

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2024

DOCKET NUMBER: AR20230008207

APPLICANT REQUESTS: through counsel,

- an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable
- that his Separation Program Designator (SPD) code and narrative reason for separation be amended to reflect "Secretarial Authority"
- to appear in person at his own expense before the Board in Washington, DC

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel petition and 17 Exhibits (2,248 pages)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, through counsel, the Board should consider granting the requested relief based upon the clarifying guidance provided in the Kurta Memorandum (Exhibit 7) for modification of discharges due to mental health conditions. This is consistent with the Board's prior decision for an infantryman who became dependent on Tramadol with a similar rank, length, and quality of service, including combat deployment to Afghanistan, mental health struggles from post-traumatic stress disorder (PTSD), and dependence on Tramadol before Tramadol was known to be addictive. The applicant earned similarly impressive awards as that infantryman: an Army Commendation Medal, Afghanistan Campaign Medal with two Campaign Stars, Army Good Conduct Medal, and a Combat Medical Badge. The applicant was also awarded a Purple Heart. While the infantryman tested positive for a Schedule I controlled substance with no accepted medical use, the applicant tested positive only for oxycodone and oxycodone, Schedule II controlled substances with a medically

accepted use of relieving moderate to severe pain. The Board should grant relief to the applicant because of his service, including his combat deployment to Afghanistan, PTSD, traumatic brain injury (TBI) and opioid dependence, mitigate and outweigh his misconduct. As Exhibit 1, counsel provides a declaration from the applicant to the Board wherein he states, in part:

a. Prior to joining the Army, he had a strong passion to serve his country. He enlisted in the Army in October 2008. He deployed to Afghanistan in support of Operation Enduring Freedom from May 2010 to March 2011. During that deployment, he served as a Line Medic at Combat Outpost Michigan and treated injured Soldiers on the front line while taking on enemy fire in the Korengal Valley, one of the most dangerous areas in Afghanistan.

b. He earned several awards and decorations during this deployment, including the Purple Heart, Combat Medical Badge, Army Commendation Medal, Army Achievement Medal (3rd award), Afghanistan Campaign Medal with two Campaign Stars, North Atlantic Treaty Organization (NATO) Medal, and Army Good Conduct Medal. He was awarded the Purple Heart as a result of being wounded in action during an enemy attack when his living quarters sustained a direct hit by an 82 millimeter recoilless round within three inches of his head. (Exhibits 3 and 4) A letter from his former platoon leader confirms the nature of his service, performance of his duties, and bravery displayed during combat. (Exhibit 5)

c. During his deployment, he was prescribed Tramadol for moderate to severe pain relief. In February 2011, he sought medical treatment for deployment-related PTSD symptoms, including an inability to sleep, and was diagnosed with insomnia. In his post-deployment assessment, he reported engaging in direct combat; losing consciousness from a blast or explosion, feeling dazed, confused, or seeing stars; seeing dead bodies; seeing people being killed or wounded; and feeling that his life was in great danger. (Exhibit 4)

d. He understands that due to his deployment, he suffered PTSD, TBI, and Tramadol-based opioid dependence. In April 2012, he sought help from his chain of command for substance abuse and self-referred to the Army's Substance Abuse Program (ASAP) for treatment. Upon completion of his inpatient treatment at a hospital, he asked his chain of command for additional inpatient treatment to cure his addiction entirely through an aggressive treatment plan. However, his command determined he should continue with a milder outpatient treatment plan through ASAP in both group and individual counseling settings and begin a regimen of Suboxone to treat his cravings in June 2012. In July 2012, one of his brothers passed away unexpectedly. His providers determined he was in remission and released him from the program in September 2012. At a related mental health appointment in October 2012, he reported deployment-

related symptoms of PTSD and that every doctor had wanted to diagnose him with PTSD, but he was hesitant to accept an official diagnosis. (Exhibit 4)

e. His addiction to opioids and mental health struggles took an immense toll on his relationship with his first wife that eventually led to their separation. He suffered a relapse and submitted a first positive urinalysis for stimulants on 17 October 2012, and a second positive urinalysis for synthetic opioids on 24 October 2012. His suboxone treatment was stopped and he received his first disciplinary action in November 2012 for allegedly tampering with a urine specimen. The Army initiated his administrative discharge UOTHC in lieu of trial by court-martial. (Exhibit 4)

f. Since his discharge, he has held several jobs and continued his education. He hopes to serve as a role model for future veterans recovering from PTSD, TBI, and substance dependence. He petitioned the Army Discharge Review Board (ADRB) for an upgrade of his discharge, explaining that he was suffering from undiagnosed PTSD and self-medicating to suppress his PTSD symptoms which began in Afghanistan after a near-death explosion from mortar fire. In February 2017, the ADRB failed to recognize his service-connected disabilities and denied his request.

g. Meanwhile, he also requested the Department of Veterans Affairs (VA) find that his service was honorable for VA purposes and grant him service-connection for his PTSD and TBI. After a personal appearance hearing, the VA found his service was honorable for VA purposes and granted him full access to VA benefits. He intends to attend medical school, he supports his wife and family, pays child support for his children from his first marriage, and attends church regularly. Since his discharge, he has had no legal issues or arrests, other than a minor traffic violation. He has also maintained sobriety since December 2013.

3. Counsel provides a brief in support of the applicant's petition and exhibits which are available in their entirety for the Board's consideration, to include all of the footnoted references. Counsel provides, in part, the following:

a. Introduction.

(1) Counsel essentially restates the information the applicant provided in his declaration above.

(2) Counsel states recent memos from the Department of Defense (DoD) indicate that military correction boards should take a fresh look at discharge characterizations involving mental health conditions and substance dependence. (See *infra* notes 2-3) Indeed, after his discharge from the Army, the VA awarded the applicant 30 percent service-connection for PTSD and TBI. (Exhibits 7 and 8)

(3) This Board is authorized to review the propriety and equity of an applicant's discharge. The applicant's discharge characterization should not be deemed equitable because his PTSD, TBI, and Tramadol-based opioid dependence mitigate the reason for his UOTHC discharge. His PTSD, TBI, and substance dependence on Tramadol (now recognized to be an opioid) affected his ability to serve satisfactorily and contributed to his use of opioids to self-medicate his withdrawal symptoms. These conditions also support changing the narrative reason for separation, SPD code, and regulatory authority to reflect "Secretarial Authority."

(4) Recent DoD guidance also supports relief. The 2017 "Kurta Memo"² echoes the requirement of Title 10 USC, subsection 1553 for "liberal consideration" of discharge upgrade claims rooted in PTSD and TBI, and it provides a four-factor framework for weighing mitigating evidence, and granting relief based on Secretarial Authority. (Exhibit 7) The applicant's record shows that all four factors support an upgrade, particularly because he self-referred to ASAP, the severity of his misconduct was not high, and his mental health struggles caused by his deployment and prescription treatment with Tramadol were well-documented. Tramadol was not a controlled substance during his deployment. The Drug Enforcement Agency (DEA) determined Tramadol should be a Schedule IV controlled substance only in 2014, well after the applicant's deployment. The 2018 "Wilkie Memo"³ also encourages the Board to consider whether fundamental fairness dictates relief. Multiple Wilkie Memo factors apply here based on the applicant's deployment and post-deployment service record.

b. Statement of facts. Counsel, once again, restates the information provided by the applicant in his declaration. Counsel further states, the Kurta Memo provides a framework for how to assess mitigating evidence: (Exhibit 7)

(1) Did the veteran have a condition or experience that may excuse or mitigate the discharge?

(2) Did that condition exist/experience occur during military service?

(3) Does that condition or experience actually excuse or mitigate the discharge?

(4) Does that condition or experience outweigh the discharge?

c. There is no doubt that the applicant incurred his PTSD and TBI during his Afghanistan deployment, and that he was prescribed an opioid-Tramadol-for pain relief, which led to his opioid dependence. There is also no doubt that his PTSD, TBI, and opioid dependence are precisely the type of debilitating mental health conditions contemplated by the Kurta Memo. Because each Kurta Memo prong is met in his case, the Board should grant relief.

d. In addition to a diagnosis during his military service, a determination made by the VA that a veteran's mental health condition is connected to military service is persuasive evidence that the condition existed, or experience occurred during military service. (Exhibit 7) The VA issued multiple rating decisions finding that the applicant's PTSD and TBI are connected to his military service. In April 2017, the VA determined the applicant's service was honorable for VA purposes for the period from 28 October 2008 to 14 February 2013, because he had a single isolated incident, he did not have a pattern of misconduct, he had above average performance reports until his single isolated incident, he sought help from his commanders and authorities with drug use, and it was not until after he reported needing assistance from the military for his drug use that his administrative discharge was initiated. (Exhibit 4)

e. The applicant's exceptional service actually excuses or mitigates his misconduct of testing positive for synthetic opioids, because his dependence on opioids was due at least in part to his prescription treatment with Tramadol for moderate to severe pain, before he and his providers fully appreciated that Tramadol is an addiction-causing opioid. Studies link PTSD and TBI with substance dependence and support that his opioid dependence is directly related to his service-connected PTSD and TBI, and that his conditions actually excuse his misconduct.

f. The applicant's service, including his entire combat service deployment in the Korengal Valley, should also be deemed honorable, particularly when his exceptional service during his deployment is weighed against his service-connected PTSD and TBI, and his related opioid dependence. As the Kurta Memo explains, "experiences that may reasonably have existed at the time of discharge will be liberally considered as excusing or mitigating the discharge." (Exhibit 7) Not only did he receive a Purple Heart for his wounds sustained in action, and a Combat Medical Badge for satisfactorily performing medical duties while personally present and under fire, and while his unit was engaged in active ground combat, he also received an Army Commendation Medal for his exceptionally meritorious service. Even after his return from deployment, the applicant continued to provide exceptional military service.

g. The final prong of the Kurta Memo framework considers whether the applicant's PTSD and TBI and related opioid dependence outweigh his UOTHC discharge. The Kurta Memo provides that "substance-seeking behavior and efforts to self-medicate symptoms of a mental health condition may warrant consideration." (Exhibit 7) That is precisely what this case presents. The applicant suffered from PTSD, TBI, and opioid dependence due to his deployment to one of the most dangerous areas in Afghanistan. His prescription treatment with an opioid-based pain medication led directly to his opioid dependence and his inability to conform his behavior to the expectations of a military environment. After several months of seeking and receiving treatment for his opioid dependence, and after his self-referral to a behavioral health center for inpatient treatment, the applicant relapsed and used synthetic opioids to self-medicate his opioid

withdrawal symptoms, resulting in two positive urinalysis tests. Had he not become dependent on Tramadol for his moderate to severe pain during his deployment, he would not have misbehaved and used synthetic opioids to self-medicate his opioid withdrawal symptoms.

h. The Wilkie Memo urges the Board to consider character references in its analysis. Here, Major (MAJ) L, the applicant's platoon leader while in Afghanistan and a current officer in the U.S. Army, has unreservedly given the applicant his "strongest endorsement," and MAJ L "truly believe[s] [the applicant] deserves this opportunity." (Exhibit 5) MAJ L reported that "[the applicant] served honorably while deployed" and "his competence and character during this deployment directly contributed to the success of (their) unit and saved lives on the battlefield"; he "consistently performed beyond expectations as the platoon medic"; and "he consistently displayed exponential leadership potential, constantly sought to expand upon his knowledge, and embraced every opportunity to contribute to the team beyond what was expected for his rank or duty position." MAJ L recognized that unfortunately, several members of their platoon "have suffered from some form of PTSD due to experiences, challenges, and memories associated with this extraordinary combat deployment." The applicant also received a reference letter from JMH, his former biology instructor and supervisor at a community college, wherein she stated he was an excellent student, and more importantly, a hardworking, considerate, intelligent, and upstanding person. These assessments of the applicant's exceptional military and post-service educational and professional accomplishments should be favorably considered pursuant to the Wilkie Memo. (Exhibit 8)

i. Counsel provides the following documents in support of the brief, all of which are available in their entirety for the Board's consideration.

- (1) Exhibit 1 – Applicant's declaration
- (2) Exhibit 2 – Applicant's resume
- (3) Exhibit 3 – Applicant's entire Defense Personnel Records Information System (DPRIS) Official Military Personnel File (OMPF)
- (4) Exhibit 4 – Applicant's entire VA record
- (5) Exhibit 5 – Letter from MAJ L
- (6) Exhibit 6 – Article entitled "Is Tramadol an Opioid or a Nonopioid Analgesic? Yes!"
- (7) Exhibit 7 – Kurta Memo

- (8) Exhibit 8 – Wilkie Memo
 - (9) Exhibit 9 – Article entitled, "America Never Knew Why It Was in Afghanistan"
 - (10) Exhibit 10 – Article entitled, "U.S. Soldiers Leave Outpost in Afghan 'Valley of Death'"
 - (11) Exhibit 11- Article entitled, "Veterans and Tramadol in 2021"
 - (12) Exhibit 12 – VA Veterans Health Administration - Change in Tramadol Prescriptions
 - (13) Exhibit 13 – Article entitled, "Substance use disorders in military veterans: prevalence and treatment challenges"
 - (14) Exhibit 14 – Article entitled, "Invisible Wounds of War"
 - (15) Exhibit 15 – ADRB Docket for a different applicant
 - (16) Exhibit 16 – Department of Justice/Drug Enforcement Agency – Drug Fact Sheet for Ecstasy/MDMA [Methylenedioxyamphetamine]
 - (17) Exhibit 17 – Letter of recommendation from JMH
4. On 28 October 2008, the applicant enlisted in the Regular Army for a period of 4 years. Upon completion of initial entry training, he was awarded military occupational specialty 68W (Combat Medic Specialist).
 5. He served in Afghanistan from 15 May 2010 to 26 March 2011. He was advanced to the rank/pay grade of specialist (SPC)/E-4 on 1 October 2010.
 6. On 24 July 2012, the applicant extended his term of enlistment for the convenience of the government.
 7. A DA Form 4187 (Personnel Action) shows the applicant was reduced from SPC to private first class (PFC)/E-3 as the result of nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on 24 October 2012.
 8. The complete facts and circumstances surrounding the applicant's separation to include a DD Form 458 (Charge Sheet) and his voluntary request for separation under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial, are not present in his available

record. Therefore, this case is being considered based upon the documents available in his record and those provided by the applicant.

a. The applicant's company, battalion, and brigade-level commanders each recommended approval of his voluntary request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial with a UOTHC discharge. His misconduct included tampering with a urinalysis specimen and having two positive urinalysis test results.

b. On 1 February 2013, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial, with his service characterized as UOTHC. He further directed the applicant be reduced from PFC to the lowest enlisted grade.

c. Orders and the applicant's DD Form 214 show he was discharged on 14 February 2013, in the rank to E-1, under the provisions of AR 635-200, Chapter 10, by reason of "In Lieu of Trial by Court-Martial" with Separation Code "KFS" and Reentry Code "4." He was credited with completing 4 years, 3 months, and 17 days of net active service this period. He completed his first full term of service.

(1) Block 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded or authorized the:

- Army Commendation Medal
- Purple Heart
- Army Achievement Medal (3rd award)
- Army Good Conduct Medal
- National Defense Service Medal
- Afghanistan Campaign Medal with two Campaign Stars
- Global War on Terrorism Service Medal
- Army Service Ribbon
- NATO Medal
- Overseas Service Ribbon
- Combat Medical Badge

(2) Block 18 (Remarks) indicates "Member completed first full term of service."

9. AR 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

10. The applicant petitioned the ADRB for relief on 12 July 2016. On 14 February 2017, the applicant was informed that after careful review of his application, military records,

and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his petition. The ADRB denied his request.

11. The applicant petitioned the ADRB for relief on 26 April 2021 based upon his previously undiagnosed condition of PTSD. On 30 May 2023, the applicant was informed that the ADRB voted to grant relief in the form of upgrading his characterization of service from UOTHC to Honorable. The ADRB further determined there should be no change to the narrative reason for his discharge, his Separation Code or his RE Code.

12. On 11 June 2023, the applicant was provided copies of his revised DD Form 214 reflecting his honorable service characterization and advised that his OMPF was corrected accordingly.

13. By regulation, an applicant is not entitled to a hearing before the Board.

14. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

15. MEDICAL REVIEW:

a. Background: The applicant's characterization of service was previously upgraded from under other than honorable conditions (UOTHC) to honorable. He is now requesting that his Separation Program Designator (SPD) code and narrative reason for separation be amended to reflect "Secretarial Authority". The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a summary of information pertinent to this advisory:

- Applicant enlisted in the RA on 28 October 2008.
- He served in Afghanistan from 15 May 2010 to 26 March 2011.
- The complete facts and circumstances surrounding the applicant's separation are not present in his available record.
- The applicant's company, battalion, and brigade-level commanders each recommended approval of his voluntary request for discharge under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial with a UOTHC discharge. His misconduct included tampering with a urinalysis specimen and having two positive urinalysis test results.
- ADRB Board dated 25 May 2023 references a DD Form 458, Charge Sheet dated 7 January 2013, and indicates the applicant was charged with:
- Charge I: Violating Article 92, UCMJ, The Specification: On 4 November 2012, fail to obey a lawful order issued by Captain S. D., by wrongfully leaving the boundaries of Fort Bragg.

- Charge II: Violating Article 112a, UCMJ:
- Specification 1: On or about 26 September 2012, wrongfully use dexamphetamine monophosphate, a schedule II controlled substance.
- Specification 2: On or about 26 September 2012, wrongfully use oxymorphone, a schedule II controlled substance.
- Specification 3: On or about 26 September 2012, wrongfully use oxycodone, a schedule II controlled substance.
- Charge III: Violating Article 121, UCMJ, The Specification: On 5 November 2012, stealing two pairs of gloves with inserts, three pairs of protective glasses, and one Stayblack assault wings, of a value of about \$263, the property of Army and Air Force Exchange Service (AAFES).
- Applicant's DD Form 214 shows he was discharged on 14 February 2013 under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial by Court-Martial" with Separation Program Designator (SPD) code "KFS" and Reentry Eligibility (RE) code "4."
- Applicant petitioned the ADRB for relief on 26 April 2021 based upon his previously undiagnosed condition of PTSD. On 30 May 2023, the applicant was informed the ADRB voted to grant relief in the form of upgrading his characterization of service from UOTHC to Honorable. The ADRB further determined there should be no change to the narrative reason for his discharge, his SPD code, or his RE code.

b. The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, his ABCMR Record of Proceedings (ROP), VA record, resume, letters of recommendation, DD Form 214, ADRB documents, and documents from his service record and separation. The VA electronic medical record and DoD health record were reviewed through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant states, through counsel, the Board should consider granting the requested relief based upon the clarifying guidance provided in the Kurta Memorandum (Exhibit 7) for modification of discharges due to mental health conditions. Prior to joining the Army, he had a strong passion to serve his country. He enlisted in the Army in October 2008. He deployed to Afghanistan in support of Operation Enduring Freedom from May 2010 to March 2011. During that deployment, he served as a Line Medic at Combat Outpost Michigan and treated injured Soldiers on the front line while taking on enemy fire in the Korengal Valley, one of the most dangerous areas in Afghanistan. He earned several awards and decorations during this deployment, including the Purple Heart, Combat Medical Badge, Army Commendation Medal, Army Achievement Medal (3rd award), Afghanistan Campaign Medal with two Campaign Stars, North Atlantic Treaty Organization (NATO) Medal, and Army Good Conduct Medal. During his deployment, he was prescribed Tramadol for moderate to severe pain relief. He

understands that due to his deployment, he suffered PTSD, TBI, and Tramadol-based opioid dependence.

d. The applicant's electronic active-duty medical record indicates a long-standing history of Opioid Dependence with enrollment to ASAP on 11 April 2012 for abuse of Opana daily as well as buying buprenorphine off the streets. The applicant's medical record notes consistent substance use from age 18-21, with increase use following his deployment. A note dated 16 July 2012 indicates he was admitted into an inpatient detox program in May 2012 and was provided with an intensive outpatient treatment program upon discharge.

e. The VA electronic medical record indicates the applicant is 40% service connected including 30% for PTSD. His most recent encounter in October 2023 has the applicant diagnosed with chronic PTSD and Opioid dependence, on agonist therapy. The applicant has no documented contact with the VA beyond that encounter.

f. The ADRB voted on 25 May 2023 to grant relief in the form of upgrading the applicant's characterization of service from UOTHC to Honorable based on his behavioral health condition. However, the Board determined that an upgrade of the narrative reason for separation and corresponding SPD code was not warranted due to the misconduct of tampering with a UA inspection, and domestic violence, found in the applicant's disciplinary record. Based on the available information, this Behavioral Health Advisor concurs with the previous ADRB decision. In addition, given the applicant's disabilities related to medical issues along with 30% service-connection for chronic PTSD and his diagnosis of opioid dependency, it is the opinion of this advisor that his Reentry Eligibility (RE) code "4" should remain ineligible for enlistment. A return to active service would likely re-traumatize the applicant and worsen his underlying PTSD condition.

Kurta Questions:

- Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Not applicable.
- Did the condition exist or experience occur during military service? Not applicable.
- Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Although the applicant's Charge Sheet is not available for review, other evidence of record shows the applicant was charged with violating the UCMJ and that court-martial-charges were preferred against him. He elected to be voluntarily discharged in lieu of trial by a court-martial. As such, when his voluntary discharge was approved, he received an under other than honorable conditions discharge. However, based upon his previously undiagnosed condition of PTSD, the ADRB voted to grant relief in the form of upgrading his characterization of service from UOTHC to Honorable. The ADRB further determined there should be no change to the narrative reason for his discharge, his Separation Code or his RE Code.

b. The Board noted that the applicant's narrative reason for separation was assigned based on the fact that after he violated the UCMJ and had court-martial charges preferred against him, and he chose to be discharged under chapter 10 in lieu of trial by a court-martial. Absent his UCMJ violation, there was no reason to prefer court-martial charges against him. The underlying reason for his discharge was his violation and subsequent voluntary request for discharge in lieu of the court-martial. The only valid narrative reason for separation permitted under chapter 10 is "In Lieu of trial by a court-martial" and the appropriate separation code associated with this discharge is KFS which at the time had a corresponding RE Code of 4.

c. The Board reviewed and agreed with the medical reviewer's finding that a change to the narrative reason for separation and corresponding separation/RE codes is not warranted due to the misconduct of tampering with a UA inspection, and domestic violence, found in the applicant's disciplinary record. Based on the available information, the Board determined that a change to the narrative reason, separation code, and reentry code is not warranted.

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.

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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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies

or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

4. Army Regulation 635-200, in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 5, paragraph 5-3 states separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

b. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

c. 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.

d. 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.

e. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

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

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable – they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification

6. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) implements the specific authorities and reasons for separating Soldiers from active duty. It also prescribes when to enter SPD codes on the DD Form 214.

a. Paragraph 2-1 provides that SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of Department of Defense and the Military Services to assist in the collection and analysis of separation data. This analysis may, in turn, influence changes in separation policy. SPD codes are not intended to stigmatize an individual in any manner.

b. Table 2-3 provides the SPDs and narrative reasons for separation that are applicable to enlisted personnel. It shows, in part, SPD KFS is the appropriate code to assign to an enlisted Soldier who is voluntarily separated under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. JFF is the appropriate SPD to assign to enlisted Soldiers who are voluntarily discharged under Secretarial authority. Additionally, the SPD/RE Code Cross Reference Table established RE code "4" as the proper reentry code to assign to Soldiers separated under this authority and for this reason.

7. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) to carefully consider the revised post-traumatic stress disorder (PTSD)

criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged UOTHC and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

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

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.

//NOTHING FOLLOWS//