

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2025

DOCKET NUMBER: AR20240011826

APPLICANT REQUESTS: through counsel, correction of his DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 7 August 1972 to show:

a. his characterization of service as honorable or alternatively, under honorable conditions (general) in lieu of under other than honorable conditions discharge and

b. his narrative reason and authority as "Secretarial Authority, Army Regulation 15-185 [Army Board for Correction of Military Records]" in lieu of "Chapter 10 [In Lieu of Court-Martial] Discharged For the Good of the Service, Army Regulation 635-200 [Personnel Separations – Enlisted Personnel]."

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

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- Counsel's Brief in Support of Discharge Upgrade Application, 17 July 2024 with supporting documents organized in exhibits
 - Exhibit 1 – Applicant's Declaration
 - Exhibit 2 – Excerpts from Applicant's Records
 - Exhibit 3 – Mental Health Evaluation by Behavioral Health Department of Missouri Delta Senior Lifestyles, 7-10 August 2022
 - Exhibit 4 – Medical Records, 1 August 2023
 - Exhibit 5 – Secretary of Defense memorandum (Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge [Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder (PTSD), 3 September 2014
 - Exhibit 6 – Under Secretary of Defense memorandum (Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment), 25 August 2017

- Exhibit 7 – Under Secretary of Defense memorandum (Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations), 25 July 2018
- Exhibit 8 – "History of PTSD in Veterans: Civil War to DSM-5 [Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition]" by the National Center for PTSD
- Exhibit 9 – Gibson Center for Behavioral Change letter, 16 February 2024
- Exhibit 10 – Catholic Charities of Southern Missouri letter, 21 February 2024

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 the circumstances of his discharge should be mitigated by his PTSD and other mental health conditions that developed after his deployment in Vietnam where he witnessed numerous traumatic events. PTSD was not recognized as a diagnostic category in the medical community until 1980, 8 years after he was discharged from the Army. Until his PTSD affected his behavior, he excelled in his service and was recognized with numerous awards including being promoted to the rank of specialist. Additionally, he has demonstrated rehabilitation and commitment to his community, and upgrading his discharge would enable him to get the health benefits he desperately needs for his chronic illnesses.
3. Counsel states, in a 22 page brief, in effect, that prior to this point in the applicant's life, he has not had the legal, medical, or emotional support necessary to seek an upgrade, nor the benefit of recent medical treatment that helped him understand his own behaviors. As evidenced by Secretary of Defense memorandums, the military had adopted holistic flexibility in applying justice in discharge cases as it relates to PTSD, mental health issues, sexual assault/harassment, and other issues (see attachment for further additional details).
 - a. He notes the applicant served a combat tour in Vietnam and found great success despite minor disciplinary issues. As a result of his combat experiences, he developed PTSD and other mental health issues that led to his post-Vietnam issues and ultimately to him being discharged from the service.
 - b. After his discharge he continued to suffer from the effects of PTSD and other mental health issues in which he sought assistance for. As a result of Secretary of Defense memorandums in 2014, 2017, and 2018 giving "liberal consideration" to

discharge upgrade petitions based on PTSD and other mental conditions that existed during service and were potential mitigating factors in the misconduct leading to the discharge, his request for an upgrade to his discharge should be granted.

4. On his DD Form 149, the applicant indicates PTSD and other mental health issues are related to his request.

5. He enlisted in the Regular Army on 23 July 1969, he was awarded military occupational specialty 76A (Supplyman).

6. His records show he was assigned to the 478th Aviation Company, 101st Airborne Division (Airmobile), United States Army Pacific – Vietnam on or about 13 March 1970.

7. He accepted nonjudicial punishment on 15 July 1970, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), to wit: on 30 November 1968, by transferring by sale a portable television set, to a Vietnamese National in violation of Article 92, UCMJ. His punishment was forfeiture of \$88 pay a month for two months.

8. He accepted nonjudicial punishment on 17 September 1970, under the provision of Article 15 of the UCMJ, at Red Beach, DaNang, Vietnam on 16 September 1970, as a sentinel at an observation tower was found sleeping at his post in violation of Article 113, UCMJ. His punishment was reduction to the rank/grade of private two/E-2.

9. He received nonjudicial punishment on 18 August 1971, under the provision of Article 15 of the UCMJ, at Fort Knox, KY for the following specifications:

a. on or about 13 August 1971 failed to obey a lawful general order to wit: doing 15 mph [miles per hour] in a 5 mph zone in violation of Article 92 of the UCMJ and

b. on or about 18 August 1971 was disrespectful in language toward a superior noncommissioned officer, by saying to him "don't yell at me" or words to that effect in violation of Article 91 of the UCMJ.

c. His punishment was forfeiture of \$25 pay for a period of 30 days. He elected to appeal.

10. Special Court-Martial Order Number 25, issued by Headquarters, 1st Training Brigade, U.S. Army Armor Center and Fort Knox, Fort Knox, KY on 24 August 1971, shows he plead not guilty but was found guilty of violating Article 86 of the UCMJ, in that on 12 April 1971, without authority absent himself from his unit and did remain so absent until on or about 11 May 1971.

a. He was sentenced to forfeiture of \$30 pay per month for 3 months, to perform hard labor without confinement for 30 days, and to be reduced to the rank/grade of private/E-1. The sentence was adjudged on 29 July 1971.

b. The sentence was approved and ordered to be duly executed on 24 August 1971.

11. Special Court-Martial Order Number 36, issued by Headquarters, 1st Training Brigade, U.S. Army Armor Center and Fort Knox, Fort Knox, KY on 14 December 1971, shows he plead not guilty but was found guilty of violating Article 86 of the UCMJ, in that on 12 October 1971, without authority absent himself for his unit and did remain so absent until or about 5 November 1971.

a. The findings substituted the words and figure of "5 November 1971 with "28 October 1971." He was sentenced to forfeiture of \$150 pay per month for 5 months and confinement at hard labor for 5 months (one previous conviction was considered). The sentence was adjudged on 29 November 1971.

b. The sentence was approved and ordered to be duly executed on 14 December 1971.

12. Special Court-Martial Order Number 138, issued by U.S. Army Correctional Training Facility, Fort Riley, KS on 10 March 1972, shows effective 15 March 1972, all unexecuted portions of his sentence to confinement at hard labor and forfeitures was remitted.

13. His records are void of a separation packet containing the specific facts and circumstances surrounding his discharge process. However, his record contains a DD Form 214 that shows he was discharged on 7 August 1972, under the provisions of chapter 10, Army Regulation 635-200, in lieu of trial by court-martial – for the good of the service. He completed 2 years, 3 months, and 20 days of total active service. His DD Form 214 shows in:

- item 11c (Reason and Authority) – Chapter 10, Army Regulation 635-200, SPN [Separation Program Numbers] 246, Discharged for good of the service
- item 13 (Character of Service) – Under Other Than Honorable Conditions
- item 22c (Foreign and/or Sea Service) – 11 months and 9 days (Vietnam)
- item 26a (Non-pay Periods Time Lost) – 269 days lost

14. The applicant provided the following evidence, organized in enclosures, in addition to the aforementioned documents:

a. Exhibit 1 contains a declaration by the applicant wherein he outlined his time before joining the Army and his time in the Army. He notes his service in Vietnam and the events he witnessed causing his PTSD and other mental health issues that led to the events causing his separation from the military. He sought help for his issues from civilian medical professionals including admitting himself to a behavioral health center.

b. Exhibit 3 contains a medical evaluation by the Behavioral Health Department of Missouri Delta Senior Lifestyles, 7-10 August 2022 that provided a consultation regarding his medical conditions and diagnoses and a discharge summary.

c. Exhibit 4 contains civilian medical records, 1 August 2023 concerning his mental health issues.

d. Exhibits 5, 6, and 7 contains the three Secretary of Defense memorandums concerning guidance related to discharge upgrade requests by Veterans claiming PTSD, mental health conditions, sexual assault/harassment or issues with equity, injustice, or clemency determinations that were mitigating issues in their separation from the service.

e. Exhibit 8 contains an article from the National Center for PTSD titled "History of PTSD in Veterans: Civil War to DSM-5" that describes the development, diagnosis, and how it affects Soldiers.

f. Exhibit 9 contains a 16 February 2024 letter from the Gibson Center for Behavioral Change noting the applicant has been participating in residential and outpatient programs for an array of services.

g. Exhibit 10 contains a 21 February 2024 letter from the Catholic Charities of Southern Missouri noting he is currently enrolled in their Supportive Services for Veteran Families program.

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

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting through counsel, his characterization of service as honorable or alternatively, under honorable conditions (general) in lieu of under other than honorable conditions discharge and his narrative reason and authority as "Secretarial Authority, Army Regulation 15-185 [Army Board for Correction of Military Records]" in lieu of "Chapter 10 [In Lieu of Court-Martial] Discharged For the Good of the Service, Army Regulation 635-200 [Personnel Separations – Enlisted Personnel]." On his DD Form 149, the applicant indicated

Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues are 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 enlisted in the Regular Army on 23 July 1969, 2) his records show he was assigned to the 478th Aviation Company, 101st Airborne Division (Airmobile), United States Army Pacific – Vietnam on or about 13 March 1970, 3) he received an Article 15 on 15 July 1970 for transferring the sale of a portable television set to a Vietnamese National on 30 November 1968, 4) he received an Article 15 on 17 September 1970 for being found sleeping at his post on 16 September 1970, 5) He accepted nonjudicial punishment on 18 August 1971, under the provision of Article 15 of the UCMJ for the following specifications: on or about 13 August 1971 failed to obey a lawful general order to wit: doing 15 mph [miles per hour] in a 5 mph zone in violation of Article 92 of the UCMJ and on or about 18 August 1971 was disrespectful in language toward a superior noncommissioned officer, by saying to him "don't yell at me" or words to that effect in violation of Article 91 of the UCMJ, 6) on 24 August 1971 the applicant was found guilty by Special Court-Martial of absenting himself without authority from his unit from 12 April 1971 to on or about 11 May 1971, 7) the applicant was found guilty by Special Court-Martial on 14 December 1971 of absenting himself from his unit without authority on 12 October 1971 until on or about 05 November 1971. The findings substituted the words and figure of "5 November 1971 with "28 October 1971." He was sentenced to forfeiture of \$150 pay per month for 5 months and confinement at hard labor for 5 months (one previous conviction was considered). The sentence was adjudged on 29 November 1971. Special Court-Martial Order Number 138, issued by U.S. Army Correctional Training Facility, Fort Riley, KS on 10 March 1972, shows effective 15 March 1972, all unexecuted portions of his sentence to confinement at hard labor and forfeitures was remitted. 8) his records are void of a separation packet containing the specific facts and circumstances surrounding his discharge process. His DD Form 214 shows he was discharged on 07 August 1972, under the provisions of chapter 10, AR 635-200, in lieu of trial by court-martial – for the good of the service. He completed 2 years, 3 months, and 20 days of total active service. His DD Form 214 shows he served 11 months, 9 days (Vietnam), and 269 days lost.

b. 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. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A DA Form 4 (Enlistment Contract-Armed Forces of the United States) dated 23 July 1969 shows the applicant's PULHES as 111111, indicating no BH concerns were identified at the time of enlistment. The applicant's Enlisted Qualification Record shows his Principal Duty as "Dropped from Rolls-Deserter" effective 27 April 1972. Effective 09

June 1972, his principal duty was "Duty Soldier" with the reason documented as "SEP." On 07 August 1972, his principal duty was noted as "UNDESIRABLE DISCHARGE." Review of his DD Form 214 also shows in block 30 a reference to item 26a (lost time), showing 27 March 1972 through 08 June 1972.

d. Through counsel, the applicant stated that his mental and physical health have been declining since being discharged from the military and that his lack of access to his VA benefits has prevented him from getting the help he needs. More specifically, it was noted that he suffers from Parkinson's Disease and Chronic Obstructive Pulmonary Disease. It was also stated that after he attempted suicide in 2022, he was formally diagnosed with PTSD and Major Depressive Disorder (MDD), which were attributed to his trauma in Vietnam.

e. A review of JLV was void of medical information. He is not service-connected through the VA for any medical conditions. It is of note that his UOTHC discharge renders him ineligible for VA services.

f. The applicant included civilian medical records as part of his application. A consultation note from the Missouri Delta Medical Center dated 08 August 2022 shows the applicant was admitted to the Senior Lifestyles unit on 07 August with a diagnosis of chronic PTSD and MDD, noting he was hospitalized due to suicidal ideation with plan. It was documented that he had one or two prior suicide attempts. His medications were documented as Lithium (mood stabilizer), Paxil (antidepressant), Tylenol, Maalox, and Ativan (anxiety). A note from the Gibson Recovery Center-Mental Health Evaluation printed on 15 December 2023 shows he reported a history of trauma associated with his experiences during Vietnam, most notably when a member of his unit stepped on a landmine and was dismembered. It was further documented that the man asked the applicant to end his life, to which he declined, and witnessed the man end his life. He endorsed experiencing flashbacks, nightmares, intrusive memories, distress at reminders of the events, avoidance of any stimuli associated with what happened, changes in cognition, and a persistent negative emotional state. The provider documented that he met criteria for PTSD and recommended he seek a more thorough mental health evaluation. His diagnoses were documented as Alcohol Use Disorder, Moderate and PTSD. A letter from the Gibson Center for Behavioral Change dated 16 February 2024 shows the applicant had attended treatment through their facility since 09 May 2023, including residential treatment from 05 June 2023 through 28 August 2023 to address signs and symptoms of his substance use disorder. A letter from Catholic Charities of Southern Missouri dated 21 February 2024 shows the applicant was enrolled in the SSVF program (the nature of this program was not specified).

g. 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 PTSD secondary to his service in Vietnam, which is a potentially mitigating BH condition.

Records show he has also been diagnosed with MDD; however, it is unclear if this diagnosis was attributed to his time in service. The specific facts and circumstances that led to his discharge are unavailable for review; however, this Advisor would contend that the applicant's in-service misconduct is partially mitigated by his diagnosis of PTSD.

h. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant has been diagnosed with PTSD secondary to his service in Vietnam by a non-VA/civilian BH provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant has been diagnosed with PTSD secondary to his service in Vietnam by a non-VA/civilian BH provider.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. There were no in-service medical records available for review. Since being discharged from the military, the applicant has been diagnosed with PTSD secondary to his service in Vietnam by a non-VA/civilian BH provider. As there is an association between difficulty with authority figures, sleep problems, recklessness/impulsivity, avoidance behaviors, and trauma, there is a nexus between the applicant's misconduct of sleeping at his post, disrespect of a superior NCO, driving over the speed limit, being absent without leave (AWOL) and his diagnosis of PTSD. Thus, there is BH support for mitigation of these episodes of misconduct. Regarding his misconduct of transferring the sale of a portable television set to a Vietnamese National, unpermitted sale of items is not part of the natural history and sequelae associated with PTSD and thus BH mitigation would not be supported for this episode of misconduct. Thus, in considering the totality of the applicant's documented misconduct, partial BH mitigation would be supported based on his diagnosis of PTSD.

i. The complete facts and circumstances that led to the applicant's discharge were unavailable for review; however, it is of note that his service records show an additional period of AWOL from 15 March 1972 to 08 June 1972. Though there is no documentation showing any charges brought against him for this period of AWOL, his DD Form 214 shows he was subsequently discharged in August 1972. Thus, although the specific facts and circumstances that led to his discharge are unavailable for review, it is reasonable to conclude based on the temporal association between his last period of AWOL and his subsequent discharge two months after that AWOL was at least in part contributory to the reason for discharge, which would be mitigated by his diagnosis of PTSD. Thus, there is BH support for partial mitigation.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's 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 Board members note the applicant had three prior nonjudicial punishments, and was pending court-martial charges for being absent without leave, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The majority Board members found no error or injustice in the separation proceedings and designated characterization of service. The majority Board members noted the applicant's length of absence and noted the medical advisory official findings that it is reasonable to conclude based on the temporal association between his last period of AWOL and his subsequent discharge two months after that AWOL was at least in part contributory to the reason for discharge, which would be mitigated by his diagnosis of PTSD. Thus, there is BH support for partial mitigation; however, the majority Board members did not agree. Based on a preponderance of the evidence, the majority Board members concluded that the characterization of service the applicant received upon separation was not in error or unjust and denied relief. On the other hand, the minority Board member concurred with the medical advisory official and found partially mitigating circumstances due to the applicant's PTSD that warranted partial relief for a general discharge.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	XXX	GRANT PARTIAL RELIEF
:	:	:	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.

ADMINISTRATIVE NOTE(S):

The applicant is authorized administrative correction of his DD Form 214 for the period ending 7 August 1972 without Board action to show the following awards:

- Republic of Vietnam Gallantry Cross with Palm Unit Citation
- Republic of Vietnam Civil Actions Honor Medal First Class Unit Citation

REFERENCES:

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

Medical Office recommendations, opinions (including advisory opinions), and reviews to ABCMR applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of enlisted members for a variety of reasons. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 (Discharge for the Good of the Service) provided that a Soldier who committed an offense or offenses for which the authorized punishment included a punitive discharge could submit a request for discharge for the good of the service in lieu of trial by court-martial.

(1) Commanders would ensure that an individual would not be coerced into submitting a request for discharge for the good of the service. The member would be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge.

(2) The request could be submitted at any time after charges were preferred and must have included the individual's admission of guilt.

(3) If the member elected to submit a request for discharge for the good of the service after receiving counseling, he would personally sign a written request certifying that he had been counseled, that he understood his rights, that he may receive a discharge under other than honorable conditions, and that he understood the adverse nature of such a discharge and the possible consequences.

(4) A discharge under other than honorable conditions normally was appropriate for a Soldier who was discharged for the good of the service. However, the separation authority could direct a general discharge if such were merited by the Soldier's overall record.

e. Paragraph 14-4 (Authority for Discharge or Retention) stated upon determination that a member is to be separated with a discharge under other than honorable

conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority.

4. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), narrative reasons for separating Soldiers from active duty, and the separation codes to be entered on the DD Form 214. The regulation states that the appropriate narrative reason to assign to Soldiers separated under the provisions of Army Regulation 635-200, Chapter 10, with SPD Code 246 is "discharge for good of the service."

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

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

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//