ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 13 August 2025

DOCKET NUMBER: AR20240011111

APPLICANT REQUESTS:

- upgrade of his under honorable conditions (general) discharge to Honorable
- correction of narrative reason for separation to disability, in effect, referral to the Integrated Disability Evaluation System (IDES)
- appearance before the board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Signature Page
- Self-Authored Statement
- Enlisted Record Brief (ERB)
- Noncommissioned Officer Evaluation Report (NCOER), 2009-2010
- Eleven Character and Applicant Letters, dated from 2011 to 2024
- Separation Packet, 4 February 2011
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (VA) Statement, 31 May 2023
- eBenefits Screenshot
- Traumatic Brain Injury (TBI) Information

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 and his legal representative state he joined the military to serve and protect his country and family. He volunteered after 11 September 2001. He served three different campaigns, Operation Iraqi Freedom, Operation Enduring Freedom, and Operation New Dawn.

a. Deploying to the middle east is an experience that encompasses a spectrum of intense emotions and challenges. The extreme relentless heat, the extreme sandstorms, large burn pits, the weight of gear, the constant threat to life, extreme hypervigilance and lack of sleep is draining. He served many positions: lead driver with mine roller, dismount, breach man, gunner, tactical commander, and personnel security detail, and Quick Reaction Force (QRF). He had many encounters on his patrols and combat missions where days blended into each other, punctuated by moments of adrenaline during combat patrols and operations and QRF missions. He lost battle buddies and his battalion commander.

b. Every time he lost a Soldier, it is like losing parts of himself and a constant reminder of the danger and extreme stress. Post-Traumatic Stress Disorder (PTSD) has affected him in many ways. It has made him feel anxious, depressed, angry, and isolated. He has nightmares and flashbacks of the traumatic events that he experienced from the military. He avoids places, people, items, smells, and situations that remind him of what happened. He has trouble sleeping, concentrating, and trusting others. He feels guilty, ashamed, and hopeless about his future.

c. The TBIs he sustained changed his life forever. He had hundreds of thousands of explosions right next to his head and he was on the Army boxing team as well. He was also physically beaten/assaulted several times in the Army and suffered several severe blows to the head that damaged his brain. TBI has impaired his ability to think clearly, process information, learn new skills, and solve problems. This has affected his academic and work performance, as well as his daily activities and decision making. TBI has altered his emotions, making them more prone to mood swings, irritability, anxiety, depression, and anger. He also has difficulty regulating his emotions and coping with stress. TBI has affected his personality and behavior, making them more impulsive, aggressive, or socially inappropriate. He also has difficulty following rules, maintaining relationships, and controlling impulses.

d. Upgrading his military discharge would mean so much to family and himself and would help with restoring his dignity and his family honor. He loves his country, and he sacrificed his mind, body, and soul for his country.

e. PTSD and TBI were not considered at time of misconduct and separation. Applicant was eligible for a medical evaluation board (MEB) at the time of separation and was not given an MEB.

3. The applicant provides, and his service records show:

- He enlisted in the Regular Army on 9 May 2006.
- His NCOER for the period 1 October 2009 through 6 October 2010 shows he was successful, fully capable, and superior.

- Character and applicant letters attest to the need for better mental health care and understanding of military personnel both during and after service. The applicant was in a difficult situation as he routinely stood up to protect lower enlisted Soldiers. The applicant states the charge of disobeying an order is false. The applicant assisted a non-profit organization. He is dedicated to his Soldiers. He is honest. The applicant demonstrates a high degree of emotional maturity. The applicant states he volunteers his time when people need assistance. He goes out of his way to help the needy.
- His commander-initiated action, 24 February 2011 for separation under Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12b, for a pattern of misconduct. On 3 November 2010 he wrongfully destroyed government property; on 24 January 2011, he had an equal opportunity complaint against him for sexual harassment which was found to be substantiated; on 9 February 2011, he was counseled for violating a no-contact order. A under honorable conditions (general) discharge was recommended.
- The applicant consulted with counsel, 24 February 2011 and was advised of the effects of a chapter 14-12b and the rights available to him. He waived consideration and personal appearance before an administrative separation board. Statements were submitted on his own behalf however they are not available for review.
- His commander recommended approval of the separation, 22 March 2011 with his service characterized as under honorable conditions (general). His chain of command concurred.
- Trial Counsel found the separation legally sufficient, 24 March 2011.
- The separation authority approved the separation, 24 March 2011 with his service characterized as under honorable conditions (general).
- He was discharged on 29 April 2011. His DD Form 214 shows he was discharged under AR 635-200, Chapter 14-12b for a pattern of misconduct. His service was characterized as under honorable conditions (general). He completed 4 years, 11 months, and 21 days of net active service.

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized)
- Army Commendation medal
- Army Achievement Medal
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Meda
- Korean Defense Service Medal
- Iraq Campaign Medal with campaign star
- NCO Officer Professional Development Ribbon
- Army Service Ribbon

- Overseas Service Ribbon (3rd award)
- Combat Infantryman Badge
- Expert Marksmanship Qualification Badge with Rifle

- VA Statement Lay/Witness Statement, 31 May 2023 shows information regarding the incidents discussed in his applicant Letter. Over the course of his career, he fired 60mm, 81mm, and a lot of 120 mortars. Throughout his time in service, he fired over 200,000 rounds and continuous exposure to blast. As a result, he has endured several concussions from firing mortars and other explosive devices. After exposure to numerous blasts, he would feel sick and nauseous and dizzy and disorientated after firing 120 mm mortars all day and night and have had a few seizures while deployed and upon returning.
- His spouse's statement shows that on 8 August 2008, the applicant was attacked by 6 other service members.
- eBenefits screen shot, undated and no name on the form shows 100% total combined disability.
- Various TBI information included.

4. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) discharge, a change to his narrative reason for separation, and to be referred to IDES for a medical discharge. He contends he experienced mental health conditions including PTSD and a TBI, which are related to his requests. 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 enlisted in the Regular Army on 09 May 2006; 2) There is evidence the applicant deployed to Iraq during his active service; 3) On 24 February 2011, the applicant's commander initiated action for his separation under, Chapter 14-12b, for a pattern of misconduct. The specific incidents of misconduct noted were on 3 November 2010, he wrongfully destroyed government property; on 24 January 2011, he had an equal opportunity complaint against him for sexual harassment which was found to be substantiated; on 9 February 2011, he was counseled for violating a no-contact order. A under honorable conditions (general) discharge was recommended; 4) The applicant discharged on 29 April 2011, Chapter 14-12b for a pattern of misconduct. His service was characterized as under honorable conditions (general). He completed 4 years, 11 months, and 21 days net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and VA documentation provided by the applicant were also examined.

c. The applicant asserts he was experiencing mental health conditions including PTSD and a traumatic brain injury (TBI), which mitigate his misconduct and warrant a medical discharge. The applicant was initially seen by behavioral health services on 30 July 2008 for marital problems prior to a deployment to Iraq. During his deployment in December 2008, he was seen by behavioral health services. He was initially seen for a medication consultation for reported depressive symptoms. The applicant was also experiencing ongoing marital problems, occupational, and Uniform Code of Military Justice problems. He was diagnosed with Depression, but he did not continue with recommended individual therapy. Later on, 20 June 2009, the applicant was Command referred to behavioral health for an evaluation due to erratic behavior during a range. The results of the evaluation revealed the applicant had been diagnosed with Conduct Disorder during his adolescence, and he was currently reporting depressive symptoms and traits consistent with Antisocial Personality Disorder (APD), but he did not meet full criteria for APD. He was diagnosed with Depression and Conduct Disorder and recommended for continued behavioral health treatment. He continued in individual therapy till early September 2009 with the diagnoses of marital problem and Conduct Disorder before he discontinued. He was also prescribed antidepressant medication, which he did not continue taking as prescribed.

After redeploying, he was seen again by behavioral health services for anger management for one session in November 2009 before discontinuing. He self-referred to the Deployment Health Clinic with reports of TBI symptoms in April 2010, but he discontinued any treatment. On 30 November 2010, a note was entered by neuropsychology in regard to the applicant. The applicant had been diagnosed with Adjustment Disorder by primary care and referred to neuropsychology due to reported symptoms related to TBI. The applicant did not return any calls to be seen by neuropsychology and the consult was closed. During his Soldier Readiness Processing for his deployment to Kuwait in February 2011, the applicant endorsed a history of previously undisclosed suicidal ideation and suicidal behavior. He also endorsed current marital problems, anger management problems, depressive symptoms, and suicidal ideation without plan or intent. The applicant was also currently being investigated for sexual harassment. The applicant was diagnosed with a Personality Disorder, not otherwise specified (NOS), and he was recommended not to deploy and be considered for an administrative separation.

On 15 February 2011, the applicant was Command Referred to behavioral health services as part of his administrative separation proceedings for a Chapter 14. He was screened for both PTSD and TBI, and he did screen positively for these conditions. Therefore, the applicant was provided additional psychological, personality, and neurocognitive testing along with a full clinical interview and review of his medical records. The results of this full psychological evaluation determined the applicant met retention standards In accordance with AR 40-501, and did not meet criteria for a MEB for a mental health condition including PTSD and a TBI. The applicant was diagnosed

with APD, and he could determine the difference between right and wrong. He was also cleared from a behavioral health perspective for any administrative action deemed appropriate by Command. The applicant did not continue in behavioral health treatment following this evaluation, despite the recommendation for continued treatment as a result of his reported suicidal ideation. However later, he was command referred to the Family Advocacy Program following a notice from Child Protective Services over concerns in regard to the applicant's child and ongoing domestic violence in the applicant's home. The applicant attended mandated appointments at FAP till his discharge.

d. A review of JLV provided evidence the applicant began to engage with the VA after his discharge in 2012. In 2016, he was diagnosed with service-connected PTSD as a result of a Compensation and Pension Evaluation (100%). There is insufficient evidence he has been diagnosed with a service-connected TBI by the VA.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct or warrants a referral to IDES to be assessed for a medical discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions including PTSD and a TBI, which mitigate his misconduct and warrant a medical discharge. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD. The applicant was diagnosed with Depression and an Adjustment Disorder intermittently while on active service. In addition, he reported exposure to TBI while on active service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD and a TBI, which mitigate his misconduct and warrant a medical discharge. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD. The applicant was diagnosed with Depression and an Adjustment Disorder intermittently while on active service. In addition, he reported exposure to TBI while on active service.

(3) Does the condition/experience actually excuse or mitigate the discharge? No, there is sufficient evidence the applicant was intermittently seen by various behavioral health providers during his military service and was reporting mental health symptoms. At times, the applicant was diagnosed with Depression and an Adjustment Disorder. However, prior to his discharge, he was fully evaluated and determined to not meet criteria for PTSD, Depression, or a TBI, and he was found to meet medical retention

standards from a behavioral health perspective. The applicant did, however, consistently meet criteria for a personality disorder during his military career. After being discharged, the applicant has been diagnosed with service-connected PTSD by the VA, but he has not been diagnosed with a service-connected TBI. In addition, the applicant engaged in the misconduct of the destruction of government property, sexual harassment, and violating a no contact order. There is no nexus between the applicant's diagnosed or reported mental health conditions or TBI and these types of misconduct in that: 1) these types of misconduct are not a part of the natural history or sequelae of the applicant's diagnosed or reported mental health conditions or TBI; 2) applicant's diagnosed or reported mental health conditions or TBI do not affect one's ability to distinguish right from wrong and act in accordance with the right. Lastly, as noted earlier, the applicant was fully evaluated to assess if he met medical retention standards related to mental health conditions including PTSD and a TBI, and he was found to meet those standards. In addition, there was insufficient evidence the applicant consistently attended six months of behavioral health treatment, required inpatient treatment, or was ever placed on a permeant psychiatric profile. Therefore, there is insufficient evidence his case warrants a referral to IDES to be assessed for a medical discharge. 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 request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for a pattern of misconduct, specifically for destroying government property, a substantiated complaint against him for sexual harassment, and he was counseled for violating a no-contact order. The Board found no error or injustice in the separation proceedings and designated characterization of service.

2. The Board considered the following Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced mental health conditions including PTSD and a TBI, which mitigate his misconduct and warrant a medical discharge.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD and a TBI, which mitigate his misconduct and warrant a medical discharge.

(3) Does the condition/experience actually excuse or mitigate the discharge? No, there is sufficient evidence the applicant was intermittently seen by various behavioral health providers during his military service and was reporting mental health symptoms. At times, the applicant was diagnosed with Depression and an Adjustment Disorder. However, prior to his discharge, he was fully evaluated and determined to not meet criteria for PTSD, Depression, or a TBI, and he was found to meet medical retention standards from a behavioral health perspective. There is no nexus between the applicant's diagnosed or reported mental health conditions or TBI and these types of misconduct.

3. The Board concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct or warrants a referral to IDES to be assessed for a medical discharge. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

4. 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:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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

[redacted]

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 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. 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.

3. Title 38 USC, section 1110 (General-Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

4. Title 38 USC, section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

5. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.

a. 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. Chapter 14 established policy and prescribed procedures for separating members for misconduct. Specific categories included minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, or absences without leave. Action would be taken to separate a member for misconduct when it was clearly established that rehabilitation was impracticable or was unlikely to succeed. A discharge under other than honorable conditions was normally considered appropriate. However, the separation authority could direct a general discharge if merited by the Soldier's overall record.

6. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states 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 military service.

b. Chapter 3-4 states Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one, which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

7. Army Regulation 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, appointment, retention, and separation (including retirement.) Chapter 3 provides the various medical conditions and physical defects which may render a Soldier unfit for further military service and which fall below the standards required for the individual in paragraph 3-2, below. These medical conditions and physical defects, individually or in combination:

- significantly limit or interfere with the Soldier's performance of duties
- may compromise or aggravate the Soldier's health or well-being if the Soldier remains in the military-this may involve dependence on certain medications, appliances, severe dietary restrictions, frequent special treatments, or a requirement for frequent clinical monitoring
- may compromise the health or well-being of other Soldiers
- may prejudice the best interests of the government if the individuals were to remain in the military service

8. 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 (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

9. PTSD can occur after someone goes through a traumatic event like combat, assault, or disaster. The Diagnostic and Statistical Manual of Mental Disorders (DSM) is published by the American Psychiatric Association (APA) and provides standard criteria and common language for the classification of mental disorders. In 1980, the APA added PTSD to the third edition of its DSM nosologic classification scheme. Although controversial when first introduced, the PTSD diagnosis has filled an important gap in psychiatric theory and practice. From a historical perspective, the significant change ushered in by the PTSD concept was the stipulation that the etiological agent was outside the individual (i.e., a traumatic event) rather than an inherent individual weakness (i.e., a traumatic neurosis). The key to understanding the scientific basis and clinical expression of PTSD is the concept of "trauma."

10. PTSD is unique among psychiatric diagnoses because of the great importance placed upon the etiological agent, the traumatic stressor. In fact, one cannot make a PTSD diagnosis unless the patient has actually met the "stressor criterion," which means that he or she has been exposed to an event that is considered traumatic. Clinical experience with the PTSD diagnosis has shown, however, that there are individual differences regarding the capacity to cope with catastrophic stress. Therefore, while most people exposed to traumatic events do not develop PTSD, others go on to develop the full-blown syndrome. Such observations have prompted the recognition that trauma, like pain, is not an external phenomenon that can be completely objectified. Like pain, the traumatic experience is filtered through cognitive and emotional processes before it can be appraised as an extreme threat. Because of individual differences in this appraisal process, different people appear to have different trauma thresholds, some more protected from and some more vulnerable to developing clinical symptoms after exposure to extremely stressful situations.

11. The fifth edition of the DSM was released in May 2013. This revision includes changes to the diagnostic criteria for PTSD and acute stress disorder. The PTSD diagnostic criteria were revised to take into account things that have been learned from scientific research and clinical experience. The revised diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity. The sixth criterion concerns duration of symptoms, the seventh criterion assesses functioning, and the eighth criterion clarifies symptoms as not attributable to a substance or co-occurring medical condition.

12. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who

have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

13. 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 DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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.

14. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service DRBs and Service BCM/NRs on 25 July 2018 [Wilkie Memorandum], 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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.

15. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability.

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with AR 40-501 (Standards of Medical Fitness),

chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by a Military Occupational Specialty Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

16. Title 38, USC, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency. The VA can evaluate a veteran throughout his or her lifetime, adjusting the percentage of disability based upon that agency's examinations and findings.

17. Army Regulation 635-40 (Personnel Separations Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or

defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability. Once a determination of physical unfitness is made, all disabilities are rated using the Department of Veterans Affairs Schedule for Rating Disabilities (VASRD).

a. Chapter 3-2 states 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 military service.

b. Chapter 3-4 states Soldiers who sustain or aggravate physically unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one, which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

18. Army Regulation 635-8 (Separation Processing and Documents), states, the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. The DD Form 214 is a synopsis of the Soldier's most recent period of continuous active service. The general instructions stated all available records would be used as a basis for preparation of the DD Form 214. The information entered thereon reflects the conditions as they existed at the time of separation.

a. Item 24 (Character of Service) characterization or description of service is determined by directives authorizing separation. Proper completion of this block is vital since it affects the Soldier's eligibility for post-service benefits. Only six standard characterizations in this block are authorized: honorable, under honorable conditions (general), under other than honorable conditions, bad conduct, dishonorable and uncharacterized.

b. Item 28 (Narrative Reason for Separation) is based on regulatory or other authority and can be checked against the cross reference in Army Regulation 635–5–1.

19. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from Active Duty). The separation code JKA (is to be used for Soldiers discharged for a pattern of misconduct).

20. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross-reference table shows the SPD code as "JKA" for pattern of misconduct. A RE code of "3" is assigned.

21. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes:

- RE-1 Applies to persons immediately eligible for reenlistment at time of separation
- RE-2 Applies to persons not eligible for immediate reenlistment
- RE-3 Applies to persons who may be eligible with waiver-check reason for separation
- RE-4 Applies to persons who are definitely not eligible for reenlistment

22. Department of Defense Financial Management Regulation, Volume 7B:

a. Section 630301 states, a member may not be paid CRSC unless he or she has applied for and elected to receive compensation under the CRSC program by filing an application on DD Form 2860 (Claim for CRSC), with the Military Department from which he or she retired. A member may submit an application for CRSC at any time and, if otherwise qualified for CRSC, compensation will be paid for any month after May 2003 for which all conditions of eligibility were met.

b. Section 630502 states, a combat-related disability is a disability with an assigned medical diagnosis code from the VA Schedule Rating of Disabilities (VASRD). The Military Departments will determine whether a disability is combat-related based on the following criteria:

- as a direct result of armed conflict
- while engaged in hazardous service
- in the performance of duty under conditions simulating war, or
- through an instrumentality of war

c. The Department will record for each disability determined to be combat-related which of the circumstances provided qualifies the disability as combat-related. A determination of combat-relatedness (see section 6306) will be made with respect to each separate disability with an assigned medical diagnosis code from the VASRD. A retiree may have disabilities that are not combat-related. Such disabilities will not be considered in determining eligibility for CRSC or the amount of CRSC payable. An uncorroborated statement in a record that a disability is combat-related will not, by itself, be considered determinative for purposes of meeting the combat-related standards for CRSC prescribed herein. CRSC determinations must be made on the basis of the program criteria.

d. Section 6306 (Determinations of Combat Relatedness)

(1) Direct Result of Armed Conflict:

a. The disability is a disease or injury incurred in the line of duty as a direct result of armed conflict. To support a combat-related determination, it is not sufficient to only state the fact that a member incurred the disability during a period of war, in an area of armed conflict, or while participating in combat operations. There must be a definite causal relationship between the armed conflict and the resulting disability.

b. Armed conflict includes a war, expedition, occupation of an area or territory, battle, skirmish, raid, invasion, rebellion, insurrection, guerilla action, riot, or any other action in which Service members are engaged with a hostile or belligerent nation, faction, force, or with terrorists.

(2) In the Performance of Duty Under Conditions Simulating War. In general, performance of duty under conditions simulating war covers disabilities resulting from military training, such as war games, practice alerts, tactical exercises, airborne operations, leadership reaction courses, grenade and live fire weapon practice, bayonet training, hand-to-hand combat training, repelling, and negotiation of combat confidence and obstacle courses. It does not include physical training activities such as calisthenics, jogging, formation running, or supervised sport activities.

(3) Instrumentality of War:

a. There must be a direct causal relationship between the instrumentality of war and the disability. It is not required that a member's disability be incurred during an actual period of war. The disability must be incurred incident to a hazard or risk of the service.

b. An instrumentality of war is a vehicle, vessel, or device designed primarily for military service and intended for use in such service at the time of the occurrence or injury. It may also include such instrumentality not designed primarily for military service if use of or occurrence involving such instrumentality subjects the individual to a hazard peculiar to military service. Such use or occurrence differs from the use or occurrence under similar circumstances in civilian pursuits.

c. A determination that a disability is the result of an instrumentality of war may be made if the disability was incurred in any period of service as a result of such diverse causes as wounds caused by a military weapon, accidents involving a military combat vehicle, injury or sickness caused by fumes, gases, or explosion of military ordnance, vehicles, or materiel.

d. For example, if a member is on a field exercise, and is engaged in a sporting activity and falls and strikes an armored vehicle, then the injury will not be considered to result from the instrumentality of war (armored vehicle) because it was the sporting activity that was the cause of the injury, not the vehicle. On the other hand, if the individual was engaged in the same sporting activity and the armored vehicle struck the member, then the injury would be considered the result of an instrumentality of war.

//NOTHING FOLLOWS//