

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2025

DOCKET NUMBER: AR20250009763

APPLICANT REQUESTS:

1. Reconsideration of his earlier requests for correction of his military records to show:

- upgrade of his under other than honorable conditions discharge to honorable
- change to the type of separation to retirement with corresponding separation code
- change to the narrative reason to retirement for length of service
- restoration of his rank and pay grade to sergeant first class (SFC)/E-7
- removal of the dates of lost time in block 29 (Dates of Lost Time Under 10 USC 972)
- back pay and allowances for his retirement at the rank grade SFC/E-7
- cancellation of Army indebtedness

2. In the alternative to a grant for request for retirement for length of service at 22 years:

- issuance of orders for consideration by a physical evaluation board (PEB) of his medical evaluation board (MEB) with a finding for medical retirement
- a disability retirement rating under 10 USC Chapter 61

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

- DD Form 149 (Application for Correction of Military Record), 17 June 2025
- Counsel statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 27 August 2013
- Personnel action, showing duty status change from present for duty to confinement on 14 May 2010
- Orders 10-152-0005, dated 1 June 2010, reducing the applicant from specialist (SPC)/E-4 to private (PVT)/E-1, effective 26 April 2010 and discharge, effective 26 July 2010 under the authority of Army Regulation 135-178 (Enlisted Administrative Separations) with an under other than honorable conditions discharge

- Personnel Action showing duty status change from confinement to present for duty on 8 June 2011
- Final Pay Worksheet, August 2013, reflecting a debt of \$47,608.15
- Applicant's sworn statement, 11 July 2013, reflecting his pay at SFC/E-7 was an error by Defense Finance and Accounting Service and was not his fault
- DA Form 3947 (MEB Proceedings), dated 29 August 2016, reflecting:
  - left and right knee patellofemoral degenerative arthritis; incurred while entitled to basic pay
  - lumbago, lumbar degenerative disc disease L4-5 and L5-S1 with herniation; incurred while entitled to basic pay
  - left and right sided lumbar radiculopathy with right side nerve compression; incurred while entitled to basic pay
  - left and right ankle degenerative arthritis; incurred while entitled to basic pay
  - right shoulder acromioclavicular joint arthritis; incurred while entitled to basic pay
- Army Board for Correction of Military Records (ABCMR) denial letter, Docket Number AR20160014846, dated 19 September 2017
- Excerpt, Army Regulation 15-180, Appendix B, Board Application for Department of Defense Clarifying Guidance Regarding Liberal Consideration, Mitigating Factors, and Clemency for Request to Modify Military Discharges or Military Records
- White House Letter, 29 March 2019
- Executive Grant of Clemency, A Full and Unconditional Presidential Pardon, dated 28 May 2025
- Excerpt, Army Regulation 600-4 (Remission and Cancellation of Indebtedness), 20 April 2021

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20140017153 on 10 March 2016 and Docket Number AR20160014846 on 7 September 2017.

2. The applicant, through counsel, states:

a. The applicant's case should be upgraded based upon a grant of a full and unconditional pardon from the President on 28 May 2025. The Commander in Chief is the officer supreme and authoritarian of all the Armed Forces of the United States of America.

b. Based upon this full and unconditional pardon and a letter from the President, extending his personal gratitude for the service of the applicant, it is incumbent upon this Board to concur with the sitting President and current Commander-in-Chief by granting justice concerning his military records.

3. A review of the applicant's service record reflects the following:

a. On 31 August 1989, the applicant enlisted in the Regular Army for 8 years.

b. On 6 July 2002, he was honorably discharged, following a series of reenlistments, and promotions. His DD Form 214 reflects he completed 12 years, 10 months, and 6 days and he attained the grade/pay grade of staff-sergeant (SSG)/E-6.

c. On 7 July 2002, he enlisted in the U.S. Army Reserve beginning at grade/pay grade SSG/E-6.

d. On 31 August 2002, he was ordered to active duty (AD).

e. On 10 September 2003, he was promoted to sergeant first class (SFC)/E-7.

f. Orders 327-01, issued from U.S. Army Human Resources Command, dated 21 April 2009, reduced him to PVT/E-1 from SFC/E-7, effective 26 April 2010. The authority for this reduction was Army Regulation 600-8-19 (Enlisted Promotions and Reductions).

g. On 31 March 2010, in the U.S. District Court, Northern District of Georgia:

(1) he plead guilty to count one and accordingly, he was adjudged guilty of such count which involved the following offense: 18 USC, Section 641, Theft of Government Property.

(2) The Court ordered he be imprisoned for 18 months beginning on 14 May 2010 with 3 years of supervised release, pay a \$100.00 fine, and pay restitution in the total amount of \$163,330.00 to the following agencies:

- Department of Health and Human Services, \$81,665.00
- National Aeronautical and Space Administration, \$3,266.00
- Veterans Administration, \$24,500.00
- Department of Transportation, \$4,899.00
- U.S. Air Force, \$49,000.00

h. On 20 April 2010, his commander notified him of his intention to separate him for conviction by civil court under the provisions of Army Regulation 635-200, chapter 14, and advised him of the rights available to him. He understood, in part, he could be separated with an under other than honorable conditions characterization of service and the separation authority was Headquarters, Department of the Army.

i. On 27 April 2010, he met with counsel, he elected his right to counsel and to appear before an administrative separation board, and he waived submission of statements in his own behalf. He understood issuance of an under other than honorable characterization of service could result in many or all benefits as a Veteran under both Federal and State laws being denied to him.

j. On 14 May 2010, his status changed from for duty to confinement by civil authorities.

k. On 15 September 2010, his commander recommended his separation with an under other than honorable conditions characterization of service.

l. On 17 September 2010, an administrative separation board convened, and he appeared with counsel. After hearing his testimony and considering the evidence in his case, the board recommended his discharge under other than honorable conditions.

m. 8 June 2011, his status changed from confinement to present for duty.

n. On 27 September 2011, the Office of the Deputy Chief of Staff, G-1, Headquarters, Department of the Army, returned the separation packet to U.S. Army Human Resources Command for correction of deficiencies.

o. On 2 June 2012, the Staff Judge Advocate, recommended the Commanding General, Headquarters, Department of the Army, approve his separation with an under other than honorable conditions characterization of service.

p. 9 May 2013, Headquarters, Department of the Army approved his separation under provisions of Army Regulation 635-200, chapter 14 and directed separation with an under other than honorable conditions characterization of service.

q. On 10 June 2013, the approval authority, Sand Hill Cadre Clinic, placed him on permanent physical profile with a PULHES of 2-3-3-1-1-2.

r. On 11 July 2013, the applicant provided a statement, requesting forgiveness for debt incurred as a result of receiving SFC/E-7 pay while he was in confinement. He stated he received pay until April 2011 as a result of his command not stopping his pay and his spouse used the pay in his absence to make ends meet.

s. On 27 August 2013, he was discharged. His DD Form 214 shows he was separated under the provisions of Army Regulation 635-200, chapter 14, Section II for misconduct (civil conviction). He completed 9 years, 11 months, and 2 days of net active duty service this period. His rank was private/E-1. He had 391 days' time lost due to civil confinement.

t. A DA Form 1506 (Length of Service Computation) reflects he had 22 years, 3 months, and 28 days creditable service.

4. On 28 July 2014, the Army Discharge Review Board (ADRB) denied his application for an upgrade of his discharge, finding it was both proper and equitable.

5. On 10 March 2016, in ABCMR Docket Number AR20140017153, the Board granted him partial relief.

a. The Board recommended referral of his case to the Office of the Surgeon General to facilitate an interview, a possible assessment and evaluation of his complete record, to determine if the applicant should have undergone an MEB. The OTSG would reconstruct the putative findings of a 2013 MEB.

b. The Board denied the portion of his requests extending to an upgrade to honorable, reinstatement of grade/pay grade, and a change of the narrative reason to retirement for length of service.

6. MEB Proceedings, 29 August 2016, reflect:

a. The MEB found the following conditions unacceptable in accordance with Army Regulation 40-501 (Medical Fitness Standards for Retention and Separation, Including Retirement), chapter 3:

- left and right knee patellofemoral degenerative arthritis
- lumbago, lumbar degenerative disc disease L4-5 and L5-S1 with herniation
- left and right sided lumbar radiculopathy with right side nerve compression
- left and right ankle degenerative arthritis
- right shoulder acromioclavicular joint arthritis

b. The MEB found the following conditions unacceptable in accordance with Army Regulation 40-501:

- left shoulder strain
- mild, intermittent asthma
- TBI
- post-TBI headaches

- obstructive sleep apnea
- allergic rhinitis
- hypertension
- gastroesophageal reflux disease

c. The narrative summary shows the medically unacceptable condition of post-traumatic stress disorder (PTSD) was based on the VA diagnosis of PTSD with a 30% disability rating from 2013.

d. The MEB recommended referral to a PEB.

e. In Docket Number AR20140017153, the recommended relief included the following instructions:

(1) Should it be determined the applicant should have had an MEB, the OTSG will reconstruct the putative findings of a 2013 MEB.

(2) Once the reconstructed MEB is complete and if the applicant is found unfit for duty, the applicant should reapply to the ABCMR and provide a copy of the MEB. The ABCMR will make a final determination as to whether or not the applicant's medical conditions caused his misconduct, and further, as a result of that determination, whether or not his current discharge should be modified or stand.

f. Prior to the current application, the applicant has not reapplied to the ABCMR for a determination resultant from the MEB proceedings.

6. On 14 September 2017, and in ABCMR Docket Number AR20160014846, the Board reconsidered his requests and determined the evidence presented was insufficient to warrant the requested relief. The Record of Proceedings is accompanied with an ARBA medical opinion.

7. On 10 October 2024, the ADRB reconsidered his original ADRB request for upgrade based on the ADRB policy guidance. The Board found his discharge was both proper and equitable and voted not to grant relief. This Case Report and Directive is accompanied with an ARBA medical opinion.

#### 8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR contending new evidence, i.e. Presidential Pardon, should initiate a return to the DES process, change in characterization, change in type of separation, and other administrative actions.

b. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the case and history. The applicant had prior ABCMR and ADRB cases pertaining to medical requests.

1. In ABCMR case AR20140017153, a medical advisor determined the conditions did not mitigate the misconduct. The Board concurred with the question of mitigation but referred the applicant to DES to complete the MEB with instructions to return with the MEB results.

2. In ABCMR case AR20160014846, a medical advisor reviewed the MEB results and determined the misconduct outweighed the conditions.

3. In ADRB case AR20210000760, a medical advisor determined the conditions did not mitigate the misconduct.

c. In the current application, AR20250009763, the applicant's contentions are legal in nature. There is no new medical information for further consideration. Accordingly, a medical advisory is deferred at this time.

#### 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.

- Upgrade to his UOTHC Discharge to Honorable: Deny. The Board found the applicant's discharge was appropriate because the quality of his service was not consistent with the Army's standards for acceptable personal conduct and performance of duty by military personnel. The applicant's record of service was marred by his civil conviction for theft of government of property and his confinement. The Board noted that although thoughtful consideration was given to his Presidential Pardon, it does not negate his serious misconduct and that his service records were accurate at the time of his discharge. Furthermore, the Board concluded that the applicant took responsibility for his actions, thereby admitting guilty and as a result, they found no error or injustice and denied relief to upgrade his discharge to honorable.

- Change Separation to Retirement: Deny. The Board found and concurred with the medical advisory official which opined that the applicant provided no additional information that was not previously seen by the medical staff in his prior cases, for a different outcome. The Board noted that although thoughtful consideration was given to his Presidential Pardon, it does not negate his serious misconduct while in service and that his service records were accurate at the time of his discharge. Furthermore, the Board concluded that the applicant took responsibility for his actions, thereby admitting guilty and as a result, they found no error or injustice to show his reason for separation should be amended to reflect retirement and denied relief.
- Change Separation Code: Deny. The Board found that pursuant to Army Regulation, his separation code (SPD) code of "JKB" is the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-5, for misconduct (civil conviction). The regulation further stipulates that no deviation is authorized. The Board noted that although thoughtful consideration was given to his Presidential Pardon, it does not negate his serious misconduct while in service and that his service records were accurate at the time of his discharge. Therefore, the Board determined there was no error or injustice and denied relief to amend his SPD code.
- Change Narrative Reason to Retirement: Deny. The Board noted the applicant was separated due to misconduct, civilian conviction, was provided and acknowledged his rights, and was given an administrative separation board, in which they recommended separation with an UOTHC discharge. The Board noted that although thoughtful consideration was given to his Presidential Pardon, it does not negate his serious misconduct while in service and that his service records were accurate at the time of his discharge. The Board concluded there was no error or injustice and denied relief.
- Restoration of his rank and pay grade to SFC/E7: Deny. The Board noted the applicant received a civilian conviction, due to misconduct and was appropriately reduced to the rank of PVT/E-1. The Board noted that although thoughtful consideration was given to his Presidential Pardon, it does not negate his serious misconduct and that his records were accurate at the time of his discharge. The Board determined there was no error or injustice and denied relief.
- Remove Dates of Lost Time in Block 29: Deny. The Board noted the applicant received a civilian conviction and as a result, received confinement; the period of his lost time. The Board noted that although thoughtful consideration was given to his Presidential Pardon, it does not negate the period of lost time he was in confinement as a result of his misconduct. Therefore, the Board found no error or injustice and denied removing his dates of lost time from his DD Form 214.

- Received back pay and allowances for his retirement at the rank grade SFC/E-7: Deny. The Board noted the applicant was convicted in civil court and received confinement. As a result, the Board noted that he was separated and reduced in rank/grade to E-1. Additionally, The Board noted that although thoughtful consideration was given to his Presidential Pardon, it does not negate his serious misconduct while in service and that his service records were accurate at the time of his discharge. The Board found no evidence to show why he should be restored grade/rank of SFC/E7. The Board determined there was no error or injustice and denied restoring his rank to the SFC/7.
- Cancellation of Army Indebtedness: Deny. The Board noted the applicant was separated due to civilian conviction, serious misconduct, was provided and acknowledged his rights, and was given an administrative separation board, in which they recommended separation with an UOTHC Discharge. The Board noted that although thoughtful consideration was given to his Presidential Pardon, it does not negate his serious misconduct while in service and that his service records were accurate at the time of his discharge. The Board noted that the applicant provided no substantive argument to waive or cancel his debt, for which he received a civil conviction and denied relief.
- In the alternative, grant retirement for length of service at 22 years: Deny. The Board noted the applicant was separated due to civilian conviction, serious misconduct, was provided and acknowledged his rights, and was given an administrative separation board, in which they recommended separation with an UOTHC Discharge. The Board noted that although thoughtful consideration was given to his Presidential Pardon, it does not negate his serious misconduct while in service and that his service records were accurate at the time of his discharge. Furthermore, the Board concluded that the applicant took responsibility for his actions, thereby admitting guilty and as a result. Finally, the Board determined there was no evidence to show he met all the statutory regulations for retirement an denied relief.
- Issuance of Orders for Consideration by a PEB of his MEB with a finding for medical retirement: Deny. The Board determined the applicant's contentions were noted; however, the policy states the separation authority will not take final action on a separation when it has been determined the Soldier should be referred to an PEB. A separation authority's final action is the decision whether to separate the Soldier for misconduct. In this case the separation authority, the ASA (M&RA), had already directed the applicant's' separation before the applicant was recommended for referral to an MEB. Since the separation authority's final action preceded the determination, the applicant was eligible for an MEB, the applicant's separation was not improper. Therefore, the Board there was no error or injustice and denied relief.

- Disability Retirement under 10 USC Chapter 61: Deny. The Board determined the applicant's contentions were noted; however, the policy states the separation authority will not take final action on a separation when it has been determined the Soldier should be referred to an MEB. A separation authority's final action is the decision whether to separate the Soldier for misconduct. In this case the separation authority, the ASA (M&RA), had already directed the applicant's separation before the applicant was recommended for referral to an MEB. Since the separation authority's final action preceded the determination, the applicant was eligible for an PEB, the applicant's separation was not improper. Therefore, the Board there was no error or injustice and denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XX	XX	XX	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 amendment of the ABCMR decision rendered in Docket Numbers AR20140017153 on 10 March 2016 and Docket Number AR20160014846 on 7 September 2017.

X//signed//  
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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. Article II, Section 2, Clause 1, of the U.S. Constitution, reads, *The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.*

a. The Constitution establishes the President's authority to grant clemency, encompassing not only pardons of individuals but several other forms of relief from criminal punishment as well.<sup>1</sup> The power, which has historical roots in early English law, has been recognized by the Supreme Court as quite broad. In the 1886 case *Ex parte Garland*, the Court referred to the President's authority to pardon as unlimited except in cases of impeachment, extending to every offence known to the law and able to be exercised either before legal proceedings are taken, or during their pendency, or after conviction and judgment. Much later, the Court wrote that the broad power conferred in the Constitution gives the President plenary authority to 'forgive' [a] convicted person in part or entirely, to reduce a penalty in terms of a specified number of years, or to alter it with certain conditions.

b. Despite the breadth of the President's authority under the Pardon Clause, the Constitution's text provides for at least two limits on the power: first, clemency may only be granted for offenses against the United States, meaning that state criminal offenses and federal or state civil claims are not covered. Second, the President's clemency authority cannot be used in cases of impeachment.

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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, provided

a. Paragraph 1-33, states that except in separation actions under chapter 10 and as provided in paragraph 1-33b, disposition through medical channels takes precedence over administrative separation processing. When the medical treatment facility (MTF) commander or attending medical officer determines that a Soldier being processed for administrative separation under chapter 14 does not meet the medical fitness standards for retention he/she will refer the Soldier to a MEB. The administrative separation proceedings will continue, but final action by the separation authority will not be taken pending the results of the MEB. If the MEB findings indicate that referral of the case to a physical evaluation board (PEB) is warranted for disability processing under the provisions of Army Regulation 635-40 (Disability Evaluation for Retention, Retirement,

or Separation), the MTF commander will furnish copies of the approved MEB proceedings to the Soldier's General Court-Martial Convening Authority (GCMCA) and unit commander. The GCMCA may direct, in writing, that the Soldier be processed through the physical disability system when action under the Uniform Code of Military Justice has not been initiated, and one of the following has been determined:

- the Soldier's medical condition is the direct or substantial contributing cause of the conduct that led to the recommendation for administrative elimination
- other circumstances of the individual case warrant disability processing instead of further processing for administrative separation

The authority of the GCMCA to determine whether a case is to be processed through medical disability channels or under administrative separation provisions will not be delegated; The GCMCA's signed decision to process a Soldier through the physical disability system will be transmitted to the MTF commander as authority for referral of the case to a PEB. Copies of the GCMCA's decision will be furnished to the unit commander and included in the administrative separation proceedings. The unit commander will suspend processing of the administrative separation action pending the PEB. If the Soldier is found physically fit, the administrative separation action will be resumed. If the Soldier is found physically unfit, the administrative separation action will be abated.

b. Paragraph 3-7a states 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.

c. Paragraph 3-7b states 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.

d. Chapter 14 Separation for Misconduct. This chapter establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave. The characterization of service or description of separation for a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

e. Paragraph 14-5. Conditions that subject a Soldier to discharge and reduction in grade. A Soldier may be considered for discharge when initially convicted by civil

authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present: (1) a punitive discharge authorized for the same or a closely related offense under the Manual of Court Martial (MCM) 2002, as amended; and/or (2) the sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Initiation of separation action is not mandatory. Although the conditions established in (1) or (2), above, are present, the immediate commander must also consider whether the specific circumstances of the offense warrant separation. If the immediate commander initiates separation action, the case will be processed through the chain of command to the separation authority for appropriate action. A Soldier convicted by a civil court will be reduced or considered for reduction.

f. Paragraph 14-7. Retention action. Retention should be considered only in exceptionally meritorious cases when clearly in the best interest of the Army. In deciding whether retention should be recommended or approved, the gravity of the offense, related events, and any matters in extenuation, will be considered. The military record of the Soldier before the offense should be considered, as well as prospects for rehabilitation.

4. Army Regulation 600-4 (Remission or Cancellation of Indebtedness), in effect on 20 April 2021, outlines the policies and guidance for remission or cancellation of indebtedness to the U.S. Army. It implements the provisions of Section 7837, Title 10, United States Code and DoD 7000.14-R, Volume 16, Chapter 4, Paragraphs 0401 and 0405. It allows all Active Army Soldiers and those in the Active Guard/Reserve program to submit an application for remission or cancellation of indebtedness to the U.S. Army.

5. Army Regulation 600-8-24 (Enlisted Promotions and Reductions), in effect at the time, prescribed the enlisted promotions and reductions function of the military personnel system. It is linked to the AR 600-8 series and provides principles of support, standards of service, policies, tasks, rules, and steps governing all work required in the field to support promotions and reductions. It provides the objectives of the Army's Enlisted Promotions System, which include filling authorized enlisted spaces with the best qualified Soldiers.

a. Paragraph 10-3. Reduction for Misconduct.

(1) A Soldier convicted by a civil court (domestic or foreign) or adjudged a juvenile offender by a civil court (domestic or foreign) will be reduced or considered for reduction according to table 10-2.

(2) On receipt of documents establishing a sentence (imposed or vacation of a suspended sentence) or a finding of guilty with sentence to be established at a later

date, action will be taken according to appropriate rule shown in table 10–2. A Soldier may be reduced even though an appeal is pending or has been filed.

(3) When a reduction board is required, it will convene after receipt of documentary evidence and before separation or retention is considered (AR 635–200) unless the Soldier waives it in writing.

(4) Commanders will publish orders and enter the reduction in the military records of the Soldier. The authority for reduction will be the appropriate rule from table 10–2 and will be cited in the order. The Soldier will be notified, in writing, of the right to appeal the reduction. The written notification will include the time limits and procedures for an appeal.

(5) If the conviction is reversed, the Soldier will be restored to the former grade.

b. Table 10-2. Rules for reduction for misconduct. If the Soldier's sentence includes death or confinement of 1 year or more that is not suspended, and Soldier is serving in any enlisted grade above PV1, Soldier will be reduced to the lowest grade without referral to a reduction board. Appeal is authorized only to correct an erroneous reduction.

6. Army Regulation 40-501 (Standards of Medical Fitness), effective 14 June 2017, applies to the active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

a. This regulation governs:

- medical fitness standards for enlistment, induction, and appointment, including officer procurement programs
- medical fitness standards for retention and separation, including retirement
- medical fitness standards for diving, Special Forces, Airborne, Ranger, free-fall parachute training and duty, and certain enlisted military occupational specialties and officer assignments
- medical standards and policies for aviation
- physical profiles
- medical examinations and periodic health assessments.

b. The proponent of this regulation is The Surgeon General. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activities' senior legal officer. All waiver requests will be

endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent.

c. PULHES is an acronym for physical capacity/stamina (P), upper extremities (U), lower extremities (L), hearing and ears (H), eyes (E), and psychiatric (S). PULHES includes numbers from one to four. For brevity, a code of 1 or 2 means that the Soldier can deploy, and a 3 or 4 means that the Soldier cannot deploy.

7. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement, or Separation), in effect at the time, established the Army Physical Disability Evaluation System according to the provisions of chapter 61 of Title 10 United States Code and Department of Defense Directive 1332.18. It set forth policies, responsibilities, and procedures that apply in determining whether a member was unfit because of physical disability to perform the duties of his office, grade, rank, or rating. If a member was found unfit because of physical disability, it provided for disposition of the member according to applicable laws and policies.

a. Paragraph 4-24 provided that Based upon the final decision of the Commanding General, U.S. Army Physical Disability Agency, or the Army Physical Disability Review Board, the Commanding General, Military Personnel Center would issue retirement orders or other disposition instruction separation for physical disability with severance pay.

b. Paragraph 4-24b(1) provided U.S. Army Human Resources Command (HRC) will publish orders or issue proper instructions to subordinate headquarters or return any disability evaluation case to U.S. Army Physical Disability Agency (USAPDA) for clarification or reconsideration when newly discovered evidence becomes available and is not reflected in the findings and recommendations. Based on the final decision of USAPDA, HRC will issue retirement orders or other instructions as follows:

- permanent retirement for physical disability (Title 10, United States Code, Section 1201 or 1204)
- placement of the Temporary Disability Retirement List (Title 10, United States Code, Section 1202 or 1205)
- separation for Physical Disability with severance pay (Title 10, United States Code, Section 1203 or 1206)

8. 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 post-traumatic stress disorder (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.

9. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, 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.

10. 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/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 based on 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.

//NOTHING FOLLOWS//