

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2025

DOCKET NUMBER: AR20230012026

APPLICANT REQUESTS:

- Upgrade of his under honorable conditions (general) discharge to honorable
- Change his narrative reason for separation to Secretarial authority
- Appropriate corresponding separation code
- Appropriate corresponding reenlistment code

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

- DD Form 149 (Application for Correction of Military Record)
- Attorney's brief
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Exhibit A - Personal Statement
- Exhibit B - Military Service Records
- Exhibit C - Department of Veterans Affairs (VA) Documents
- Exhibit D - Letter from Licensed Clinical Social Worker
- Exhibit E- Letter of Support
- Exhibit F - Post-Traumatic Stress Disorder (PTSD) Information

FACTS:

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

2. The applicant defers to his counsel.

3. The applicant's attorney states, on behalf of the applicant:

a. The applicant is entitled to an upgrade of his discharge to honorable on several bases. First, he meets the upgrade criteria established by Federal law and the Hagel and Kurta memorandums which govern discharges based on conduct secondary to mental health conditions. Second, his discharge meets the basis for injustice under the

regulations that govern the ABCMR. Lastly, the Wilkie memorandum allows for acknowledgement of post-service record as a basis for the applicant's upgrade.

b. The applicant is a U.S. Army veteran who served as an enlisted Reserve Soldier from 1995 to 1996, and as an active duty West Point graduate officer from 1999 to 2004. His excellent performance at drill would open an opportunity for him to attend West Point, and he became an artillery officer.

c. As an artillery officer, he excelled and received the prestigious Aubrey New Award. He also deployed to Iraq and took on tasks that would not typically be assigned to a regular first lieutenant. Unfortunately, during the deployment, several Soldiers under his command became casualties during the tragic Black Hawk crash that haunted him and led to his discharge.

d. He returned from the deployment with PTSD and survivor's guilt, which still affects him today. He was not able to get proper medical help as the Army did not have effective programs to deal with PTSD in the early 2000s. Furthermore, the stigma around mental health was also an obstacle to him receiving mental health treatment or even acknowledging his mental health struggles.

e. In order to cope with the pain and struggles of his PTSD, he started drinking heavily and used drugs. Even though he started abusing substances, he continued to excel as an officer after his deployment. But eventually, his drug use was detected during a urinalysis, and he was forced to resign his commission.

f. He continues to suffer from severe PTSD and has attempted suicide on several occasions since his discharge. He was never able to receive any mental health treatment from the VA, as he is statutorily barred. Fortunately, he found a therapist who diagnosed his PTSD, and he now receives consistent treatment. The treatment has helped him establish some stability in his life, but he feels like his discharge was unjust due to his PTSD.

g. The applicant's discharge is unjust because his misconduct is directly attributed to and excused by his PTSD, specifically from survivor's guilt. He is a combat veteran and experienced traumatic events, which still haunts him today. Furthermore, an under honorable conditions (general) discharge is not just. His quality of service and character is deserving of an honorable discharge. Under the Hagel memorandum, he requests his application be given timely consideration due to his PTSD, which stemmed from service.

h. Under the Hagel memorandum, the applicant's PTSD mitigates and excuses his misconduct. He meets all four criteria in the Kurta memorandum and deserves an upgrade to honorable. He would have been afforded more protection, under the current

Army policies and procedures on mental health treatment and screenings. Irrespective of his PTSD, he deserves an honorable discharge based on his excellent service record and the sacrifices he made for his country. His service is consistent with an honorable discharge as many veterans receive honorable characterizations despite minor or isolated misconduct. His post-service record shows his true character. He deserves a second chance as it is in line with military custom. He has suffered enough and deserves an upgrade.

i. His misconduct was solely related to self-medication for PTSD from his deployment. He has significant survivor's guilt, which was the only reason for his misconduct. The Kurta memorandum directs the Board to consider applications within the framework of four questions:

- Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- Did that condition exist/experience occur, during military service?
- Does that condition or experience actually excuse or mitigate the discharge?
- Does that condition or experience outweigh the discharge?

In the applicant's case, the answer to each of these questions is yes. Accordingly, the ABCMR should grant his request for an upgrade.

j. His PTSD qualifies as a condition that mitigates and excuses his discharge. The Kurta memorandum establishes that a PTSD diagnosis by a licensed psychiatrist or psychologist is evidence that the veteran had a condition that may excuse or mitigate the discharge. The applicant has been diagnosed with PTSD by K- S- a licensed clinical social worker who works for Headstrong, a nonprofit organization providing mental health services to members of the military and veterans. The applicant has had, and still has, weekly sessions with Ms. S-. During these sessions, Ms. S- found that his PTSD stemmed from survivor's guilt and from combat in Iraq.

k. The applicant also has service-connected, by the VA, for PTSD. As a result of his PTSD, he also suffers from major depressive disorder and moderate substance use disorder. Due to these symptoms, he has had a hard time keeping employment and has had two attempted suicides.

l. His PTSD stemmed from his deployment to Iraq. There are two major events that contributed to his PTSD. Ms. S- has summarized, in the 71 sessions with the applicant, the main events behind his PTSD. The main factor was due to survivor's guilt from a Black Hawk crash on 15 November 2003. The second event was from a combat operation in Iraq. This is also shown by his personal statement in which he goes into more detail on the origins of his PTSD. His service record shows he was deployed to Iraq and awarded the Bronze Star Medal for his actions in the Iraq war.

m. On 15 November 2003, the applicant was supposed to be on a Black Hawk with his Soldiers acting as the Quick Reaction Force (QRF). However, for some reason, he got pulled from the QRF and did not enter the Black Hawk. Sadly, soon after, the Black Hawk that he was supposed to be on collided with another Black Hawk and five Soldiers, from his company, died. One of the Soldiers that died was Specialist (SPC) H-, who was close to the applicant. The applicant fondly remembers the first time he met SPC H-, which highlights SPC H-'s character and personality in the applicant's personal statement. Another Soldier who was involved in the crash but survived was Staff Sergeant (SSG) F-. The applicant became angry at himself thinking if he had been on the Black Hawk one of his Soldiers might still be alive. He suffered from survivor's guilt but pushed through his duties as the executive officer (XO) of his company and later as the battle captain (CPT), until the end of his tour. He placed all his focus on attempting to protect others, but he was dealing with constant struggles inside.

n. He was also involved in combat operations, throughout Iraq. He was tasked with going on patrols, firing artillery, and securing towns. This also contributed to his PTSD. He remembers that during an operation involving firing artillery into Karbala, Iraq, he was given intelligence to target orange and white vehicles. After firing upon the city, his unit secured the town and while securing the town, he saw the destruction of his shelling. He remembers seeing dead bodies and the vehicles. After arriving in Bagdad, he found out that the orange and white vehicles were taxi cabs and not scouting vehicles. These experiences in Iraq further contributed to his PTSD.

o. His PTSD, specifically the effects of survivor's guilt, excuse the misconduct that led to his discharge. The Kurta memorandum instructs the Board to recognize that misconduct may be the result of a mental health condition that excuses the applicant's discharge. The Kurta memorandum also instructs the Board to use liberal considerations when evaluating such cases. Here, the applicant's PTSD mitigates the misconduct that led to his discharge. Furthermore, because his discharge was due to his PTSD, the Board should use liberal consideration.

p. After the Black Hawk crash, he felt anger, guilt, and shame. He had less regard for his own life and wished, and actively volunteered, to go on dangerous missions. However, he was soon sent to his battalion as the fire direction officer. During this time, he also acted as the battle CPT when his Soldiers went on patrol. He continued to hold in his survivor's guilt while excelling at his job.

q. After returning from deployment, at the hanger where his battalion landed and assembled, a sergeant major (SGM) had asked if anyone needed to see someone about PTSD. This was in front of the entire battalion and also during a period where there was a lot of stigma and misinformation attached to PTSD. The applicant wanted to raise his hand, but not in that manner. He remembers no one asking for help at the

hanger. Unfortunately, his PTSD would be something only he knew about until it was too late. He was able to continue to carry out his duties and was promoted to CPT. However, he needed to find other ways to cope with his PTSD. One day, he heard that one of his Soldiers who survived the Black Hawk collision was released from the hospital. That day, he was prepping himself to apologize to his Soldier. When the applicant saw SSG F-, before he could say anything to the Soldier, SSG F- apologized to the applicant. At this instance, all the emotions and memories the applicant thought he was coping with rushed back to him and he was overwhelmed with guilt. That night, the applicant sought to drink until he could forget his pain. At the bar, he met a woman who he had told about his experience. The woman offered him some drugs that would make him feel better. He, by that point, was drunk and felt like nothing mattered. In that moment, he made the poor decision to ease his pain.

r. He only used an illegal substance to self-medicate; it was a coping mechanism. While his success in his job told one story, he was suffering from severe PTSD. Seeing his Soldier from the helicopter crash and hearing his Soldier apologize to him, was too much for him to keep inside. This triggered all his emotions and pains to rush back. In order to alleviate the pain, he turned to alcohol use to self-medicate. However, in his inebriated state, he was continuing to seek relief and was susceptible to making a bad choice. He would not have taken the illegal substance had it not been for his pain from his PTSD.

s. Substance seeking behavior is also a common symptom of PTSD and survivor's guilt. Another common symptom is suicide or attempted suicide. The applicant has had prior suicide attempts, and the use of illegal substance was for self-medication. Studies have shown that approximately 20 percent of individuals with PTSD used substances in an attempt to relieve their symptoms. Unfortunately, the applicant fell victim to his own pain, which led to him seeking comfort in an illegal substance. Thus, the applicant's PTSD excuses his misconduct.

t. The applicant's PTSD outweighs the misconduct that resulted in his discharge due to the fact that it was for self-medication and relatively minor. The Kurta memorandum states that "in some cases, the severity of the misconduct may outweigh any mitigation from mental health conditions, including PTSD." This is not the case here. The misconduct leading to the applicant's discharge was not severe, relative to the PTSD he was suffering from, at the time. His misconduct consisted of self-medication with an illegal drug and was thus not indicative of premeditation. Of additional importance here, the Kurta memorandum instructs the boards to recognize that "substance-seeking behavior and efforts to self-medicate symptoms of mental health conditions may warrant consideration" as a factor to excuse an applicant's misconduct. The medical evidence already discussed makes it clear that this provision applies in the applicant's favor. Furthermore, this was nonviolent misconduct that had no victims. Thus, his misconduct does not outweigh the mitigation that should be afforded due to his underlying PTSD.

u. The applicant would have been afforded more protection under the current Army policies and procedures on mental health treatment and screenings. The Kuta memorandum observes that servicemembers who have experienced PTSD or military sexual trauma receive heightened screenings and other protections today to ensure that the causal relationship of possible symptoms and discharge basis is fully considered. It also recognizes that individuals discharged before these procedures may experience injustice because had a commander been fully apprised of the condition and relevant causal relationships, he or she may have opted for a less prejudicial discharge. The Wilke memorandum states that, "changes in policy, whereby a servicemember under the same circumstances today would reasonably be expected to receive a more favorable outcome than the applicant received, may be grounds for relief."

v. Under the current Army policies and procedures, Soldiers in the applicant's position would have been afforded more protection. Had he benefited from heightened and mandatory PTSD screening, after deployment, he likely would have received a less prejudicial discharge or even stayed in the Army by receiving mental health treatment. The Department of Defense implemented various Post Deployment Health Assessment (PDHA) and Reassessments since 1998. However, the earlier versions of the PDHA were inadequate in assessing PTSD. Many different studies and reevaluations of these PDHAs have been conducted since and the current PDHA is better suited to assess a Soldier's mental health, after deployment. There were also issues regarding the stigma of PTSD, during the time the applicant served. Studies have shown that many servicemembers do not try to get mental health help due to the stigma surrounding PTSD. In today's Army, there is a lot less stigma and information provided to Soldiers regarding PTSD. Had the applicant been serving today, he would have been afforded much more protection, especially after coming off a tough deployment. Mental health would have also been less stigmatized, and he would have an easier time getting mental health treatment for his PTSD. With mental health treatment, he would not have turned to an illegal substance for self-medication.

w. Irrespective of his PTSD, he deserves an honorable discharge based on his excellent service record and the sacrifices he made for his country. Under 32 Code of Federal Regulation 70.9(c)(3), a discharge shall be deemed to be equitable unless: in the course of a discharge review it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the Discharge Review Board viewed in conjunction with the factors listed in this section and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper, at the time of issuance. Areas of consideration include, but are not limited to, (i) qualify of service, and (ii) capability to serve. When looking at qualify of service some factors are, but not limited to:

- Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct or efficiency ratings (numerical or narrative);
- Awards and decorations;
- Combat service;
- Level and responsibility at which the applicant served;
- Other acts of merit that may not have resulted in a formal recognition through an award or commendation; and
- Length of service, during the service period which is the subject of the discharge review

x. The applicant's service history is filled with military dedication, achievement, and honor. Aside from the situation surrounding his illegal substance use, his achievements in the army define his true character. Overall, the positives in his record outshine and overshadow his mistake. A look into his Officer Evaluation Reports (OER) show how important and hard-working he was. His evaluations were all beyond excellent demonstrating his contribution to the Army on and off deployment. Even in his last OER, after he tested positive for an illegal substance, his rater raves on how much of an important asset he was to the Army.

y. He also has been awarded several military medals for his achievements. He has three Army Achievement Medals, an Army Commendation Medal, and a Bronze Star Medal. He was also awarded the highly prestigious Aubrey Newman Award in 2002. Finally, he also served honorably in the Reserves, before he went to West Point. His quality of service was extraordinary and was only tainted slightly by his mistake. His service outshines his mistake and he deserves an honorable characterization of discharge.

z. His service record shows that he should have been given a second chance or a lighter punishment. He had no instance of misconduct, prior to the illegal substance use. Instead of his command giving him an Article 15, he was given court-martial charges and if convicted, it could have led to a bad-conduct or dishonorable discharge and up to five years of confinement. He should have been afforded a second chance, based on his service history.

aa. His post-service record shows his true character. He deserves a second chance as it is in line with military custom. He has suffered enough and deserves an upgrade. The Wilke memorandum instructs the boards to consider a servicemember's post-service records in determining relief. It further reminds the boards that "it is consistent with military custom and practice to honor sacrifices and achievements" and "to punish only to the extent necessary, and favor second chances." "An honorable discharge characterization does not require flawless military service" and "relief is more appropriate for non-violent offenses than for violent."

bb. The applicant has been punished beyond what is necessary. He has been carrying the stigma for almost two decades of not being able to complete his service and being discharged after all of his accomplishments and hard work in the Army. He has also suffered from the effects of his PTSD, since his deployment. It greatly affected his life, after the military, and continues to interfere in his life today. He has struggled to maintain steady employment due to the effects of his PTSD. He has suffered enough and deserves a second chance.

cc. He has also been active in the veteran community online. He has learned lessons from his own experience in the military and uses his own experiences of mental health to assist others. He posts inspirational and personal stories to share with the online veteran community in hopes that it will help other veterans. He has received a lot of positive feedback from his posts helping other veterans with their struggles. He continues to struggle with PTSD but has not given up on this fight.

4. The applicant provides the following documents:

a. Personal statement, which states, in effect:

(1) He was born in the South Bronx. He grew up, during the crack epidemic, but his parents did their best to keep him on track and focused on school. He enjoyed school and excelled in his classes. He was interested in playing "Army" and would even go further by thinking of strategy and tactics, as a young child. He was afforded a scholarship to a Connecticut boarding school called Choate Rosemary Hall. Upon graduation, he went to New York University for a year, when he decided to join the Army. There were too many distractions in his life and he knew he would find discipline and purpose in the Army.

(2) He enlisted in the Army Reserves as a 31C (Signal Channel Radio Operator) and was part of the last graduating class for that military occupational specialty. After two months of drill, his commander, Major G- C-, invited him to a West Point Prep School. A West Pointer himself, he suggested that the applicant try to go to the prep school, as he would be a good fit. Initially, he did not care too much about it but after seeing a class at the prep school, it piqued his interest. His commander then told him to sign some paperwork and at the time, he did not know it was an application for the West Point Prep School.

(3) During the next drill, his commander congratulated him as the commander said he got the applicant into the prep school. At the prep school, the applicant started to wrestle and continued boxing. After graduating, he went to West Point. He remembers his experience at West Point was great. He continued to wrestle and box at West Point and can proudly say that during his time on the wrestling team, they always beat the Navy wrestling team. He was an above average cadet, doing well in his

physical, military, and academics. During branch night, he was excited to get into Field Artillery and head to the 101st at Fort Campbell, as these were his first choices.

(4) At Fort Campbell, he excelled at being a field artillery officer. He was part of the best fire direction center, during a competition. He received an Army Commendation Medal for winning that competition with his Soldiers. He was also awarded the Aubrey Newman Award, soon after. He was able to implement everything he learned, when he went to do training at Joint Readiness Training Center, at Fort Polk. Life at Fort Campbell was going well. Then 9/11 happened. That was when everything changed. He knew, as well as everyone across the Army, that something big was going to happen. His focus was to get as prepared as possible, which they did.

(5) He took leave to go see his family around Christmas time in 2003. During dinner with his family, he received notification that their unit was going to be deployed. At that moment, he stopped eating dinner and packed up. He said his goodbyes to his mom and dad. He hated to see his mom upset, but he had to go. It was his duty to go, and it was his obligation to his Soldiers to go.

(6) Back at Fort Campbell they packed and prepared to go to Iraq. As a unit movement officer, he helped make sure that their gear got to its destination in Kuwait. Right before leaving for Kuwait, he was promoted to Charlie Company's XO. They stayed in Kuwait for about a month. During that time, they off loaded everything, did combat training, weapons training, first aid, and a bunch of other training. Then after they were told that they were to go into Iraq. They convoyed into Iraq across the berm. Their missions were to secure towns in Iraq toward Baghdad. They would roll into these towns and as they would secure them, they did patrols. At that point, they were infantry. He was obsessive every time they went on patrols. He made sure that he and his Soldiers were prepared if they were attacked. It was vital to keep the Soldiers on their toes. If the patrols felt stagnant, that would be the time they were most in danger.

(7) Some of the towns they secured were Najaf, Al-Hillah, and Karbala. He was able to use his skills as a Field Artillery officer when they fired shells against enemy combatants before they secured Karbala. After firing upon and securing Karbala, they drove through the town and saw the destruction. He also saw the vehicles they were ordered to target and some of the vehicles had dead bodies. He received a Bronze Star Medal for that action. However, he later learned they had bad intelligence and that the vehicles were actually just Iraqi taxi cabs. For the longest time, he felt as if he was the bad guy. As they went up further north, he began to realize that they were no longer getting the friendly greetings from the Iraqis. When they reached the area near Fallujah, they got rocks thrown at them. They finally reached Baghdad, but only spent about a week there. They were moved to Mosul, and they relieved the Marines. They were assigned different sectors and were told to figure out what was going on.

(8) As the XO of Charlie Company, 1st Battalion, 320th Field Artillery Regiment, he was put in charge of northern Mosul. They set up their perimeter and continued to do patrols. One of their missions was to guard a grain house, which stored and provided grains for the locals with gas for their stoves. They had to escort the trucks and propane from the Turkish border. They would drive to the border to get propane and then escort the propane tanks back to the locals. There was always the possibility that they would be involved in a huge explosion if they ever got attacked escorting the propane. While escorting propane in a warzone adds its risks, the biggest risks he remembers was the wires set up by the insurgents. These wires would decapitate anyone who would drive through them. While there was no one in his company that was decapitated, one of the first casualties was a new first sergeant who was shot in the face. One mission he was personally tasked with was to escort a Jewish Chaplain. He was able to gather resources from the Jewish communities back in the states and build several schools. However, due to possible religious tensions, the applicant was tasked to protect him.

(9) His other tasks as the XO was to be present with his Soldiers and to make sure that all the Soldiers in his company were taken care of. While he always had fear when they went on patrols, he never showed it. He knew he could not show fear in front of his Soldiers, so he had to put it away and do his job. Another part of his job was to get to know the locals, which he did. He remembers one specific local who was the translator. He remembers the local had a wife and daughter. The applicant does not know what happened to him, but he wishes he and his family was able to get to safety.

(10) One day, he will never forget, was the day he was supposed to be on a QRF helicopter. For some reason, he was not on that helicopter as he usually was, and it was that day when that helicopter crashed into another helicopter. Five Soldiers from Charlie Company and seventeen in total in the battalion died that day and many more were wounded. He specifically remembers one Soldier who unfortunately lost his life that day. His name was SPC S- H-. The applicant got to know him, when during a run, the SPC ran past him and made an encouraging comment to him. At that time, the applicant thought he was being factious but after the applicant got to know him, he realized the SPC truly had a kind soul and he really meant it. The SPC was on the helicopter and the applicant was not. The applicant has been suffering from survivor's guilt since. He was angry at himself because he should have been there. If he was on there maybe one of his Soldiers would not have been killed or wounded. If he would have been there, SPC H- might be still alive. Maybe if he was on the helicopter, SPC H-'s uncle and aunt would not have invited the applicant to visit his resting place. After that day, his regard for his own life went down the hole. He would seek out dangerous missions because he honestly wanted to die.

(11) He did not get that wish. After being his company's XO, he was sent to battalion as a fire direction officer. It was a coveted position, and he was proud to have been moved there but he also was not in the front line anymore. He also acted as the

battle CPT, during this time and had to stay behind while his Soldiers went out. He did not go on patrols very much anymore. He would get antsy every time his Soldiers would go out knowing full well that he was not physically there. He was there supporting them but he wanted to be with them. Eventually their deployment came to an end. However, on their way to Baghdad, they were put in a tense situation when their convoy got struck by an improvised explosive device. They eventually made it and they got on the C130 and flew back home as soon as possible.

(12) Right after landing, they assembled in the hanger right after getting off the planes. He remembers a SGM speaking to the battalion about getting help for PTSD. He said that anyone who thought about killing themselves or hurting themselves should line up right here. No one lined up as it was in front of everybody. It was not a good way to get Soldiers mental health help especially after their tense situation to Baghdad in which they had to rush home. They were all jet lagged and still in the deployment mentality and they only had their flight home to decompress. He wanted to but he did not want to let everyone know. He did not want to be the only one and thinking back he is sure many Soldiers felt the same way.

(13) Although he was suffering mentally, he was about to hold it together. He was able to get through it by working. He was getting recertified and updating manuals. However, soon, most everyone he knew was not at Fort Campbell. Either they had an expiration term of service or a permanent change of station or were at the Captain's Course. One day he remembers one of his Soldiers telling him that SSG J- F- came back from the hospital. SSG F- was one of his Soldiers who miraculously survived the helicopter crash. Before he went to see the SSG, he prepared an apology for not being on the helicopter that day. He went to go see SSG F- and the very first thing SSG F- did, after putting his hand out, was apologize to him. He apologized to the applicant first and at that point, the applicant felt like he should die. He also could not forget how the SSG looked, when he saw him. The applicant remembers the SSG's teeth were bright when compared to his face, which was brown from being burnt. The SSG did not have a nose and his eyes were mangled and just weird. That image was seared into the applicant's mind and still is today. He held on to his outward professional appearance but inside all of his guilt, anger, and sadness came back. That night, he went out to drink alone. He went to a rougher part of Nashville because a part of him wanted to get into a fight. He did not care if he died. He got drunk and started talking to a woman. He told her about his deployment, and she said she had something to make him feel better. At that point, he was drunk and he felt like nothing mattered so he decided to use the drug she said would make him feel better and did it. He never did drugs in his life, prior to that, but it took away the pain he was feeling.

(14) But that was only temporary. The pain would always come back and it led to his first suicide attempt. He had his gun, and he was ready to end it all but that night he got a DVID of Pearl Jam's latest concert. He first got into Pearl Jam when one of his

classmates introduced them to him. The same classmate was someone who would actually commit suicide 10 years later. He decided that he was going to end his life after watching it. Fortunately, he fell asleep and when he woke up, he decided that he was not going to end his life. He still credits his classmate and Pearl Jam for saving his life that night. Unfortunately, that classmate would commit suicide himself in 2017.

(15) He did talk to someone about his mental health. He told another officer that he was struggling mentally and the officer took him to talk to someone at Fort Campbell. But once he got there, he backed out because he did not want to talk to a stranger about all of his problems. He lied and said that he was all right and returned to work. Shortly afterwards, he was picked for a random urinalysis. He knew that he was going to pop hot, but he kept working.

(16) One assignment he had was to teach the cadets at West Point about field artillery lessons, but after the first break, he was told that he needed to go back to Fort Campbell immediately. He already knew what this was about. After returning, he was basically separated from his work and his battalion. He could not return to work and during physical training, he was separated and alone in his own formation. This happened for a month, while the Army was processing his resignation.

(17) He did not know what he was going to do, after his discharge. Fortunately, he was able to go to the Service Academy's Career Conference at West Point and there he was able to meet other West Point graduates that helped him get a job as a group leader at Target. During his job at Target, he got promoted fast and that was also where he met his ex-wife. However, he continued to use drugs to self-medicate the pain from his PTSD. His PTSD and drug use were a contributing factor to why the marriage failed. However, he did not let it affect his work. He moved to another job at DHL where he became a general manager. During this time, he did begin to see a therapist, but he stopped because he felt as if it did not help. But the pain from his PTSD never went away.

(18) He was moved to Texas for his promotion and there he had the second suicide attempt. By then, he was divorced and only had his dog. He was close to pulling the trigger one night but he could not because he was thinking about his dog. He was pretty jaded with his work, but he had a chance to help kids in Panama get uniforms for school. As part of his job at DHL, he would have to go to Panama for a couple of weeks. There, he got to know some of the local workers and they invited him to lunch in a part of Panama City, where they lived. At lunch, he saw a bunch of kids and he asked why there were not in school. He learned that they would not be able to go to school unless they had a uniform and there were only a few uniforms for the children. When he got back to the states, he talked to the head of the department that was in charge of the Panama division and he helped and planned out a way to get uniforms for the children.

When he learned that the first batch of uniforms for the children were handed out, he felt a spark. It felt good to serve and help people in need.

(19) However, he always struggled with PTSD, which would lead him to changing jobs. He would always perform well, and his coworkers always liked him, but a lot of times, he would get misunderstood. For example, he has issues with his hearing and when someone would ask him something, he would respond in a manner that seems rude. It is not intentional, but he would raise his voice and it would come off as rude. Or other habits that really are symptoms of PTSD would led to similar situations. In 2017, he tried to go the VA hospital for mental health in California but was turned away because of his discharge. He has a civilian doctor who diagnosed him with PTSD and he took six months of short-term disability, but he could not afford weekly visits and the disability period ended. He has not tried to go to the VA since, but recently he was assisted by a Veterans Service Officer with a VA claim. The VA has since service connected him for PTSD.

(20) Back in New York City, in 2021, he was hospitalized for encephalitis, and he was given a low chance of survival. He could not walk and was bed stricken. While he was hospitalized, he called a friend (ex-military) T- to tell him about his situation. T- flew out from North Carolina and sat next to the applicant. T- got him connected with a mental health counselor and because the applicant was bed stricken, he had to interact with her. He immediately hit it off with her and he told her his story. He opened up to her and she diagnosed him with PTSD. He miraculously was able to survive his encephalitis and walked again.

(21) Today, he continues to go to therapy. He also got involved in the veteran community, as for the longest time, he did not know if he considered himself as a veteran, due to his discharge. He often shares his story through a Facebook veteran group. He writes about things he went through and what helped him get through tough times. He tries to give hope and he believes he does. He gets many messages from different people who have read his posts and they tell him that his messages or story have inspired them. Often, they would message him saying it resonated with them because they thought they were the only ones feeling a certain way or the only ones who went through certain experiences. Other messages include supportive messages and thankful messages. Lately, he has been going around New York City with his service dog, Toby, and just talking to people in need. Toby would be a source of comfort and he tries to help with what he can. Many of the homeless people he interacts with are veterans too. When he can help, even if it is just talking to them or having them pet Toby, he feels good.

(22) It has been hard to him to get to where he is, where he accepts and acknowledges his service. He admits that he made a huge mistake and many of his classmates now are finishing their military career, something he wishes he had a

second chance to do. He deeply regrets using drugs and who knows where he could have been had he received mental health help. He was a good officer but made a mistake and he accepts the consequences. However, the consequences were too harsh, and he believes the culmination of his service was honorable. He thanks the Board for reading his personal statement and truly hopes they also see that his service was honorable.

b. His military service records, which include his awards and his OERs. His OERs show he was rated as:

(1) From 7 December 2000 through 31 August 2001, outstanding performance must promote and best qualified.

(2) Form 1 September 2001 through 16 March 2002, outstanding performance must promote and best qualified.

(3) From 17 March 2002 through 12 November 2002, outstanding performance must promote and best qualified.

(4) From 13 November 2002 through 10 June 2003, outstanding performance must promote and best qualified.

(5) From 11 June 2003 through 10 June 2004, unsatisfactory performance do not promote and do not promote.

The documents are available for the Board's review.

c. Letter from the VA, 10 July 2023 and a VA rating decision, 7 July 2023, which shows he had service connection for PTSD with an evaluation of 70 percent, effective 27 March 2023.

d. Letter from a Licensed Clinical Social Worker, 15 May 2023, which states in pertinent part, the applicant sought mental health treatment in August 2021, while hospitalized following a drug overdose. She and the applicant continue to meet each week. The applicant met the full criteria for PTSD, significant symptoms of major depressive disorder, and moderate substance use disorder. Prior to the events in Iraq in 2003, he did not have a history of mental illness. His symptoms of PTSD and depression developed weeks and months following the helicopter crash in November 2003. The entire letter is available for the Board's review.

e. Letter of support from E- G-, a friend and colleague of the applicant. The applicant was one of the first people to make an effort to get to know her as a female in a male dominated field. He has a unique and exceptional way of allowing people to feel

seen and heard. His efforts were genuine. They worked together for two years, and the applicant taught her more about leadership than any other manager she's worked with, because he demonstrated what it was to be a leader. She knows the applicant had experiences as a Soldier that thoroughly impacted his life and mental well being. She appreciates him doing so much to not only get the help he needs and deserves but also advocate for others in the same position. He truly deserves every opportunity to live a life filled with love, happiness, and acceptance he tried to provide for everyone else. The entire letter is available for the Board's consideration.

f. His Facebook posts in the veteran community, picture of the applicant, a newspaper article regarding the death of SPC H-, a picture and article on SSG F-, and information on PTSD, which are available for the Board's review.

5. The applicant's service record contains the following documents:

a. The applicant's service record does not contain his DA Form 71 (Oath of Office - Military Personnel) showing when he took the oath of office as a Reserve Commissioned Officer.

b. DD Form 458 (Charge Sheet), 16 June 2004, shows he was charged with wrongfully using cocaine between on or about 10 May 2004 and on or about 18 May 2004.

c. On 21 June 2004, the applicant voluntarily tendered his resignation from the Army for the good of the service. He did not desire to appear before a court-martial or a board of officers. He had not been subjected to coercion with respect to his resignation, had been fully advised of, and fully understood the implications of the action. The applicant had been fully advised and counseled in the matter by his consulting counsel and the applicant fully understood the implications of his voluntary action.

d. On 23 June 2004, the Commanding General, Headquarters, 101st Airborne Division (Air Assault) recommended disapproval of his resignation for the good of service in lieu of court-martial.

e. On 25 August 2004, a memorandum from U.S. Army Human Resources Command, states the resignation for the good of the service of the applicant is approved and is to be accomplished no later than 14 days after he is officially notified of the action.

f. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant entered active duty on 26 January 1999 and was discharged on 17 September 2004. He completed 5 years, 7 months, and 22 days of active duty service. He was discharged in lieu of trial by court-martial, his characterization of

service was under honorable conditions (general). His separation code was DFS, and he did not receive a reentry code. (By regulation, officers are not assigned reentry codes.) He was awarded or authorized the:

- Army Achievement Medal (3rd Award)
- Bronze Star Medal
- Army Commendation Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- National Defense Service Medal
- Army Service Ribbon
- Air Assault Badge

g. The applicant's service record is void of medical documents showing he was diagnosed with PTSD.

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under honorable conditions (general) character of service to honorable and corresponding changes to his DD214. He contends he experienced PTSD that mitigates his misconduct. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in 1995 and then attended West Point Academy in 1999 and received his commissioning as a Regular Army Officer; 2) The applicant deployed to Iraq in 2003; 3) On 16 June 2004, the applicant was charged with wrongfully using cocaine; 4) The applicant was discharged on 17 September 2004 (in lieu of trial by court-martial). His characterization of service was under honorable conditions (general).

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and civilian hardcopy medical and VA documentation provided by the applicant were also reviewed.

c. The applicant asserts he was experiencing PTSD as a result of his deployment while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided evidence the applicant began to engage with the VA for treatment for PTSD and assistance for homelessness in 2023. He underwent a Compensation and Pension Evaluation in 2023 and was diagnosed with service-connected PTSD (SC 70%). The applicant also provided a letter, dated 15 May 2023,

from a Licensed Clinical Social Worker (LCSW) from Headstrong located in New York. The applicant was reported to be diagnosed with PTSD related to his deployment to Iraq, and he was likely experiencing PTSD at time of his service. The LCSW stated she began to work with the applicant in 2021, and the applicant has undergone an evidence-based treatment for PTSD and continued in stress management treatment.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct which led to his discharge.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD, and he was diagnosed with PTSD as a result of his combat deployment by a civilian provider.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD, and he was diagnosed with PTSD as a result of his combat deployment by a civilian provider.

(3) Does the condition/experience actually excuse or mitigate the discharge? Yes, there is sufficient evidence beyond self-report the applicant was experiencing PTSD while on active service. The applicant did use illegal drugs while on active service following his combat deployment. This type of avoidant or self-medicating behavior can be a natural sequelae to PTSD. Therefore, per Liberal Consideration, the applicant's misconduct, which led to his discharge is mitigable.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found that relief was not warranted.

2. The Board carefully considered the applicant's contentions, his record of service to include deployment, the frequency and nature of his misconduct, his resignation request, the result of the officer separation board, the reason for his separation and the character of service he received upon discharge. The Board considered his statement regarding PTSD as related to his misconduct, the content of his available medical

records, his VA service connected PTSD diagnosis and the review and conclusions of the Agency medical advisor. The Board found: (1) applicant asserts he experienced PTSD that mitigates his misconduct; there is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service; there is evidence the applicant has been diagnosed by the VA with service-connected PTSD, and he was diagnosed with PTSD as a result of his combat deployment by a civilian provider; (2) the applicant asserts he experienced PTSD that mitigates his misconduct while on active service. There is evidence the applicant has been diagnosed by the VA with service-connected PTSD, and he was diagnosed with PTSD as a result of his combat deployment by a civilian provider; (3) While he was diagnosed with PTSD by the VA and a civilian provider, absent sufficient evidence that he was diagnosed with a mental health condition including PTSD at the time of his service. The applicant did not provide evidence of post-service achievements or reference letters in support of a clemency consideration by the Board. Based on a preponderance of evidence, the Board determined that the character of service the applicant received was not in error or unjust and that an upgrade was not warranted as a matter of liberal consideration.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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:	:	:	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.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 600-8-24 (Officer Transfers and Discharges), then in effect, prescribes policies and procedures governing transfer and discharge of Army officer personnel.
 - a. Paragraph 1-21 (Types of administrative discharge/character of service) states when an officer's tour of AD is terminated due to discharge, retirement, or release from active duty (REFRAD), the period of service will be characterized as "Honorable," "General" ("Under Honorable Conditions"), "Under Other Than Honorable," or "Dishonorable" (warrant officers who don't hold a commission only), depending on the circumstances. The character of service will be predicated on the officer's behavior and performance while a member of the Army. Characterization normally will be based on a pattern of behavior and duty performance rather than an isolated incident. However, there are circumstances in which conduct reflected by a single incident may provide the basis of characterization of service.

(1) An officer will normally receive an Honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty for an officer.

(2) An officer will normally receive an under honorable conditions (general) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

b. An officer may submit a resignation for the good of the service in lieu of general court-martial under the following circumstances:

(1) Court-martial charges have been preferred against the officer with a view toward trial by general court-martial and until action by the convening authority on the findings and sentence in a case where the officer has been convicted.

(2) When the convening authority is taking initial action on a sentence from a court-martial suspends an adjudged dismissal, the officer may submit a resignation for the good of the service, during the period of suspension of the dismissal.

(3) A decision by the Deputy Assistant Secretary of the Army (Review Boards) or higher authority to disapprove a resignation for the good of the service does not preclude the officer from submitting a subsequent resignation for the good of the service at any time prior to the initial action by the convening authority on a case or, in case of an approved but suspended sentence, to a dismissal during the period of suspension.

c. Army Regulation 600-8-24, in effect at the time, did not have a provision to separate an officer with the narrative reason of secretarial authority.

3. Army Regulation 635-5-1 (Separation Program Designator (SPD)) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD code to be entered on the DD Form 214. It identifies SPD code "DFS" is the appropriate code for "In Lieu of Trial by Court-Martial".

4. 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.

5. 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 (TBI); sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

6 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 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.

7. Title 10, U.S. Code, section 1556 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.

//NOTHING FOLLOWS//