."

i. Excuse from Work or School from VA Eastern Kansas Health Care System dated 6 Dec 03 with comments: "[REDACTED] needs to be excused from work for the following dates: 6 -11 DEC 03. He may return to physical activity as of to be determined after seen in PT on 11 DEC 03."

j. VA prescription form dated 11 DEC 03, "Pt. will not be able to return back to work until he is done with the medical care for his right shoulder."

k. A prescription note from [REDACTED] and Advanced Register Nurse Practitioner Wilson, dated 5 FEB 04, "[REDACTED] us advised to be off work for three weeks till ... (unable to decipher word) by the rehab physicians cervical radiculopathy."

l. Certificate for return to work or school for Neurosurgical Associated, P.A., dated 11 FEB 04: "[REDACTED] has been under my care from 11 FEB 04 to present and is not able to return to work/school on off work. Remark: Pt. to remain off work. He's scheduled to have surgery under care of [REDACTED] at SV 16 FEB 04, and expected to be off work 8-12 Recover.

m. These work excuses listed above as part of the Applicant's supporting documentation are not sufficient to excuse the applicant from performing in his duties since there were no profiles to accompany these excuses as stated in AR 40-502, 27 June 2019, para 3-6 a(5) Regular Army and Reserve Component on active duty participating in TRICARE Prime Remote, Ready Reserve (troop program unit, Active Guard Reserve), individual mobilization augmentee, Individual Ready Reserve and Inactive National Guard and Army National Guard Soldiers. Many Soldiers in these categories receive their routine medical care from civilian healthcare providers. Medical recommendations from these healthcare providers will support and inform accurate, complete, and comprehensive profiles from DoD military, civilian, or contracted providers.

n. Upon review of submitted documents, applicant did not have profiles from his commander or DOD providers to confirm duty restrictions needed at that time.

o. The Applicant did not have any career terminating injury/illness while on Active Duty that would necessitate referral of his case to the Disability Evaluation System.

p. Based on the information submitted, there is insufficient evidence to support the applicant's request.

BEHAVIORAL HEALTH REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable, to update his narrative reason for separation to "Secretarial Authority," and to reinstate his rank/grade to Major (O4), or in the alternative O3 with entitlement to back pay and allowances. He also requests medical retirement or to be processed through the Medical Evaluation Board (MEB) and, if necessary, the Physical Evaluation Board (PEB). On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) is related to his request. 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: 1) the applicant was appointed as Reserve Commissioned Officer on 08 May 2004, 2) he served in Iraq from 01 February 2008 through 09 July 2008, 3) he was issued a Letter of Reprimand on 16 September 2015 for failing to obey a lawful order from a security officer, resisting arrest, failure to pay court ordered child support, violating a court ordered restraining order, having a relationship with a woman that was not his wife and sexually assaulting the same woman on two separate occasions, and domestic violence, 4) On 7 October 2015, the senior commander notified the applicant he was required to show cause for retention in accordance with AR 600-8-24, specifically for failure to meet financial obligations, acts of personal misconduct, and conduct unbecoming of an officer: A series of substantiated derogatory activity resulting

in a General Officer Memorandum of Reprimand (GOMOR) dated 16 September 2015. In conjunction with this action, a suspension of favorable personnel actions flag would be initiated according to AR 600-8-2; He was recommending the applicant be discharged with an UOTHC; If he did not submit a resignation in lieu of elimination, his case was to be referred to a Board of Inquiry (BOI), 5) On 7 October 2015, the senior commander directed the GOMOR be placed in the applicant's official military personnel file, 6) On 1 December 2015, an Informal PEB found the applicant physically unfit for anxiety disorder with comorbid depressive disorder and recommended his disposition be placement on the temporary disability retired list with reexamination in August 2016. He concurred and waived a formal hearing of his case, 7) On 11 December 2015, the applicant requested resignation in lieu of elimination proceedings under the provisions of AR 600-8-24, chapter 4, 8) On 6 January 2016, the applicant was released from assignment and retired, effective 21 March 2016 in the rank/grade of CPT/O-3, 9) On 14 January 2016, the applicant's retirement orders were revoked, 10) On 8 September 2017, the applicant was found guilty by General Court -Martial Order of being absent without leave (two specifications); disobeying a Superior Officer; failure to obey an order; resisting arrest; and wrongful use, possession and distribution of a controlled substance, 11) On 19 December 2017, a General Court-Martial Order shows the applicant was found guilty of assault consummated by a battery and guilty of the other three specifications, and a threat to kill [alleged victim] or words to that effect. On 21 April 2017, the sentence was adjudged, and his sentence was confinement for 11 months, 12) On 19 December 2018, the Deputy Assistant Secretary Army – Review Boards informed the U.S. Army Human Resources Command (HRC) that the Department of the Army Ad hoc review Board accepted the applicant's request for resignation in lieu of General Court-Martial and determined his characterization of service would be UOTHC, 13) On 7 January 2019, the applicant was discharged from active duty under the provisions of AR 600-8-24, paragraph 3-13, by reason of in lieu of trial by Court-Martial with an UOTHC characterization of service, 14) the ADRB denied the applicant's previous requests for relief on 17 December 2021 and 22 August 2023 as it was determined that his discharge was fair and equitable.

2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. The applicant's in-service medical records included as part of his application and available via JLV were reviewed. The applicant has an extensive in-service BH treatment history and thus what follows is a summary of care and is not exhaustive.

The applicant had the following BH-conditions listed on his problem list in JLV: Severe Mood Disorder without Psychotic Features (17 March 2015), Posttraumatic Stress Disorder (09 March 2017), Depressive Disorder (07 January 2018), Nicotine

Dependence (18 May 2015), Narcissistic Personality Disorder (22 July 2015), Depression with Anxiety (03 August 2015), Brain Injury Traumatic (11 August 2015), Anxiety Disorder Not Otherwise Specified (NOS) (11 August 2015), Alcohol Dependence, Uncomplicated (27 March 2017), Alcohol Abuse, Uncomplicated (13 April 2017), Other Persistent Mood [Affective] Disorders (20 June 2017), Insomnia, Unspecified (20 July 2017), Other Stimulant Abuse, Uncomplicated (27 September 2016), Anxiety Disorder, Unspecified (13 October 2015), Other Stimulant Dependence, Uncomplicated (03 October 2016).

The applicant was trialed on numerous psychotropic medications while in-service including antidepressants, anxiolytics, benzodiazepines, sedative-hypnotics, and antipsychotics. More specifically, his in-service prescription history shows the following: Alprazolam (initially ordered 07 August 2015, prescribed off-and-on until 28 December 2017); Amitriptyline (15 August 2014-04 September 2014); Abilify (initially ordered on 11 July 2014. Prescribed off-and-on through 06 August 2018); Strattera (25 June 2018, 06 August 2018); Bupropion (initially prescribed on 03 March 2014. Prescribed off-and-on through 23 October 2018); BuSpar (initially ordered on 07 December 2015. Prescribed off-and-on through 22 March 2017); Clonazepam (initially ordered 03 March 2014 through 02 November 2015); Depakote (initially prescribed on 22 July 2014. Prescribed off-and-on through 25 April 2017); Diazepam (02 November 2015; 07 December 2015); Gabapentin (24 April 2015. Prescribed off-and-on through 02 May 2017); Fluoxetine (initially prescribed on 09 November 2015. Prescribed off-and-on through 04 December 2018); Hydroxyzine (initially prescribed on 02 June 2014, then again from 25 June 2018-09 October 2018); Mirtazapine (initially prescribed on 12 May 2015 through 24 August 2016; 06 August 2018); Olanzapine (10 February 2016 through 02 May 2017); Oxcarbazepine (09 November 2015 through 16 February 2016); Paxil (06 August 2018); Propranolol (14 October 2015 through 21 March 2016); Quetiapine (17 April 2014; 28 December 2017; 22 May 2018); Sertraline (04 June 2014 through 11 February 2015); Venlafaxine (03 March 2014); Trazodone (25 June through 06 August 2018); and Ambien (initially prescribed on 25 January 2008. Prescribed on several occasions between 2008 and December 2017).

The applicant initially sought BH treatment from 06 December 2007 through 27 June 2008 due to marital problems. He self-referred to BH on 25 October 2011 at the encouragement of his command due to having three significant incidents over the past three months (i.e., raised voice and verbally assaulted an NCO while ripping off the NCO's wings from their uniform, flipped a desk of a warrant officer, and after correcting a Private First Class's (PFC) nametape, put his hands around his neck in a choking gesture). He was not diagnosed with a condition and did not seek treatment.

The applicant was engaged with the Family Advocacy Program (FAP) from 29 May 2012 through 21 June 2013 for Other Specified Family Circumstances, Partner Relational Problem, and Child Emotional Neglect. It appears the applicant was referred

to FAP as the offender and was later added as a victim for an incident that occurred on 18 May 2012. The Case Review Committee (CRC) results were unavailable for review; however, it was documented that the interventions were individual and marital therapy. There was a gap in treatment until 28 February 2014.

He presented to BH as a walk-in on 03 March 2014 due to concerns about his stepson's biological father and marital problems (wife leaving and moving out of the area). He endorsed experiencing suicidal ideation, anger when he gets anxious, and requested medication to help address his symptoms. He was diagnosed with Anxiety Disorder NOS and was prescribed Clonazepam to help with anxiety and Venlafaxine for anxiety/irritability. The applicant continued treatment on an outpatient basis addressing concerns related to his legal and marital stressors, being separated from his daughter, and occupational stressors, while also reporting a history of childhood trauma and combat-related trauma. He was transferred to the Warrior Transition Unit (WTU) on 05 October 2014. He primarily completed routine outpatient BH treatment until his time of discharge, excluding periods of time wherein he was psychiatrically hospitalized, in confinement, or enrolled in an intensive outpatient program.

The applicant was psychiatrically hospitalized on several occasions throughout his military career due to suicidal ideation, suicidal behavior, and suicide attempt, which typically occurred following acute legal or marital stressors. He was first hospitalized on 04 March 2014 for six weeks, and then several times afterwards including 14 July 2014 for suicide attempt (overdose with prescription medication), 20 November 2014 for suicidal ideation, 16 March 2016 due to escalation in erratic behavior and possible suicide attempt in the previous two weeks, 15 October 2015 due to suicidal ideation, 31 January 2016, 28 March 2017, 05 January 2018, 18 April 2018, and on 07 August 2018.

The applicant's treating psychiatrist submitted a referral for a Medical Evaluation Board (MEB) on 29 April 2015. His diagnoses were documented as Anxiety Disorder NOS and Narcissistic Personality Disorder. His MEB medical examination on 24 June 2015 documented that his diagnosis of Anxiety Disorder NOS, and Depression with Anxiety did not meet retention standards with the date of onset documented as February 2014. He underwent VA Compensation and Pension (C&P) examinations as part of the MEB process. A C&P examination dated 30 July 2015 showed he was diagnosed with Bipolar Disorder NOS, Personality Disorder NOS, and Alcohol Abuse. He was diagnosed with TBI on 28 July 2015, with the date of diagnosis documented as 03 February 2015. An Informal Physical Evaluation Board (IPEB) convened on 01 December 2015 and found the applicant unfit for Anxiety Disorder with Comorbid Depressive Disorder. A rating of 50% was recommended in addition to being placed on the Temporary Disability Retirement List (TDRL) with a re-evaluation in August 2016. It was documented that 23 conditions were considered in total, and he was found fit for 21 of the 23 considered conditions, including the following BH-related conditions: Personality Disorder, Alcohol Abuse, and TBI. An email dated 21 September 2018 in his PEB files shows the

applicant had been put into a deferred status due to his being in confinement. A separate email dated 24 September 2018 documented that the applicant's case would be kept in a deferred status while it was being determined if the case would be restarted. An email dated 27 September 2018 showed the applicant's resignation in lieu of court-martial had been administratively closed by ARBA and that he had a pending court-martial to take place on 05 December 2018.

The applicant attended treatment through the Intensive Outpatient Program (IOP) twice: 01 December 2014 through 05 January 2015 and May through June 2018.

The applicant underwent a neuropsychological evaluation for concerns related to a TBI that he reported occurred in 2012. On 29 June 2015, it was documented that the applicant's neuropsychological testing was within normal limits and no significant cognitive deficits were found. Personality testing was deemed invalid. He was diagnosed with Adjustment Disorder with Anxiety and Depression, Chronic. Review of records shows that he received treatment through the Brain Injury Rehabilitation services in 2015.

The applicant was referred to the Army Substance Abuse Program (ASAP) on several occasions throughout his career. It was documented in an ASAP Triage note dated 09 September 2016 that he attended ADAPT treatment in 1998 while at West Point. He was command-referred on 13 April 2015; however, he declined services due to stating he did not have an alcohol problem. He was referred again on 16 February 2016 following a positive urinalysis for methamphetamine, which he reportedly used to self-medicate when he was anticipating being retired from the military. He self-referred on 14 September 2016 due to concerns about his previous methamphetamine use and alcohol use and self-referred again in May 2018. He was enrolled in ASAP treatment on 23 September 2016 and was diagnosed with Alcohol Use Disorder (AUD), Mild and Methamphetamine Use Disorder, Severe, In Controlled Environment. It also appears that residential treatment was recommended in June 2016; however, it was documented that he was not eligible due to pending trial.

The applicant underwent two Officer Elimination Evaluations while in-service. His initial evaluation occurred on 22 January 2016 and the provider documented his diagnoses as Narcissistic Personality Disorder, Dysthymia, and Anxiety Disorder, Unspecified. The evaluating provider documented that there was no evidence of a mental condition that required disposition through medical channels, was able to distinguish between right and wrong, and was able to participate in any proceedings deemed appropriate by command. On 22 October 2018, he underwent another officer elimination evaluation in light of his request for resignation. He was diagnosed with Other Specified Trauma-and-Stressor Related Disorder, Other Stimulant Use Disorder, and Antisocial and Narcissistic Personality Traits. It was documented that the applicant was mentally responsible, was able to distinguish between right and wrong, and had the mental

capacity to understand and participate in proceedings. It was further documented that he met medical retention standards and had not surpassed the Medical Retention Determination Point (MDRP) and thus did not require a referral to IDES.

It appears the applicant underwent a 706 Sanity Board evaluation on 10 September 2018, which was unavailable for review to this Advisor. His final in-service BH encounter occurred on 18 December 2018. The applicant expressed a preference to no longer engage in BH treatment. His diagnoses were documented as Other stimulant abuse, uncomplicated, Anxiety Disorder, Unspecified and the date of his most recent methamphetamine use was documented as May 2018.

There is documentation at various points throughout the applicant's medical record wherein the applicant's treating provider(s) opined that his primary condition may be Narcissistic Personality Disorder and Substance Use Disorder, and that his fluctuations in mood and behavior may be better explained by these conditions, or withdrawal from substances; however, this finding was not consistent amongst his treating providers, and it is of note that he was also consistently diagnosed with an anxiety and/or mood-based condition since initiating care.

4. A review of JLV shows the applicant is not service-connected through the VA for any conditions. It is of note that his UOTHC discharge renders him ineligible for VA services.

5. Although the applicant's charge sheet as it pertains to court-martial charges in 2018 which led to his resignation in lieu of court-martial was unavailable for review, his service records included a memorandum for HRC regarding the applicant's resignation for the Good of Service in Lieu of General Court-Martial. The memorandum documented that on 10 August 2018, court-martial charges were referred against the applicant for one specification of willfully disobeying a senior commissioned officer, two specifications of wrongful use, possession, etc. of a controlled substance, one specification of provoking speeches or gestures, and one specification of conduct unbecoming of an officer and gentleman. On 06 September 2018, the applicant submitted a Resignation for the Good of the Service IAW AR 600-8-24, paragraph 3-13. Review of his Officer Elimination Evaluation dated 18 October 2018 also shows that the applicant was pending court-martial charges; however, the charges were not specified in the medical record.

6. The Medical Advisories from the applicant's previous petitions to the ADRB were reviewed. The Medical Advisory in Docket Number AR20210015342 dated 24 August 2021 shows that it was determined that there was sufficient evidence of several BH conditions in-service including Narcissistic Personality Disorder, Unspecified Anxiety Disorder, Depression with Anxiety, Major Depression, Dysthymia, Methamphetamine, and Alcohol Abuse; however, the Advisor opined that there was not a nexus between these conditions and the applicant's misconduct of resisting arrest, failing to pay child support, violating restraining orders, adultery, domestic violence, assault, and going

AWOL. It was further determined that the basis for separation outweighed the relief offered by Liberal Consideration. The Medical Advisory in Docket Number AR20190006229 dated 04 March 2019 shows the Advisor indicated that the applicant's misconduct was partially mitigated; however, it was also noted that the basis for separation outweighed the relief offered through Liberal Consideration.

7. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed with numerous potentially mitigating BH conditions in-service including: Severe Mood Disorder without Psychotic Features, PTSD, Bipolar Disorder [unspecified; not otherwise specified; Unspecified Bipolar and Related Disorder] , Depressive Disorder, Depression with Anxiety, TBI, Anxiety Disorder NOS, Anxiety Disorder, Unspecified, and Other Persistent Mood [Affective] Disorders. As the applicant was diagnosed with various anxiety and depressive-based conditions with differing specifiers, these will be referred to as Anxiety Disorders and Depressive Disorders, respectively. His diagnosis of Adjustment Disorder is subsumed by his anxiety and depression diagnoses. He was also diagnosed with Narcissistic Personality Disorder, Alcohol Dependence, Uncomplicated, Alcohol Abuse, Uncomplicated, Other Stimulant Abuse, Uncomplicated, and Other Stimulant Dependence, Uncomplicated, which do not constitute mitigating conditions. This Advisor would contend that the applicant's misconduct is partially mitigated by his behavioral health condition(s).

8. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with several potentially mitigating BH conditions in-service to include TBI, PTSD, Bipolar Disorder, Anxiety Disorder, and Depressive Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with several potentially mitigating BH conditions in-service to include TBI, PTSD, Bipolar Disorder, Anxiety Disorder, and Depressive Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. Review of the applicant's in-service medical records demonstrate a complex and longstanding history of behavioral-health related concerns dating back to 2008. He was diagnosed with several potentially mitigating conditions including TBI, PTSD, Bipolar Disorder, Anxiety Disorder, and Depressive Disorder, which were complicated by his Personality and Substance Use Disorder diagnoses. The applicant's records show court-martial charges were preferred against the applicant in 2018 that led to his resignation in lieu of court-martial. He also had two prior convictions by court-martial and a Letter of Reprimand issued in 2015. Given his extensive behavioral health history coupled with his history of misconduct, the totality of the applicant's misconduct in the

context of his behavioral health history will be reviewed as it pertains to Liberal Consideration.

Regarding the applicant's misconduct associated with his LOR and two previous court-martial convictions, there is an association between difficulty with authority figures, poor decision making, impulsivity, avoidance behaviors, self-medicating with substances, trauma, changes in mood, mania, and anxiety. As such, there is a nexus between the applicant's misconduct of failing to obey a lawful order from a security officer, being AWOL, wrongful use and possession of a controlled substance, and his diagnoses of PTSD, Anxiety, Depression, TBI, and Bipolar Disorder. Thus, mitigation would be supported for these episodes of misconduct. However, disobeying a superior officer (to not possess firearms, weapons, or ammunition), resisting arrest, failure to pay court-ordered child support, violating a court-ordered restraining order, extramarital affairs, sexual assault, domestic violence, distribution of a controlled substance, and communicating a threat are not part of the natural history and sequelae associated with any of his mitigating BH conditions, nor do his diagnosed BH conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. Moreover, some of the misconduct outweighs the relief offered by Liberal Consideration. Thus, BH mitigation would not be supported for these episodes of misconduct. In summary, partial mitigation would be supported for the misconduct documented in his records prior to his resignation in lieu of court-martial in 2018.

As it pertains to the misconduct that led to the applicant's resignation in lieu of court-martial in 2018, there is an association between difficulty with authority figures, wrongful use and possession of a controlled substance, avoidance behaviors, self-medicating with substances, trauma, depression, and anxiety. Thus, there is a nexus between his misconduct of willfully disobeying a senior commissioned officer and wrongful use and possession of a controlled substance, and his diagnoses of PTSD, depression, anxiety, and Bipolar Disorder. As such, BH mitigation would be supported for these episodes of misconduct. The specific misconduct that led to the charges preferred against the applicant of provoking speeches or gestures and conduct unbecoming of an officer was not available for review and thus it is unclear if there is a nexus between the applicant's misconduct and his BH conditions. Thus, partial BH mitigation is supported for disobeying a senior commissioned officer and wrongful possession and use of a controlled substance.

Regarding the request for medical retirement, it appears the applicant's case was processed IAW AR 635-40 and therefore re-referral to the MEB/PEB is not warranted at this time. The applicant was found unfit for duty by the PEB in 2015 for Anxiety Disorder with Comorbid Depressive Disorder and recommended a rating of 50%; however, the applicant's retirement orders were revoked in 2016, and he was later convicted by court-martial and placed in confinement. Review of his PEB files from 2018 appear to

show that his case had been placed in a deferred status due to his being in confinement. Per AR 635-40, paragraph 4-9(b) officers who are “pending an administrative elimination action are disenrolled from the DES on the date the elimination action is approved by the Army Review Boards Agency.” The applicant’s resignation in lieu of General Court-Martial was accepted by the Deputy Assistant Secretary Army – Review Boards on 19 December 2018 and he was subsequently discharged on 07 January 2019. As such, the applicant’s discharge under the provisions of AR 600-8-24, chapter 3-13, by reason of in lieu of trial by Court-Martial appears to be fair and equitable and a referral to the DES is not warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a minority of the Board found relief was warranted, and a majority of the Board found that relief was not warranted. The Board carefully considered the applicant’s request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant’s statement and record of service, the frequency and nature of the applicant’s misconduct and the reason for separation. The majority of the Board found no error or injustice in the separation proceedings, narrative reason for separation, and characterization of service. The majority of the Board also concluded there was no basis to reinstate his rank of MJA with applicable back pay and allowances. The majority of the Board concurred with the medical and behavioral health advisor’s review finding insufficient evidence the applicant had a behavioral health or medical condition during service that mitigated his misconduct or warranted referral to the IDES. Based on a preponderance of the evidence, the majority of the Board concluded that the narrative reason for separation and characterization of service the applicant received upon separation was not in error or unjust.

2. The Board considered the following Kurta questions:

a. Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with several potentially mitigating BH conditions in-service to include TBI, PTSD, Bipolar Disorder, Anxiety Disorder, and Depressive Disorder.

b. Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with several potentially mitigating BH conditions in-service to include TBI, PTSD, Bipolar Disorder, Anxiety Disorder, and Depressive Disorder.

c. Does the condition or experience actually excuse or mitigate the discharge? Partially. Review of the applicant's in-service medical records demonstrate a complex and longstanding history of behavioral-health related concerns dating back to 2008. He was diagnosed with several potentially mitigating conditions including TBI, PTSD, Bipolar Disorder, Anxiety Disorder, and Depressive Disorder, which were complicated by his Personality and Substance Use Disorder diagnoses. The applicant's records show court-martial charges were preferred against the applicant in 2018 that led to his resignation in lieu of court-martial. He also had two prior convictions by court-martial and a Letter of Reprimand issued in 2015. Given his extensive behavioral health history coupled with his history of misconduct, the totality of the applicant's misconduct in the context of his behavioral health history will be reviewed as it pertains to Liberal Consideration.

(1) Regarding the applicant's misconduct associated with his LOR and two previous court-martial convictions, there is an association between difficulty with authority figures, poor decision making, impulsivity, avoidance behaviors, self-medicating with substances, trauma, changes in mood, mania, and anxiety. As such, there is a nexus between the applicant's misconduct of failing to obey a lawful order from a security officer, being AWOL, wrongful use and possession of a controlled substance, and his diagnoses of PTSD, Anxiety, Depression, TBI, and Bipolar Disorder. Thus, mitigation would be supported for these episodes of misconduct. However, disobeying a superior officer (to not possess firearms, weapons, or ammunition), resisting arrest, failure to pay court-ordered child support, violating a court-ordered restraining order, extramarital affairs, sexual assault, domestic violence, distribution of a controlled substance, and communicating a threat are not part of the natural history and sequelae associated with any of his mitigating BH conditions, nor do his diagnosed BH conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right. Moreover, some of the misconduct outweighs the relief offered by Liberal Consideration. Thus, BH mitigation would not be supported for these episodes of misconduct. In summary, partial mitigation would be supported for the misconduct documented in his records prior to his resignation in lieu of court-martial in 2018.

(2) As it pertains to the misconduct that led to the applicant's resignation in lieu of court-martial in 2018, there is an association between difficulty with authority figures, wrongful use and possession of a controlled substance, avoidance behaviors, self-medicating with substances, trauma, depression, and anxiety. Thus, there is a nexus between his misconduct of willfully disobeying a senior commissioned officer and wrongful use and possession of a controlled substance, and his diagnoses of PTSD, depression, anxiety, and Bipolar Disorder. As such, BH mitigation would be supported

for these episodes of misconduct. The specific misconduct that led to the charges preferred against the applicant of provoking speeches or gestures and conduct unbecoming of an officer was not available for review and thus it is unclear if there is a nexus between the applicant's misconduct and his BH conditions. Thus, partial BH mitigation is supported for disobeying a senior commissioned officer and wrongful possession and use of a controlled substance.

(3) Regarding the request for medical retirement, it appears the applicant's case was processed IAW AR 635-40 and therefore re-referral to the MEB/PEB is not warranted at this time. The applicant was found unfit for duty by the PEB in 2015 for Anxiety Disorder with Comorbid Depressive Disorder and recommended a rating of 50%; however, the applicant's retirement orders were revoked in 2016, and he was later convicted by court-martial and placed in confinement. Review of his PEB files from 2018 appear to show that his case had been placed in a deferred status due to his being in confinement. Per AR 635-40, paragraph 4-9(b) officers who are "pending an administrative elimination action are disenrolled from the DES on the date the elimination action is approved by the Army Review Boards Agency." The applicant's resignation in lieu of General Court-Martial was accepted by the Deputy Assistant Secretary Army – Review Boards on 19 December 2018 and he was subsequently discharged on 07 January 2019. As such, the applicant's discharge under the provisions of AR 600-8-24, chapter 3-13, by reason of in lieu of trial by Court-Martial appears to be fair and equitable and a referral to the DES is not warranted.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	XXX	GRANT FORMAL HEARING
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 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 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment (including officer procurement programs), retention, and separation (including retirement). Once a determination of physical unfitness is made, the physical evaluation board (PEB) rates all disabilities using the Veterans Affairs Schedule for Rating Disabilities (VASRD).

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

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

5. 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. 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.

b. An officer will normally receive an under honorable conditions (general) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 3 (Resignations) of the regulation prescribes the tasks, rules, and steps for processing voluntary resignations. Paragraph 3-13 states an officer may submit a resignation for the good of the service in lieu of general court-martial if court-martial charges have been preferred against the officer with a view toward trial by general court-martial. An officer separated under this paragraph normally receives characterization of service of under other than honorable conditions. An officer who resigns for the good of the service (regardless of the character of service received) is barred from rights under laws administered by the Veterans Affairs based on the period of service from which the officer resigned.

d. Paragraph 4-1 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.

6. 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. 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 2-6 provides the SPDs and narrative reasons for separation that are applicable to officer personnel. It shows, in part, SPD DFS is the appropriate code to assign to an officer who is separated due to resignation in lieu of trial by court-martial. KFF is the appropriate SPD to assign to officers who are voluntarily discharged under Secretarial authority.

7. 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.

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.

//NOTHING FOLLOWS//