

IN THE CASE OF: ██████████

BOARD DATE: 14 August 2025

DOCKET NUMBER: AR20240011957

APPLICANT REQUESTS:

- Upgrade of his general discharge under honorable conditions to an honorable character of service
- Correction of the following items on his DD Form 214 (Certificate of Release or Discharge from Active Duty) by deleting the current entries and replacing with:
 - Item 26 (Separation Code) – "JFF"
 - Item 27 (Reentry (RE) Code) – RE-1
 - Item 28 (Narrative Reason for Separation) – "Secretarial Authority"

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214
- Reassignment Orders
- DA Form 2627 (Record of Proceedings under Article 15, UCMJ (Uniform Code of Military Justice))
- State District Court Case Summary
- Defense Finance and Accounting Service (DFAS) Support Garnishment Memorandum
- Five DFAS Leave and Earnings Statements (LES)
- DA Form 2A (Personnel Qualification Record – Part I)
- DA Form 2-1 (Personnel Qualification Record – Part II)
- Standard Form (SF) 600 (Health Record – Chronological Record of Medical Care)
- Two SF 558 (Emergency Care and Treatment)
- Optional Form 275 (Medical Record Report)
- Administrative Separation Notification Memorandum
- Trial Defense Counsel Memorandum
- DA Form 4856 (General Counseling Form)
- DA Form 3822-R (Report of Mental Status Evaluation)

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. Counsel states:

- In accordance with Department of Defense Instruction (DODI) 1332.28 (Discharge Review Board (DRB) Procedures and Standards), paragraph E3.2.9.4.1 (Availability of Records and Documents), prior to the decision process, the Board must furnish counsel with the following to allow him to submit a rebuttal:
 - All regulations
 - Case Summaries, staff briefs, or memoranda
 - Advisory opinions from any sources
 - Military or civilian investigation reports
 - Any other documents to be considered in the discharge review
- Because applicant has been diagnosed with a behavioral health disorder, Title 10 (Armed Forces), U.S. Code, section 1552 (g) states a physician, clinical psychologist, or psychiatrist must be included as a member of the Board

3. Counsel argues:

- Citing the 25 August 2017 memorandum by then-Acting Under Secretary of Defense for Personnel and Readiness, there is substantial doubt the applicant would have received a general discharge under honorable conditions had he been separated under today's policies
- Based on the foregoing memorandum, the Board should upgrade the applicant's character of service for the following reasons:
 - The applicant was diagnosed with and showed consistent symptoms of mental health conditions
 - Those conditions persisted throughout his short military career
 - When coupled with the applicant's physical injuries and prescribed medications, the Board should find sufficient mitigating factors existed to warrant an upgrade
 - Those mitigating factors and the actions taken by the applicant's chain of command outweigh the command's basis for separation

- On 20 May 1996, as the applicant participated in advanced individual training (AIT), a civilian court established his paternity and required him to fulfill his financial obligations to his child; effective 1 July 1996, the court issued an order to withhold \$363 from the applicant's military pay
- Because DFAS failed to garnish the applicant's support payments until September 1996, the applicant accrued a large debt, and this caused him extreme financial hardship; on 10 July 1996, the applicant sought help from his medical provider due to the stress caused by his financial situation
- "[Applicant] was set up for failure from the start of his short career"
 - While in AIT, the applicant raised mental health concerns but was ignored
 - "As with many trainees, [applicant] was told to wait for his follow-on assignment to address his personal, physical, and behavioral issues"
 - The applicant reported to his duty assignment in Korea, hoping his new leadership would be able to assist and guide him, but this did not happen
 - In September 1996, DFAS started deducting child support; although the court order and DFAS policy prohibited garnishing more than 50 percent of the applicant's pay, the DFAS LESSs provided by counsel appear to show DFAS violated its own policies
- On 5 November 1996, while performing charge of quarters (CQ) runner duties, the applicant lost consciousness; the attending physical suspected hypoglycemia but also noted the applicant had been prescribed a muscle relaxer and now banned opioid pain reliever; these were for injuries he had incurred during AIT
- On 13 November 1996, the applicant was found unresponsive in his barracks room and was transported to the emergency room (ER); the ER released him and, at his follow-up appointment, the applicant told the doctor he felt excessive fatigue, insomnia, feelings of loneliness, and an sense he had no one to turn to
- Two days after being treated in the ER, the applicant committed his first act of misconduct by writing a bad check; over the next eleven days, he would cash six dishonored checks, totaling \$1,570, at an on-post establishment
- The three main reasons for writing the bad checks were: his decision-making ability was heavily affected by his medical condition and his medications; he had unexpected deductions from his pay; and he was being an impulsive, short-sighted 20-year-old
- Soon after his arrival at the unit, the applicant tried to address his problems with his chain of command, but his leadership's disinterest only helped the applicant's financial issues to compound and spiral out of control
- Counsel acknowledges the applicant acted impulsively but maintains the lapse in judgment is mitigated by the applicant's untreated mental and physical health conditions, his prescribed medications, and the lack of leadership support
- On 30 December 1996, the applicant was involved in a disrespectfully verbal altercation with a Republic of Korea (ROK) noncommissioned officer (NCO); the

applicant's financial problems, professional frustration, physical ailments, and untreated behavioral health issues all contributed to what occurred

- Following this incident, the applicant's leadership was more interested in separating the applicant than helping him resolve his pay problems
- The bad checks and disrespectful encounter with the ROK NCO resulted in a field grade nonjudicial punishment (NJP) action, but the punishments administered turned out simply to be a precursor to his ultimate separation
- On 11 February 1997, the applicant's first sergeant (1SG) counseled him but only addressed the potential for separation action; there were no descriptions of deficiencies, no plan to correct deficiencies, and no mention of rehabilitation
- Based on bad checks and an argument with a ROK NCO, the applicant's command issued him a general discharge, which was a "very steep and life altering punishment for a Soldier with less than 14 months of service (who was in need and asking for assistance"
- "[Applicant] was never given the opportunity to prove himself; his physical limitations and mental health concerns overtook his potential in the eyes of his chain of command, and he was discharged with (an) erroneous and unjust characterization"
- Counsel contends that, under 32 Code of Federal Regulations (CFR), Part 70 (DRB Procedures and Standards), section 70.9 (Discharge Review Standards), the Board should upgrade the applicant's character of service

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

- On 4 January 1996, after serving in the U.S. Army Reserve and earning the rank/grade of private (PV2)/E-2, the applicant enlisted for 6 years into the Regular Army; upon completion of initial entry training and the award of military occupational specialty 91B (Medical Specialist), orders assigned him to Korea
- On or about 21 January 1997, the applicant arrived at his new duty station, a field artillery battalion within the 2nd Infantry Division, ROK
- On 3 February 1997, the applicant accepted NJP from his battalion commander for two specifications of disrespect toward an NCO and writing six bad checks, totaling \$1,570
- On 14 March 1997, the applicant's commander advised him, via memorandum, that he was initiating separation action against the applicant, under paragraph 14-12c (Acts or Patterns of Misconduct – Commission of a Serious Offense), Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel)
 - The commander stated his reasons were the applicant's disrespect toward an NCO and the rendering of \$1,570 in bad checks
 - Additionally, the commander advised he would be recommending the applicant for a general discharge under honorable conditions, but the final decision rested with the separation authority

- On 17 March 1997, after consulting with counsel, the applicant acknowledged counsel had advised him of the basis for the separation action, informed him of his rights, and the effect of waiving those rights
 - The applicant additionally affirmed he was not entitled to present his case before an administrative separation because he had not completed 6 or more years of total active and reserve service
 - He requested counsel and opted to submit statements in his own behalf
- On 17 March 1997, the applicant's military defense counsel submitted two memoranda to the separation authority:
 - The first addressed the applicant's separation packet, arguing the evidence did not support a separation for commission of a serious offense; the applicant had not been given the opportunity for a rehabilitative transfer; and he had already been punished via NJP
 - The second argued the applicant should be granted an honorable character of service; the applicant had only one negative counseling statement about appearance, and he had passed his Army Physical Fitness Test and qualified with his weapon; further his duty performance was not substandard
- On 17 March 1997, the company commander filed his separation recommendation; as to why it was not feasible to consider other disposition, the commander stated, "continued attempts to rehabilitate the Soldier would not be considered in the best interest of the Army nor would it produce a quality Soldier"
- On 18 March 1997, the separation authority approved the commander's separation recommendation and directed the applicant's general discharge under honorable conditions; on 8 April 1997, orders separated the applicant accordingly
- The applicant's DD Form 214 shows he completed 1 year, 4 months, and 5 days of his 6-year enlistment contract; the report additionally reflects the following:
 - Item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) – Army Service Ribbon
 - Item 25 (Separation Authority) – AR 635-200, paragraph 14-12c
 - Item 26 (Separation Code) – "JKQ"
 - Item 27 (Reentry (RE) Code) – RE-3
 - Item 28 (Narrative Reason for Separation) – Misconduct

5. MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant through counsel, requests upgrade in characterization of service from Under Honorable Conditions, General to Honorable. He also had related administrative requests for his DD Form 214. He indicated that Other Mental Health was related to his request. He contends that his mental condition coupled with physical injuries and prescribed medication, excuse and mitigate his misconduct. He further contends that the mitigating factors and actions of applicant's chain of command outweigh the discharge. The applicant's mental health conditions were reviewed under separated cover by an ARBA Medical Reviewer with mental health expertise.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant was a member of the Army reserve and entered the Regular Army on 04Jan1996. His MOS was 91B, Medical Specialist. He was deployed 5 and a half months in Korea starting 19960807. He was discharged on 08Apr1997 under provisions of AR 635-200, para 14-12c commission of a serious offense. The DD 214 reads 'misconduct'. On 04Feb1997, he had received a Field Grade Article 15 for actions while in Korea that included: Being disrespectful in language to a noncommissioned officer (30Dec1996); disobeyed a noncommissioned officer (30Dec1996); and wrote 6 bad checks totalling \$1,570 to a club from 16Nov1996 to 27Nov1996. His service was characterized as Under Honorable Conditions, General.

3. Medical records and related. The focus was on physical symptom/conditions.

a. 11May1996 emergency room visit. He was found at midnight sitting in a chair unresponsive and "shaking". He was diagnosed with Syncopal Episode. They suspected he had fainted due to hypoglycemia. It was also noted that he was taking Darvocet (narcotic), and Robaxin (muscle relaxant) and No Doz (over-the-counter caffeine supplement for alertness). His neurologic and cardiovascular exams were normal. The blood sugar level was not recorded in the note. The ER clinician gave nutrition advise to avoid hypoglycemia, the applicant was advised not to take the narcotic and muscle relaxant together and he was advised to return for follow up and further plan of action.

b. 10Jul1996 TMC Screening Note of Acute Medical Care. He was seen in part for blood work. He reported fatigue since January 1996 along with symptoms consistent with mental health issues. Of note, the blood glucose test was low normal at 67. It was also discussed that he had failed the sit-up portion of the PT test and that he needed it to graduate.

c. On 18Jul1996, he rear-ended another car and injured his back.

d. 14Aug1996 Acute Care Clinic. The applicant reported severe back pain. He reported being involved in a car accident 18Jul1996. X-rays were normal. He reportedly had been seen 5 times for back pain. He reported right leg numbness; however, the straight leg testing was negative and there were no sensory or motor deficits. The diagnosis was Low Back Pain with Muscle Spasm. He was treated with pain medication (narcotic) and a 5 day no duty profile. A neurosurgery consult was pending.

e. 13Nov1996 Emergency Care and Treatment. He was found unresponsive by his roommate. He became more responsive after he was treated with iv fluids with glucose in it. The urine test for glucose was abnormally high (unclear if the urine was tested before the iv with glucose in it was administered intravenously). The blood glucose was normal at 120. He was given quarters for 24 hours.

f. 14Nov1996 Chronological Record of Medical Care. The applicant was noted to have been seen twice in 2 weeks for episodes of loss of consciousness (and altered consciousness) and "shaking". There was no reported trauma.

g. 12Feb1997 Personnel Qualification Record. PULHES was 111111.

h. In the 17Mar1997 Department of Army U.S. Trial Defense Service memorandum with Subject: Discharge Characterization, applicant's defense counsel stated that the applicant had passed his APFT and had qualified as a Sharpshooter with the M-16.

4. Summary/Opinion

a. In regard to possible mitigation of the applicant's discharge due to misconduct, the following was noted: In May 1996, the applicant began having episodes of syncope suspected to be the result of hypoglycemia (low blood sugar). In November 1996, he seemed to respond to an intravenous sugar bolus during one of the syncopal episodes. Low blood sugar has been associated with reduced self-control and anger/aggression (Aggress Behav. 2011 Jan-Feb;37(1):73-80. A common lay term for this is "hangry".

b. The applicant was also seen on several occasions for "severe" lower and mid back pain warranting neurosurgery consultation. In addition to the pain itself, the applicant was treated with muscle relaxants and narcotics which can also be mood/behavior modifiers. He is currently rated by the VA at 40% for Degenerative Arthritis of the Spine, 40% for Paralysis of the Sciatic Nerve and 20% for Paralysis of the Sciatic Nerve.

c. Based on these findings, there is sufficient evidence to support that the applicant's medical conditions could have impacted his mood/behavior and contributed to his misconduct/offences involving the noncommissioned officer. The offenses involving disrespectful behavior to and failure to obey a lawful order of the noncommissioned officer; are mitigated by his medical conditions. The undersigned does not find a nexus between the applicant's medical conditions/symptoms and his writing of bad checks. The bad checks misconduct is not mitigated. The applicant's financial situation/obligation to his minor dependent was noted.

BEHAVIORAL HEALTH REVIEW:

a. Background: The applicant is requesting an upgrade of his (general) under honorable conditions discharge to honorable, along with changes to his separation code, RE code, and narrative reason for separation. The applicant contends OMH as related to his request.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- On 4 January 1996, after serving in the U.S. Army Reserve and earning the rank/grade of private (PV2)/E-2, the applicant enlisted for 6 years into the Regular Army.
- On 3 February 1997, the applicant accepted NJP from his battalion commander for two specifications of disrespect toward an NCO and writing six bad checks, totaling \$1,570.
- Applicant was discharged on 18 March 1997, under the provisions of Army Regulation 635-200, paragraph 14-12c, with a (general) under honorable conditions characterization of service. His DD Form 214 shows he was assigned separation code JKQ, his narrative reason for separation listed as Misconduct, with reentry code 3.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant's counsel argues the applicant was diagnosed with and showed consistent symptoms of mental health conditions and those conditions persisted throughout his short military career. When coupled with the applicant's physical injuries and prescribed medications, the Board should find sufficient mitigating factors existed to warrant an upgrade. Those mitigating factors and the actions taken by the applicant's chain of command outweigh the command's basis for separation.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant submitted hardcopy documentation of a mental status evaluation dated 14 February 1997. The evaluation states the applicant was found to have the mental capacity to understand and participate in proceedings, was

mentally responsible, met retention standards, had no psychiatric disease or defect, and was cleared for any administrative action deemed appropriate by his command. The diagnostic impression was of Anti-Social Personality Disorder.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for various medical conditions, but he is not service connected for any BH condition. On 8 August 2018, the applicant participated in a mental health intake session, he reported having previously worked with a community mental health provider with a focus on supporting his overall physical and psychological functioning. During the intake he denied any prior hospitalization, suicidal ideation, thoughts of harm to self or others, or history of substance abuse. He reported having been previously diagnosed with anxiety, depression and PTSD. However, there was no medical documentation to corroborate his account. He was provided supportive therapy with a focus on vocational rehabilitation along with Compensated Work Therapy until June 2019. On 17 September 2019, the applicant ingested medication along with liquor in an apparent suicide gesture, the alleged behavior occurred while he was on the phone with his spouse who wanted a divorce which the applicant did not want. His spouse called EMS, and he was brought to the hospital. The applicant consistently denied his behavior was a suicide attempt and he was discharged on 19 September 2019. The encounter was labeled as Problems Related to Unspecified Psychosocial Circumstances, since the applicant reported struggling with multiple stressors. The diagnostic impression was of Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, Unspecified Trauma and Stressor-related Disorder, complicated by Alcohol Use Disorder. The clinician further indicated his vulnerability due to ineffective coping skills along with borderline personality traits as a consideration. Following discharge from the hospital, the applicant was provided individual and group therapy. The applicant was inconsistent with treatment. However, a psychiatry note dated 9 June 2022 indicates he was being treated via medication management and supportive therapy. Recent psychiatric pharmacology appointment in May 2025 shows the applicant is being treated via medication management.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts OMH as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant experienced financial stressors and medical issues during his time in service.

A mental status evaluation shows he was diagnosed with Anti-Social Personality Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant asserts OMH, there is no evidence of any in-service BH diagnoses, the VA has not service-connected him for any BH condition, and he was not treated for a BH condition while in service. The applicant did experience financial stressors and medical issues during his time in service. A mental status evaluation shows he was diagnosed with Anti-Social Personality Disorder which would not mitigate his misconduct. The applicant sought mental health services via the VA over 20 years post-military service and was diagnosed with Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, Unspecified Trauma and Stressor-related Disorder, and Alcohol Use Disorder with the clinician noting ineffective coping skills with borderline personality traits.

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 Board reviewed and concurred with the medical advisor's review finding insufficient evidence to support any mitigating reason for his misconduct.

a. Characterization of Service: Deny. The Board determined there was no error or injustice in the characterization of service he received at the time of his discharge. The Board noted his disciplinary actions and infractions and determined the characterization he received was just.

b. Narrative Reason for Separation: Deny. The Board found no error or injustice in the narrative reason for separation the applicant received based upon his pattern of misconduct, including writing bad checks. The narrative reason was found to be appropriate.

c. Separation Code: Deny. The Board determined there to be no error or injustice in the type of separation code he received upon discharge.

d. Reentry Code: Deny. The Board determined the code he received was in accordance with regulatory guidance and there was no error or injustice.

2. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts OMH as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. The applicant experienced financial stressors and medical issues during his time in service. A mental status evaluation shows he was diagnosed with Anti-Social Personality Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant asserts OMH, there is no evidence of any in-service BH diagnoses, the VA has not service-connected him for any BH condition, and he was not treated for a BH condition while in service. The applicant did experience financial stressors and medical issues during his time in service. A mental status evaluation shows he was diagnosed with Anti-Social Personality Disorder which would not mitigate his misconduct. The applicant sought mental health services via the VA over 20 years post-military service and was diagnosed with Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, Unspecified Trauma and Stressor-related Disorder, and Alcohol Use Disorder with the clinician noting ineffective coping skills with borderline personality traits.

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

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	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.

8/15/2025

X 

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.

a. 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.

b. Section 1552(g) states:

(1) Any medical advisory opinion issued to the ABCMR with respect to a member or former member of the Armed Forces who has been diagnosed while serving in the Armed Forces as experiencing a mental health disorder shall include the opinion of a clinical psychologist or psychiatrist if the request for correction of records relates to a mental health disorder.

(2) If the ABCMR is reviewing a claim based on post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) or whose claim is related to combat or military sexual trauma, the Board shall seek the advice and counsel in the review from a psychiatrist, psychologist, or social worker with training on mental health issues associated with PTSD or TBI or other trauma as specified in the current addition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

c. Section 1556 (Ex Parte Communications Prohibited) 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 applicant's (and/or their counsel) prior to adjudication.

2. Department of Defense Instruction (DODI) 1332.28 (Discharge Review Board (DRB) Procedures and Standards), paragraph E3.2.9.4.1 (Availability of Records and Documents) is applicable to the Army Discharge Review Board and states the following:

a. In any case heard on request of an applicant, the DRB shall provide the applicant, at a reasonable time before initiating the decision process, a notice of the availability of all regulations and documents to be considered in the discharge review, except for documents in the official personnel or medical records and any documents submitted by the applicant.

b. The DRB shall notify the applicant of the right to examine such documents or to be provided with copies of the documents up on request; of the date by which such requests must be received; and of the opportunity to respond within a reasonable period of time to be set by the DRB.

3. Title 32 (National Defense), Subtitle A (Defense Department), Chapter I (Office of the Secretary of Defense), Subchapter D (Personnel, Military and Civilian), Part 70 (Discharge Review Board (DRB) Procedures and Standards).

a. Part 70.1 (Reissuance and Purpose). This part establishes uniform policies, procedures, and standards for the review of discharges or dismissals under Title 10, U.S. Code, section 1553 (Review of Discharge or Dismissal).

b. Part 70.3 (Definitions). Discharge Review Board (DRB). An administrative board constituted by the Secretary of the Military Department concerned and vested with discretionary authority to review discharges and dismissals under the provisions of Title 10 U.S. Code, section 1553.

c. Part 70.9 (Discharge Review Standards).

(1) The objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of review and the underlying factors that aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service.

(2) In each case, the DRB or the Secretary of the Military Department concerned shall give full, fair, and impartial considerations to all applicable factors before reaching a decision. An applicant may not receive a less favorable discharge than that issued at the time of separation.

4. Title 32, Subtitle A, Chapter V (Department of the Army), Subchapter F (Personnel), Part 581 (Personnel Review Board).

a. Part 581.2 (Army Discharge Review Board). This provision implements Title 10 U.S. Code, section 1553 and DODI 1332.28.

b. Part 581.3 (ABCMR). This section prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The statutory authority is Title 10, U.S. Code, section 1552.

5. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).

a. Paragraph 3-7a (Honorable Discharge). An honorable discharge was a separation with honor. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 3-7b (General Discharge) stated a general discharge was a separation from the Army under honorable conditions. The regulation authorized separation authorities to issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 5, section II (Secretarial Authority), paragraph 5-3 (Secretarial Plenary Authority). The separation of Soldiers was the prerogative of the Secretary of the Army. Except as otherwise delegated, such separations only occurred by the Secretary's authority and were to be based on a determination that the separation was in the best interests of the Army.

d. Chapter 14 (Separation for Misconduct), paragraph 14-12c (Acts or Patterns of Misconduct – Commission of a Serious Offense). Commander could separate Soldiers based on the commission of a serious military or civil offense, if the specific circumstances of the offense warranted separation and a punitive discharge was authorized for the same or a closely related offense under the Manual for Courts-Martial. A discharge under other than honorable conditions was normally appropriate for Soldier discharged under this chapter. However, the separation authority could direct a general discharge if such was merited by the Soldier's overall record.

6. Manual for Courts-Martial, in effect at the time, showed punitive discharges were among the maximum punishments for the following Uniform Code of Military Justice offenses: Article 91 (Contempt or Disrespect toward a Superior Noncommissioned Officer) and Article 134 (General Article – Making and Uttering a Worthless Check by Dishonorably Failing to Maintain Funds).

7. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation. The regulation stated the narrative reason for separation was tied to the Soldier's regulatory separation authority and directed DD Form 214 preparers to AR 635-5-1 (Separation Program Designators (SPD)) for the appropriate entries in item 28 (Narrative Reason for Separation). For the RE code, preparers were to use the code associated with the SPD, as listed on the SPD/RE Code Cross Reference Table.

8. AR 635-5-1, in effect at the time, stated Soldiers separated in accordance with paragraph 14-12c, AR 635-200 were to receive an SPD of "JKQ" and have, "Misconduct" entered in item 28 of their DD Form 214. When the regulatory authority for separation was paragraph 5-3, AR 635-200, the appropriate SPD was "JFF" and the narrative reason for separation was "Secretarial Authority."

9. The SPD/RE Code Cross Reference Table, in effect at the time, provided instructions for determining the RE code for Active Army Soldiers; the table shows the

SPD code and its corresponding RE code. The SPD code of "JKQ" has a corresponding RE code of "3."

10. AR 601-210 (Regular Army and Army Reserve Enlistment Program), in effect at the time, prescribed policies and procedures of the enlistment of Regular Army and U.S. Army Reserve Soldiers.

a. Paragraph 3-22 (U.S. Army RE Codes).

- RE-1 – applied to applicants who were fully eligible for entry into the Regular Army or U.S. Army Reserve
- RE-3 – pertained to applicant who had a waivable disqualification for entry into the Regular Army or U.S. Army Reserve

b. Paragraph 4-9 (Prior Military Service). A waiver was required for any applicant or current member of a Reserve Component who was separated or discharged from any Component of the United States Armed Forces for misconduct.

11. 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.

12. 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 (DRBs) and Board for Correction of Military/Naval Records (BCM/NRs) 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 (PTSD); Traumatic Brain Injury (TBI); 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.

13. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial.

However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

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

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

14. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, states:

a. The ABCMR decides cases on the evidence of record; it is not an investigative body. The ABCMR begins its consideration of each case with the presumption of administrative regularity (i.e., the documents in an applicant's service records are accepted as true and accurate, barring compelling evidence to the contrary).

b. The applicant bears the burden of proving the existence of an error or injustice by presenting a preponderance of evidence, meaning the applicant's evidence is sufficient for the Board to conclude that there is a greater than 50-50 chance what he/she claims is verifiably correct.

//NOTHING FOLLOWS//