ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 27 March 2025

DOCKET NUMBER: AR20240008987

APPLICANT REQUESTS

- upgrade character of discharge to honorable or general
- enter an honorable period of service served
- change the narrative reason to Secretarial Authority

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
Available for the Board's review:

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief-In support of the applicant's claim counsel states in part the applicant's discharge should be changed to Honorable or General (Under Honorable Conditions) with a narrative reason of Secretarial Discretion. A summary of the applicant's active-duty service along with subsequent explanation of his medical conditions. Counsel's argument the Board should upgrade the applicant's discharge to general or honorable or change his records to indicate successful period of service. Counsel adds the applicant has been sufficiently punished for his mistakes and requests his final service be upgraded to general or honorable and the Board should provide an honorable period of service to reflect his performance of duty for his first decade of service. Counsel concludes the applicant's discharge should be changed to honorable or general and his narrative reason should be changed to secretarial discretion. In the alternative, his records should be changed to issue a discharge effective December 31, 2015 with a new period of service starting January 4, 2016 (change to issue a discharge effective December 31, 2015, with a new period of service starting January 4, 2016)
- Medical Record Progress Note from 2 June 2020 to 25 April 2022 a medical assessment of the applicant.
- Wilkie Memorandum
- Kurta Memorandum
- Licensed Clinical Psychologist Statement, 11 Aug 23 (62 pages) shows the determination of diagnosis with supported research (page 246-260)
- Declaration of Applicant dated 20 Apr 24, the applicant declares his issues in service were related to hiding his mental health issues that manifested over a few

years in service. He declares if he had fully understood the nature of his conditions, he would have sought the help he really needed. He feels he has lost personal, professional relationships and dishonored his self and the service.
- Hagel Memorandum
- Substance Abuse and Rehabilitation Article, 11 Sep 15 (14 pages)
- IPERMs Personnel Service Record (173 pages)

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 states his discharge should be changed to honorable or general and his narrative reason should be changed to secretarial discretion. In the alternative, change his records and re-issue a discharge effective 31 December 2015, with a new period of service starting 4 January 2016 to 30 November 2019.

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

a. He was appointed as a second lieutenant in the Regular Army on 9 December 2004.

b. He deployed to Afghanistan from 17 February 2006 to 16 February 2007.

c. On 30 April 2017 a Memorandum of Record (MFR) presented a summary of actual and/or alleged senior leader misconduct committed by the applicant.

d. On 24 July 2017, he received nonjudicial punishment for:

- 20 March 2017, failure to obey a lawful order
- 12 April 2017, intent to deceive a senior officer in an official statement

e. On 10 August 2017, the applicant submitted matters for consideration to the nonjudicial punishment taking full responsibility for the majority of his actions. However, he requested to be found not guilty for article 86 violations set forth in the memo.

f. On 11 August 2017, the applicant received a General Officer Memorandum of Reprimand (GOMOR) for the following (available for the Board's review: supporting executive summary of the AR15-6 investigation and AR15-6 findings):

- having inappropriate personal sexual in nature relationships with multiple women not his wife
- failing to report to his place of duty on multiple occasions
- being drunk on duty
- violating General Orders regarding consuming alcohol during Operation Pacific Reach and Key Resolve exercises in Korea
- violating a General Order regarding curfew in Korea

g. On 6 June 2019 the Department of the Army Ad Hoc Review Board-(ARBA Case#: AR20190003383) reviewed the Resignation for the Good of the Service in Lieu of General Court-Martial tendered by the applicant. The resignation was approved for discharge from the U.S. Army with an under other than honorable conditions characterization of service.

h. On 3 July 2019 the Army Physical Disability Agency administratively terminated the Physical Evaluation Board (PEB) Findings. The available service record is void the PEB Board Findings.

i. He was discharged with an under other than honorable conditions on 30 November 2019, he completed 14 years, 10 months, and 15 days of active service this period.

4. In reaching its determination, the Board can consider the applicants petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). Through counsel, the applicant requests an upgrade in discharge to Honorable or General (Under Honorable Conditions) or alternatively, that his records be changed to reflect an honorable period of service for his first decade of service (ending 31Dec2015 with a second period of service beginning 04Jan2016). He requests for the discharge narrative to reflect “Secretarial Discretion”. He indicated that his request was related to PTSD, TBI and Other Mental Health conditions. The mental health (and related) conditions were reviewed under separate cover by an ARBA Medical Reviewer BH specialist. The undersigned reviewed the applicant’s records for his service-connected physical conditions to ascertain if any had a role in his misconduct; or reason for discharge.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant served as an officer from 20050116 until 20191130. His MOS was 90A Logistics. He was deployed in Afghanistan 20060217 to 20070216. He was discharged from service under provisions of AR 600-8-24, para 3-13, in lieu of trial by court-martial. The Charge Sheet included the following specifications: Failed to obey a lawful general order by remaining off a military installation between the hours of 1 to 5 am without approval (20May2018); with intent to deceive, signed an official document for a family housing related allowance the basis of which was false (21Jul2016); did steal Family Separation Housing entitlement valued at about $3600 (between 01Aug2016 and 30Sep2017); while in Korea, collected a Basic Allowance for Housing entitlement for a zip code in Kansas (01Aug2016 and 30Sep2017); and did flee from military police when asked to present identification while they were conducting Town Patrol duties during curfew hours (20May2018). His service was characterized as Under Other Than Honorable Conditions.

3. In addition to the administrative separation process, the applicant also underwent medical disability discharge proceedings through IDES (Integrated Disability Evaluation System). In short, he was found physically unfit by the PEB to continue military service due to sole condition Cyclothymic Disorder. The applicant's Cyclothymic Disorder, Attention Deficit Hyperactivity Disorder, TBI and Alcohol Use Disorder were reviewed under separate cover by an ARBA Medical Reviewer mental health specialist. Medical records pertaining to his physical conditions are reviewed below.

a. 14Nov2017 Report of Medical Examination (DD Form 2808). The following physical defects were listed during the separation exam: Snoring; Multiple Joint Symptoms; Dental Concerns; Headaches. PULHES at the time was 111111.

b. 14Nov2018 VA Disability Evaluation System Proposed Ratings included the following service connected disabilities: Plantar Fasciitis; Cyclothymic Disorder, Attention Deficit Hyperactivity Disorder, TBI; Left Shoulder Distal Supraspinatus Tendinopathy Degenerative Changes (minor); Thoracic Endplate Spondylosis; Cervical Right Sided Neural Foraminal Narrowing C3-C4; Right Hip Strain; Right Knee Strain; Lateral Ankle Strain; Allergic Rhinitis with Cough; Hemorrhoids; Right Eyebrow Residual of Laceration from a Bicycle Accident; Tension Headaches (non-prostrating, treated with Tylenol); Right Wrist Pain; Left Wrist Pain; Left Hip Pain; Dizzy Spells; and Irregular Heart Beats. This list of VA service-connected disabilities accurately reflected the medical concerns listed in the applicant's self-authored 22Oct2017 Medical History for Separation Physical Exam which served as the content for the Report of Medical History (DD Form 2807-1) and also served for inclusion for listing on the MEB DA Form 3947-1 dated 19Apr2018.

c. Of special note (because of the association with snoring and OSA and the

association of the latter with daytime somnolence and possible impact on behavior), the following was noted: The applicant complained of snoring during the separation physical exam (DD Form 2808). However, Snoring was not a claimed condition (VA Form 21-526EZ) for IDES. Accordingly, the condition was not listed on the MEB's DA Form 3947-1. The applicant did undergo a sleep study (18Jan2018 Sleep Disorder Center BAACH South Korea). He was not diagnosed with Obstructive Sleep Apnea (OSA). He did not have apnea episodes or worrisome desaturations (for example below 90%). The lowest desaturation was 94%. He did have some sleep fragmentation. The majority of his arousals during sleep were not secondary to sleep disordered breathing. He did have elevated leg movement during sleep. Diagnoses: Primary Snoring and Elevated leg movement during sleep, vast majority associated with micro arousal. His Epworth Sleep Score (self-reported symptoms) was 15/24 which was consistent with mild to moderate sleepiness.

4. Summary/Opinion

The undersigned reviewed the applicant's records for his service-connected physical conditions to ascertain if any caused of significantly contributed to his misconduct; or reason for discharge. His physical conditions were carefully reviewed with special attention to his Primary Snoring. However, it was noted that deliberate deception, contrived theft and other such premeditated actions are not associated with the natural history/sequela of snoring or persistent daytime somnolence. None of the applicant's reviewed physical conditions would be expected to impact one's ability to distinguish right from wrong and act in accordance with the right. In the ARBA Medical Reviewer's opinion, no reasonable nexus was established in the record between the applicant's episodes of misconduct and his physical medical conditions.

BEHAVIORAL HEALTH REVIEW:

1. The applicant is applying to the ABCMR requesting an upgrade of his discharge to honorable or general and to change the narrative reason to Secretarial Discretion. His request to enter an honorable period of service served is outside of the scope of this Advisory and will not be addressed. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and Other Mental Health Issues are related to his request. 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 was appointed as a Second Lieutenant in the Regular Army on 09 December 2004, 2) he deployed to Afghanistan from 17 February 2006 to 16 February 2007, 3) On 30 April 2017, a Memorandum of Record (MFR) presented a summary of actual and/or alleged senior leader misconduct committed by the applicant, 4) On 24 July 2017 he received non-judicial punishment for failure to obey a lawful order (20 March 2017) and intent to deceive a senior officer in an official statement (12 April 2017), 5) On 11 August 2017, the applicant received a GOMOR for the following: having inappropriate personal sexual in nature relationships with multiple women not his wife, failing to report to his place of duty on multiple occasions, being drunk on duty, violating General Orders regarding consuming alcohol during Operation Pacific Reach and Key Resolve exercises in Korea, and violating a General Order regarding curfew in Korea 6) On 6 June 2019, the Department of the Army Ad Hoc Review Board reviewed the Resignation for the Good of the Service in Lieu of General Court-Martial tendered by the applicant and was approved for discharge with an under other than honorable conditions characterization of service, 7) the applicant was discharged on 30 November 2019 under the provisions of AR 600-8-24, paragraph 3-13, In Lieu of Trial by Court-Martial with a separation code of 'DFS' and reentry code of NA.

2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. In-service medical records included as part of the applicant's application and in JLV were reviewed. The applicant initially presented to psychiatry on 04 June 2010 for an evaluation for Attention Deficit/Hyperactivity Disorder (ADHD). The applicant reported a childhood history of ADHD with treatment via Ritalin until age 11 years old. The provider documented that he denied past or present symptoms of PTSD, Generalized Anxiety Disorder (GAD), Panic Disorder, Obsessive-Compulsive Disorder (OCD), psychosis or Bipolar Disorder. He was diagnosed with ADHD, Predominantly Inattentive Type and was started on Concerta. He continued to follow-up with psychiatry through 12 October 2010 and reported improvement in his ADHD symptoms with medication management.

It appears his prescription for Concerta was refilled through primary care in 2015 and 2016.

4. The applicant and his spouse attended couples counseling from 12 August 2014 through 26 September 2014 with the diagnosis noted as Marital Problem. He presented for an individual session on 19 August 2014 due to concerns with alcohol abuse or dependence. At the time of the evaluation, it was documented that he had abstained from alcohol use for one month and reported doing better staying at home.

5. The applicant screened negative for concussion as part of his Command and General Staff Officer Course (CGSOC) in-processing on 28 July 2015. On 04 March 2016, he presented to primary care after reporting falling off of his bike that morning. It was documented that he had a laceration to the forehead above his right eyebrow. He denied experiencing a loss of consciousness or headache. During his Periodic Health Assessment (PHA) on 06 June 2016, the applicant screened negative for PTSD.

6. The applicant presented to psychiatry on 03 April 2017 and was initially diagnosed with Bipolar II Disorder and ADHD. He was started on Quetiapine (antipsychotic) and a temporary BH profile was initiated. At the time of his second appointment with psychiatry on 14 April 2017, the provider documented the applicant met the mandatory referral criteria for Substance Use Disorder Clinical Care (SUDCC). The provider also documented the applicant's symptoms of hypomania: racing thoughts, decreased need for sleep, hypersexuality, expansive and elevated mood, increased energy, and flight of ideas. His diagnosis was changed to Cyclothymia, and the provider added Lamictal (mood stabilizer) to his medication regimen. The provider also noted he also likely met criteria for Alcohol Use Disorder (AUD), Unspecified.

7. On 18 April 2017, the applicant was referred to the Addictions Medicine Intensive Outpatient Program (AMIOP) Residential treatment program. During his psychiatry appointment on 21 April 2017, he reported he was "coming off of a hypomanic episode" during his most recent alcohol-related incident. The provider continued his prescriptions for Seroquel and Lamictal though discontinued his prescription for Concerta. On 10 September 2017, it was documented that he was stable on his medications; however, he reported having gone on a military exercise which disrupted his schedule to which he reported having strong urges associated with his hypomania but denied acting on the urges. During his psychiatry appointment on 06 November 2017, the provider documented that the applicant had a history of exposure to different traumatic events; however, determined that the applicant did not meet criteria for PTSD. On 14 May 2018, he reported that he experienced a disruption in his sleep cycle during a recent exercise and noted an increase in hypomanic symptoms when his schedule/routine is disrupted. On 21 May 2018, it was reported that the applicant had relapsed on alcohol and broke curfew the previous weekend. The applicant noted that his drive for thrill seeking had escalated since his previous appointment and his sleep did not normalize after his

return from the exercise. His diagnoses were noted as Cyclothymia and AUD, with recent relapse. The provider restarted him on Seroquel to target his residual decreased need for sleep. On 18 June 2018, the provider updated the applicant's diagnosis to Bipolar II Disorder, noting sufficient medical evidence to update the diagnosis, and AUD, currently in early remission. On 23 July 2018, he was started on Abilify (antipsychotic) for mood augmentation and stabilization and was continued on Lamictal. He continued to meet with his treating psychiatrist until 25 September 2018 when he was moved from Area II to Area IV in South Korea and established psychiatric treatment at his new duty station. On 04 December 2018, it was documented that he wanted to ensure his PTSD symptoms and past head injuries were part of his medical record. It was documented that in 2007 he reported a history of loss of consciousness for 30 seconds while in theater and was not hospitalized. He reported in 2015 a history of bike accident and with a LOC for two hours and was subsequently seen in the ER. His last appointment with outpatient psychiatry was on 05 March 2019 for a medication refill. While in pre-trial confinement on 10 June 2019, he requested a medication re-evaluation, and the provider increased his prescription of Abilify and continued Lamictal. On 21 June 2019, he underwent an evaluation for psychological clearance for administrative proceedings. The provider documented that no PTSD or TBI was elicited. His diagnosis was documented as Bipolar II Disorder and he was cleared for administrative proceedings.

8. On 19 April 2017, the applicant was evaluated by SUDCC and diagnosed with Alcohol Dependence, Uncomplicated. He attended AMIOP treatment from 02 May 2017 through 05 June 2017. He continued in SUDCC treatment on a weekly basis through 11 January 2018 when his treatment frequency was changed to every two weeks due to continued stability and sobriety. On 24 May 2018, the applicant's treatment frequency was increased to weekly following a relapse in alcohol use. It was documented that his relapse would constitute a rehabilitation failure though the provider would recommend continued follow-up in SUDCC. On 01 June 2018, it was documented that he would be recommended for separation due to Chapter 9 rehabilitation failure. The applicant continued with SUDCC treatment through 22 April 2019, and it was documented he maintained sobriety.

9. A DA Form 3822 (Report of Mental Status Evaluation) dated 21 November 2017 and conducted for the purposes of administrative separation due to misconduct shows the applicant's diagnoses as Cyclothymic Disorder, ADHD, Predominantly Inattentive Type, and Alcohol Dependence, Uncomplicated. The evaluating provider documented that his BH condition was a mitigating factor in the alleged behavior leading to administrative separation. It was further documented that the "psychotropic medication treatment that leads to behavioral and mood stabilization leads to non-deployability and a MEB process is recommended."

10. On 17 November 2017, the applicant's treating psychiatrist submitted a Narrative Summary (NARSUM) for referral to a Medical Evaluation Board (MEB) due to failing medical retention standards as a result of his diagnosis of Cyclothymia and ongoing treatment with deployment limiting medications that were required for continued stability (e.g., Seroquel and Lamictal). The provider documented that he had been on profile for over 230 days, did not meet medical retention standards IAW AR 40-501, and was not expected to return to full duty in his MOS in one year. As such, the provider determined that he met the Medical Retention Determination Point (MRDP) for Cyclothymia and recommended a referral to MEB. As part of his MEB processing, the applicant underwent a VA Compensation and Pension (C&P) evaluation for an Initial Evaluation of Residuals of TBI on 06 April 2018. The evaluating provider diagnosed the applicant with TBI with the date of diagnosis documented as 2007. The evaluating provider marked the applicant's judgment as 'mildly impaired' and marked 'no,' to the item specifying if the residual conditions attributable to TBI impacted his ability to work. He also completed an Initial PTSD C&P examination on 06 April 2018. The evaluating provider documented that he did not meet criteria for PTSD, though it was documented that he was exposed to deployment-related stressors that met Criterion A. He was diagnosed with Cyclothymic Disorder and ADHD. The MEB Proceedings dated 03 October 2018 shows that the applicant was determined to not meet retention standards due to Cyclothymia. The date of origin of the condition was documented as 03 April 2017. There were 21 conditions that were considered overall, and the applicant was determined to meet retention standards for conditions 2-21, which included ADHD, AUD, and TBI. The NARSUM shows his DA 3349 profile was updated on 17 April 2018 to 111113, reflecting an MEB-generated profile. It was further noted that the applicant's medical records were reviewed and there was "insufficient evidence to conclude that the residual effects of the SM's TBI significantly interfere with performance of duty." The DES Commander's Performance and Functional Statement dated 04 December 2017 shows that his commander determined that the applicant had the physical and mental capacity to perform and excel in his assigned duties and concluded that this medical condition was not impacting his work performance. The Formal Physical Evaluation Board (FPEB) proceedings dated 22 February 2019 shows the applicant was determined to be physically unfit due to Cyclothymia and recommended 30% for permanent disability retirement. A memorandum dated 03 July 2019 shows that the Physical Disability Agency (PDA) administratively terminated his IDES case, and all authorizations and proceedings were deemed void.

11. DA Form 458 (charge sheet) shows on 20 June 2018, court-martial charges were preferred against the applicant for: on or about 20 May 2018, failure to obey a lawful general order regarding off-installation curfew; on or about 21 July 2016 with intent to deceive, sign an official document-Department of Defense Form 1561-Statement to Substantiate Payment of Family Separation Allowance which was false in that his family did not reside at the specified residence; on or about 01 August 2016 and 30 September 2017 steal Family Separation Housing Entitlements; between on or about 01

August 2016 and or on about 30 September 2017 collected a Basic Allowance for Housing entitlement for a zip code where neither he nor his family resided; on or about 20 May 2018 flee from Military Police (MP) when asked to present identification while conducting Town Patrol duties during curfew hours.

12. A review of JLV shows the applicant is not service-connected through the VA for any conditions. Review of his VA records show he has been diagnosed with PTSD, Chronic, TBI, ADHD, Predominantly Inattentive Type, and Cyclothymic Disorder. Review of his medication list shows he was prescribed Abilify, Bupropion (antidepressant), and Lamictal, for Cyclothymia, Cyproheptadine HCL for treatment of nightmares, and Concerta for ADHD.

13. As part of his application the applicant included an expert opinion from a civilian/non-VA clinical psychologist dated 11 August 2023. The psychologist provided a detailed overview of the applicant's medical and treatment history and concluded that it is as least as likely as not that his diagnoses of PTSD, Cyclothymia, ADHD, TBI, secondary AUD, and associated medical conditions directly caused him to be insane as defined by VA Regulations.

14. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant was diagnosed with Bipolar II Disorder (his diagnosis of Cyclothymia is subsumed by this diagnosis) and TBI in-service, which are potentially mitigating BH condition(s). ADHD and alcohol use disorders fall under the purview of administrative separations and do not constitute mitigating conditions. His post-discharge VA records show he has been diagnosed with PTSD, Chronic. This Advisor would contend that the applicant's misconduct is partially mitigated by his diagnosis of Bipolar II Disorder.

15. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Bipolar II Disorder and TBI in-service. He has been diagnosed with PTSD, Chronic through the VA since being discharged from the military.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Bipolar II Disorder and TBI in-service. He has been diagnosed with PTSD, Chronic through the VA since being discharged from the military.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant was diagnosed with Bipolar II Disorder and TBI in-service, and post-discharge has been diagnosed by the VA with PTSD, Chronic, which are potentially mitigating BH condition(s). Review of the applicant's military medical records

demonstrates that he experienced hypomanic episodes characterized by hypersexuality, racing thoughts, increase in goal-directed behavior, decreased need for sleep, and an elevated sense of self, which is consistent with the diagnostic criteria presentation associated with hypomanic episodes as part of Bipolar II Disorder. As it pertains to the misconduct that led to the applicant's discharge, there is an association between impulsivity, poor decision-making, and hypomania. As such, there is a nexus between his misconduct of failure to obey a lawful order, fleeing from an MP, and his diagnosis of Bipolar II Disorder. However, as his misconduct of making a false official statement (Statement to Substantiate Payment of Family Separation Allowance), stealing Family Separation Housing Entitlements, and BAH fraud require organization, planning, and the deliberate misrepresentation of facts, which are not likely to occur as a consequence of a hypomanic episode, and are not part of the natural history or sequelae of head injury or trauma-related response, there is not a nexus between these instances of misconduct and his diagnoses of Bipolar II Disorder, TBI, or PTSD. As such, BH mitigation is partially supported for failure to obey a lawful order and fleeing from an MP.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation.

- Upgrade character of discharge to honorable or general. Deny: The Board determined the applicant was pending court-martial for failing to obey a lawful general order; with intent to deceive, signed an official document for a family housing related allowance the basis of which was false; did steal Family Separation Housing entitlement; while in Korea, collected a Basic Allowance for Housing entitlement for a zip code in Kansas, and did flee from military police when asked to present identification while they were conducting patrol, punishable under the Uniform Code of Military Justice with a punitive discharge. In addition, the Board noted the applicant received a GOMOR for additional misconduct. The Board concluded that the applicant voluntarily submitted his request for resignation, which was approved, and he received an other than honorable discharge. However, the Board did not concur with the medical advisory which found his misconduct partially mitigating. The Board determined some of his misconduct was not mitigating and therefore, the Board concluded

that the applicant was discharged accordingly. The Board found there was no error or injustice and denied relief.

- Enter an honorable period of service served. Deny: The Board determined pursuant to his pending court-martial and the applicant's voluntarily resignation request due to serious misconduct, and based on a preponderance of the evidence, the Board found no error or injustice and denied relief.
- Change Narrative Reason to Secretarial Authority. Deny: The Board determined pursuant to his pending court-martial and the applicant's voluntarily resignation request due to serious misconduct, and based upon a preponderance of the evidence, the Board found no error or injustice and denied relief.

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

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with Bipolar II Disorder and TBI in-service. He has been diagnosed with PTSD, Chronic through the VA since being discharged from the military.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with Bipolar II Disorder and TBI in-service. He has been diagnosed with PTSD, Chronic through the VA since being discharged from the military.

(3) Does the condition or experience actually excuse or mitigate the discharge? Partially. The applicant was diagnosed with Bipolar II Disorder and TBI in-service, and post-discharge has been diagnosed by the VA with PTSD, Chronic, which are potentially mitigating BH condition(s). Review of the applicant's military medical records demonstrates that he experienced hypomanic episodes characterized by hypersexuality, racing thoughts, increase in goal-directed behavior, decreased need for sleep, and an elevated sense of self, which is consistent with the diagnostic criteria presentation associated with hypomanic episodes as part of Bipolar II Disorder. As it pertains to the misconduct that led to the applicant's discharge, there is an association between impulsivity, poor decision-making, and hypomania. As such, there is a nexus between his misconduct of failure to obey a lawful order, fleeing from an MP, and his diagnosis of Bipolar II Disorder. However, as his misconduct of making a false official statement (Statement to Substantiate Payment of Family Separation Allowance), stealing Family Separation Housing Entitlements, and BAH fraud require organization, planning, and the deliberate misrepresentation of facts, which are not likely to occur as a consequence of a hypomanic episode, and are not part of the natural history or sequelae of head injury or trauma-related response, there is not a nexus between these

instances of misconduct and his diagnoses of Bipolar II Disorder, TBI, or PTSD. As such, BH mitigation is partially supported for failure to obey a lawful order and fleeing from an MP.

The Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

CHAIRPERSON

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

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 635-5 (Separation Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Honorable Discharge states an honorable discharge is a separation with honor. 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.

b. General Discharge states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 14 of the regulation states action will be taken to separate a Soldier for misconduct when it is clearly established that despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.

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

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

BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

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

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based, in whole or in part, on those conditions or experiences. The guidance further describes evidence sources and criteria and requires boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product.

Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//