

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2025

DOCKET NUMBER: AR20240012816

APPLICANT REQUESTS: reconsideration of the following:

- Upgrade his bad conduct discharge to an honorable character of service
- Permission to appear personally before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (VA) Form 21-781a (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault)
- Extract from Verbatim Record of Trial
- DD Form 259A (Bad Conduct Discharge Certificate)
- Memorandum
- Confidential Treatment Summary
- Army Review Boards Agency (ARBA) Letter
- Two Therapist Letters
- Request for Clemency
- Three pages of medical records

FACTS:

1. Incorporated herein by reference are military records, as were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AC87-01254, on 30 March 1988.

2. The applicant states:

- In 1973, he was a 16-year-old junior in high school who excelled at mathematics and ROTC (Reserve Officers' Training Corps); recruiters came to his school looking for applicants and, because the applicant's family members had previously served, entering the military was a deep and profound value for him
- He talked his parents into allowing him to enlist when he was 17 and, after taking a variety of tests, he wanted to sign up for 2 years; however, the recruiter talked

him into enlisting for 3 years; (he now feels he was manipulated and later learned such conduct was common among recruiters)

- After completing basic combat training (BCT), they sent him to Fort Bliss, TX for advanced individual training (AIT); they put him in a missile repairman class that was half Army and half U.S. Marines; one day, in the dayroom, a marine started bullying him because of the applicant's race and culture
- The marine told the applicant to get him a soda from the machine, and when the applicant refused, the marine punched him in the face, knocking out his two front teeth
- The applicant ultimately transferred into supply and was assigned to a unit in Germany; while there, he brought his wife and child over and rented a house on the local economy; he loved his job and he did it well
- One day, an individual named D__ L__ C__ (who later turned out to be a CID (Criminal Investigation Division) informant) came to one of the applicant's gatherings; he asked where he could get heroin, speed, or pills; the applicant said "we (are) not like that, and we would get hash (hashish)/marijuana only"
- The following weekend, they bought six pieces of hashish and smoked it with Mr. D__ L__ C__, but they were alarmed at how much hashish he smoked and saw that he "clearly could not hold his liquor"; Mr. D__ L__ C__ chipped in \$20 for the hashish knowing there would be another gathering the following week
- The next Friday, CID and the German police came to the applicant's house while he was at work, and they found 6 to 8 pieces of hashish; they called the applicant to the headquarters, where he found Mr. D__ L__ C__ waiting for him
- Mr. D__ L__ C__ read the applicant his rights and then, after a search, found the \$20 bill he had previously given to the applicant; "I was devastated and frightened, still a teenager but charged with possession and sale of a controlled substance"
- "I had no money for a lawyer and had to use a military (attorney) who did not advocate for me. I was told if I did not plead guilty, they would charge my wife and she would go to jail and that they would take my son from me...I immediately put my wife and son on the next plane out of Germany"
- When they learned the applicant had sent his family home, they "threw the book at me"
- The applicant was the only one in his group who was sent to Leavenworth (i.e., U.S. Disciplinary Barracks (USDB), Fort Leavenworth, KS); while at Fort Leavenworth, the applicant incurred "complex post-traumatic stress disorder (CPTSD)"
- "I was diagnosed with CPTSD, panic disorder, generalized anxiety and moderate recurring depression...I remain hypervigilant, my thoughts ruminate on this, I participated in self- destructive behaviors including alcoholism, and I have flashbacks, nightmares and insomnia...I am seeking to resolve this situation"
- The applicant contends, "The Bad Conduct discharge does not represent who I am or my values...I was manipulated and bullied from the beginning of my

tenure with the Army. It was evident in the court record of trial. I was just a teenager"

3. The applicant provides letters from his therapist and a confidential treatment summary, all of which confirm the applicant has a history of PTSD, depression, and anxiety.

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

- On 15 March 1974, after obtaining his parents' permission, the applicant enlisted into the Regular Army for 3 years; he was 17 years old
- On 26 May 1974, after completing BCT at Fort Knox, KY, orders transferred him to Fort Bliss for AIT in military occupational specialty (MOS) 24G (Improved Hawk Information Coordination Central Mechanic); in October 1974, orders moved him to Fort Ord, CA for AIT in MOS 76Y (Unit Supply Specialist)
- On 12 December 1974, the Army awarded him MOS 76Y and permanent change of station orders assigned him to a signal company in Germany; he arrived at his new duty station, on 16 January 1975
- On 18 March 1975, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ); the applicant's commander charged him with being absent without leave (AWOL), from 4 to 6 March 1975 (2 days)
- Effective 8 September 1975, the applicant's chain of command promoted him to private first class (PFC)/E-3
- On 15 January 1976, the applicant accepted NJP for assaulting a female PFC and using provoking words against her; the applicant's punishment included a suspended reduction to private (PV2)/E-2
- On 2 December 1976, and consistent with the applicant's pleas, a general court-martial convicted the applicant of violating Article 134 (General Article – Wrongful Possession or Sale of Marijuana), UCMJ
 - The court addressed three specifications: wrongful sale of four grams of marijuana in hashish form, on 20 August 1976; wrongful sale of four grams of marijuana in hashish form, on 24 August 1976; and wrongful possession of fifty-seven grams of marijuana in hashish form, on 25 August 1976
 - The court sentenced him to 6-months' confinement, forfeiture of \$250 per month for 6 months, and a bad conduct discharge; the court immediately remanded him to confinement and, on or about 16 December 1976, orders relocated him to the USDB at Fort Leavenworth
- On 24 February 1977, the general court-martial convening authority approved the applicant's sentence

- On 28 April 1977, a general court-martial order announced that, because the applicant had completed his period of confinement, he was restored to duty, pending the outcome of the appellate process; on 28 April 1977, the USDB placed the applicant on excess leave
- On 29 July 1977, the U.S. Army Court of Military Review affirmed the applicant's sentence and the findings of guilty
- On 28 September 1977, a general court-martial order confirmed the completion of the applicant's appellate process and ordered the execution of his bad conduct discharge; on 2 November 1977, orders discharged the applicant accordingly
- The applicant's DD Form 214 (Report of Separation from Active Duty) shows he completed 3 years, 2 months, and 18 days of net creditable service with 147 days of lost time; the report additionally reflects the following:
 - Item 9c (Authority and Reason) – Paragraph 11-2 (DD Form 259A (Bad Conduct Discharge)), Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), SPD (Separation Program Designator) "JJD"
 - Item 10 (Reenlistment (RE) Code) – RE-4
 - Item 15 (Date Entered Active Duty This Period) – The report inaccurately lists his active duty as 2 November 1974
 - Item 26 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – National Defense Service Medal and two marksmanship qualification badges
- On 7 October 1986, the applicant petitioned the ABCMR requesting an upgrade to honorable; he contended his adverse discharge had resulted from peer association and immaturity; he was now a productive member of society and offered letters of support as proof
- On 30 March 1988, the Board voted to deny relief after determining the applicant had failed to file his request within the 3-year statutory time limit

5. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his prior request of an upgrade of his bad conduct discharge (BCD) to honorable. He selected PTSD and OMH on his application 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:

- Applicant enlisted in the Regular Army on 15 March 1974.
- On 18 March 1975, the applicant accepted nonjudicial punishment (NJP), under the provisions of Article 15, Uniform Code of Military Justice (UCMJ); the

applicant's commander charged him with being absent without leave (AWOL), from 4 to 6 March 1975 (2 days).

- On 15 January 1976, the applicant accepted NJP for assaulting a female PFC and using provoking words against her.
- On 2 December 1976, and consistent with the applicant's pleas, a general court-martial convicted the applicant of violating Article 134 (General Article – Wrongful Possession or Sale of Marijuana), UCMJ. The court addressed three specifications: wrongful sale of four grams of marijuana in hashish form, on 20 August 1976; wrongful sale of four grams of marijuana in hashish form, on 24 August 1976; and wrongful possession of fifty-seven grams of marijuana in hashish form, on 25 August 1976
- Applicant was discharged on 2 November 1977. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Paragraph 11-2. His service was characterized as Under Other Than Honorable Conditions, with SPD “JJD” and RE 4.

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 states he enlisted when he was 17, he wanted to sign up for 2 years; however, the recruiter talked him into enlisting for 3 years; (he now feels he was manipulated and later learned such conduct was common among recruiters). After completing basic combat training (BCT), they sent him to Fort Bliss, TX for advanced individual training (AIT); they put him in a missile repairman class that was half Army and half U.S. Marines; one day, in the dayroom, a marine started bullying him because of the applicant's race and culture. The marine told the applicant to get him a soda from the machine, and when the applicant refused, the marine punched him in the face, knocking out his two front teeth. The applicant ultimately transferred into supply and was assigned to a unit in Germany; while there, he brought his wife and child over and rented a house on the local economy. One day, an individual named D__ L__ C__ (who later turned out to be a CID (Criminal Investigation Division) informant came to one of the applicant's gatherings; he asked where he could get heroin, speed, or pills; the applicant said "we (are) not like that, and we would get hash (hashish)/marijuana only".

d. The following weekend, they bought six pieces of hashish and smoked it with Mr. D__ L__ C__, but they were alarmed at how much hashish he smoked and saw that he "clearly could not hold his liquor"; Mr. D__ L__ C__ chipped in \$20 for the hashish knowing there would be another gathering the following week. The next Friday, CID and the German police came to the applicant's house while he was at work, and they found 6 to 8 pieces of hashish; they called the applicant to the headquarters, where he found Mr. D__ L__ C__ waiting for him, he read the applicant his rights and then, after a search, found the \$20 bill he had previously given to the applicant; "I was devastated and frightened, still a teenager but charged with possession and sale of a controlled

substance." "I had no money for a lawyer and had to use a military (attorney) who did not advocate for me. I was told if I did not plead guilty, they would charge my wife, and she would go to jail and that they would take my son from me...I immediately put my wife and son on the next plane out of Germany". When they learned the applicant had sent his family home, they "threw the book at me". The applicant was the only one in his group who was sent to Leavenworth (i.e., U.S. Disciplinary Barracks (USDB), Fort Leavenworth, KS); while at Fort Leavenworth, the applicant incurred "complex post-traumatic stress disorder (CPTSD)". "I was diagnosed with CPTSD, panic disorder, generalized anxiety and moderate recurring depression...I remain hypervigilant, my thoughts ruminate on this, I participated in self-destructive behaviors including alcoholism, and I have flashbacks, nightmares and insomnia...I am seeking to resolve this situation". The applicant contends, "the Bad Conduct discharge does not represent who I am or my values...I was manipulated and bullied from the beginning of my tenure with the Army. It was evident in the court record of trial. I was just a teenager".

e. Due to the period of service no active-duty electronic medical records were available for review.

f. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no evidence he has participated in behavioral health treatment via the VA, likely due to the characterization of his discharge. The applicant provides a letter from a mental health provider, dated 9 April 2014, indicating he was treated from January 2013 to April 2014 and diagnosed with "PTSD, Depression and Anxiety due to multiple medical, physical, and mental health stressors". The letter indicates the following medical conditions: Ruptured Disk (L5-S1), Degenerative hip disease, Osteoarthritis, Morton's Neuroma, Torn Right Bicep, Chronic Severe Pain-knee, History knee surgery, and Chronic pain back. The letter does not indicate his behavioral health diagnoses are related to military service, but instead state, it is due to multiple severe psychosocial stressors.

g. A second letter by another provider, dated 22 September 2014, states the applicant was being treated since 2 May 2014 and diagnosed with Anxiety, Mood Disorder with major depression-like episode due to general medical condition, and PTSD. The letter appears to indicate his mental health issues were related to his medical condition. The applicant provides a third letter by a nurse practitioner dated 29 April 2024, that also indicates a long history of PTSD, depression, and anxiety but links these conditions to his experience within military service. The letter does not provide a course of treatment, prognosis, or other information but does reiterate the applicant's story and states, without evidence, the charges against the applicant "were a confabulation by the investigator".

h. 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 discharge. However, regardless of BH condition, his misconduct of wrongful sale of marijuana is unlikely to be mitigated by his BH condition.

i. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected PTSD and OMH on his application as related to his request, there is insufficient evidence of any mitigating BH condition. Per his own account, he incurred "complex post-traumatic stress disorder" while at Fort Leavenworth. The applicant was sent to Fort Leavenworth following his misconduct, as such the experience occurred after his engaging in the misconduct and would not provide mitigation. In addition, the applicant's onset of behavioral health symptoms, per available documentation appeared to have surfaced in 2013, 36 years post military service, and appeared related to medical and psychosocial stressors. However, regardless of BH condition, his more serious misconduct of wrongful sale of marijuana, is not part of the natural sequelae of any of his BH conditions and would not be mitigated.

j. Per Liberal Consideration guidelines, his selection of PTSD and OMH on his application is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during

military service that mitigates his discharge. However, regardless of BH condition, his misconduct of wrongful sale of marijuana is unlikely to be mitigated by his BH condition.

2. Kurta Questions:

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

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected PTSD and OMH on his application as related to his request, there is insufficient evidence of any mitigating BH condition. Per his own account, he incurred "complex post-traumatic stress disorder" while at Fort Leavenworth. The applicant was sent to Fort Leavenworth following his misconduct, as such the experience occurred after his engaging in the misconduct and would not provide mitigation. In addition, the applicant's onset of behavioral health symptoms, per available documentation appeared to have surfaced in 2013, 36 years post military service, and appeared related to medical and psychosocial stressors. However, regardless of BH condition, his more serious misconduct of wrongful sale of marijuana, is not part of the natural sequelae of any of his BH conditions and would not be mitigated.

3. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of wrongful sale of marijuana. The Board recognized the applicant enlisted in the RA at age 17 with parental consent and initially demonstrated potential, completing training and receiving promotion to private first class. However, the applicant's record reflects a pattern of misconduct, including two nonjudicial punishments, one for AWOL and another for assault and use of provoking language and a general court-martial conviction for multiple offenses involving the wrongful sale and possession of marijuana in hashish form.

4. The Board considered the applicant's assertion that his misconduct was the result of immaturity and peer influence and acknowledged his claim of post-service productivity. However, he provided no substantive documentation of post-service accomplishments for the Board to consider in support of a clemency determination. Furthermore, the Board found no evidence of error or injustice in the original proceedings and determined

that the characterization of service was appropriate given the nature and severity of the offenses. Therefore, the Board denied the applicant's request for an upgrade of his bad conduct discharge.


5. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction be completed to more accurately depict the military service of the applicant. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20070005960 on1 AC87-01254, on 30 March 1988.

 //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):

Item 10 of the applicant's DD Form 214, ending on 2 November 1977, inaccurately lists the date he entered active duty as 2 November 1974; according to his enlistment documents, he entered active duty, on 15 March 1974. As a result, delete the current entry in item 10 and replace it with the following: "74/03/15."

REFERENCES:

1. Title 10, U.S. Code, section 1552, states:

a. Subsection (f). With respect to courts-martial, and related administrative records pertaining to court-martial cases tried or reviewed under the UCMJ, action to correct any military record of a Secretary's Department may only extend to actions taken by reviewing authorities under the UCMJ or action on the sentence of a court-martial for purposes of clemency. The Secretary of the Army shall make such corrections by acting through boards of civilians within the executive part of the Army.

b. Subsection (h).

(1) This subsection applies to a former member of the armed forces whose claim under this section for review of a discharge or dismissal is based in whole or in part on matters relating to post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI) as supporting rationale, or as justification for priority consideration, and whose PTSD or TBI is related to combat or military sexual trauma, as determined by the Secretary concerned.

(2) In the case of a claimant described in paragraph (1), a Board shall:

(a) Review medical evidence of the Secretary of Veterans Affairs or a civilian health care provider that is presented by the claimant; and

(b) Review the claim with liberal consideration to the claimant that PTSD or TBI potentially contributed to the circumstances resulting in the discharge or dismissal or to the original characterization of the claimant's discharge or dismissal.

2. Title 10, U.S. Code, 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.

3. Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Paragraph 1-9d (Honorable Discharge). An honorable discharge was separation with honor.

(1) Issuance of an honorable discharge certificate was appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty or was otherwise so meritorious that any other characterization would clearly be inappropriate.

(2) Where there were infractions of discipline, commanders were to consider the extent thereof, as well as the seriousness of the offense. Separation authorities could furnish an honorable discharge when subsequent honest and faithful service over a greater period outweighed disqualifying entries in the Soldier's military record. It was the pattern of behavior, and not the isolated instance, which commanders should consider as the governing factor.

b. Paragraph 1-9e (General Discharge). A general discharge was a separation from the Army under honorable conditions. When authorized, separation authorities could issue a general discharge to Soldiers whose military record was satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 5 (Separation for the Convenience of the Government), Section II (Secretarial Authority), paragraph 5-3 (Authority) stated 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. Paragraph 11-2 (DD Form 259A (Bad Conduct Discharge)). A Soldier received a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate authority must have completed the review process, and the affirmed sentence ordered duly executed.

4. AR 635-5 (Separation Documents), in effect at the time, prescribed policies and procedures for DD Form 214 preparation.

a. 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 SPD code.

b. For item 10 (Reenlistment (RE) Code), the regulation referred preparers to the regulations governing enlistment/reenlistment.

5. AR 635-5-1, in effect at the time, stated Soldiers separated with a bad conduct discharge received an SPD of "JJD."

6. AR 601-210 (Regular Army Enlistment Program), in effect at the time, covered eligibility criteria, policies, and procedures for the Regular Army (RA) enlistment program.

a. Table 4-6 (Armed Forces RE Codes – Regular Army RE Codes) included the following list of the RE codes:

- RE-1 – Soldiers completing their term of active service who were considered qualified to reenter the U.S. Army; they were qualified for enlistment if all other criteria were met
- RE-3 – Soldiers who were not considered fully qualified for reentry or continuous service at time of separation, but their disqualification could be waived
- RE-4 – Soldiers who were not considered fully qualified for reentry or continuous service at time of separation and their disqualification could not be waived

b. Appendix A (Nonwaivable Moral and Administrative Disqualifications). Line Q (Disqualification) stated Soldiers convicted by a general court-martial during their last term of service were disqualified for reentry into the Regular Army.

7. 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.

8. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to Discharge Review Boards (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 PTSD; 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.

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

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, 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.

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

a. Paragraph 2-2 (ABCMR Functions). The ABCMR decides cases on the evidence of record; it is not an investigative body.

b Paragraph 2-9 (Burden of Proof) states:

(1) 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).

(2) 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.

c. Paragraph 2-11 (ABCMR Hearings) states applicants do not have a right to a hearing before the ABCMR; however, the Director or the ABCMR may grant a formal hearing.

//NOTHING FOLLOWS//