

1. Applicant's Name:

- a. **Application Date:** 9 September 2020
- b. **Date Received:** 11 September 2020
- c. **Counsel:** None

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for period under review is under other than honorable conditions. The applicant requests an upgrade to honorable, changes to the type of separation, separation authority, SPD and RE codes, and narrative reason, and correction of lost time and the applicant's rank.

b. The applicant seeks relief contending, in effect, the judge kicked out one of the key witnesses from the courtroom; the applicant was given medication by the unit physician assistant to silence (make unfit) the applicant 2 days before the trial and after the trial drugs was found in the applicant's system: the unit compromised the applicant's health and medical which can be verified by the VA: the African American first sergeant that was used to start a witch hunt, harass, bully, and target the applicant was the main focus in the trial, however, they refused to bring this person to the court-martial: the applicant never committed a crime: rank and race was used to target an innocent black person because the applicant refused the Article 15 which resulted in reprisal against the applicant: the applicant did not attend the administrative separation board due to being diagnosed with PTSD, depression, and anxiety: the court-martial was compromised and the applicant did not receive a fair trial: the applicant's equal opportunity (EO) complaint was compromised and the applicant never received a copy of the EO investigation: the unit refused the applicant to take treatment after an off post hospital diagnosed the applicant with PTSD and chronic depression: the applicant's wife was silenced when the lawyer told the wife not to explain the incidents that occurred: the applicant did not out process and did not receive a separation packet

c. The applicant further details the contentions in an allied hand-written self-authored statement provided with the two applications.

d. **Board Type and Decision:** In a records review conducted on 22 January 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 10 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

a. **Reason / Authority / Codes / Characterization:** Misconduct (Serious Offense) / AR 635-200, Chapter 14-12c / JKQ / RE-3 / Under Other Than Honorable Conditions

b. **Date of Discharge:** 7 April 2020

c. **Separation Facts:**

(1) **Date of Notification of Intent to Separate:** 10 February 2020

(2) Basis for Separation: The applicant was informed of the following reasons:

(a) On or about 22 April 2019, the applicant wrongfully communicated to Captain (CPT) M__ P. C__ and First Sergeant (1SG) D__ E. H__ Jr., by stating, "If I have to remove my rank, I am going to kill them," or words to that effect.

(b) On or about 23 April 2019, the applicant was disrespectful in department towards Lieutenant Colonel (LTC) E__ B. W__ by walking away from the LTC after being ordered to stand at the position of attention.

(c) The applicant submitted false official documents to their personnel file, to wit: An Army Physical Fitness Test (APFT) Scorecard, dated on or about 1 June 2018, a college degree and transcript from the University of Southampton, dated on or about 15 December 2006.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 12 February 2020

(5) Administrative Separation Board:

(a) On 10 February 2020, the applicant requested consideration of their case by an administrative separation board.

(b) On 20 March 2020, the administrative separation board convened, the applicant was not present, and counsel appeared on behalf of the applicant. The Board determined the three allegations listed in the notification of separation (see paragraph 3c(2) above) were supported by a preponderance of the evidence. Allegations in paragraph 3c(2) (a) and (b) above, did not warrant separation. The allegation in paragraph 3c(2) (c) above, warranted separation. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

(c) On 27 March 2020, the separation authority approved the findings and recommendations of the administrative separation board.

(6) Separation Decision Date / Characterization: 27 March 2020 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 3 February 2016 / 5 years

b. Age at Enlistment / Education / GT Score: 31 / Bachelor's Degree / 85

c. Highest Grade Achieved / MOS / Total Service: E-5 / 92Y10, Unit Supply Specialist / 12 years, 11 months, 4 days

d. Prior Service / Characterizations: RA, 22 March 2007 - 2 February 2016 / HD

e. Overseas Service / Combat Service: Korea, Bahrain, SWA / Iraq (27 September 2009 - 20 September 2010)

f. Awards and Decorations: AAM-5, AGCM-3, NDSM, GWOTEM, GWOTSM, KDSM, ICM-CS, NCOPDR-2, ASR, OSR-2

g. Performance Ratings: 1 February 2013 - 12 September 2013 / Marginal
13 September 2013 - 13 December 2013 / Marginal
14 December 2013 - 17 June 2014 / Fully Capable
17 June 2014 - 16 June 2015 / Fully Capable
17 June 2015 - 15 June 2016 / Qualified
17 June 2016 - 31 December 2016 / Qualified
1 January 2017 - 14 May 2017 / NIF
15 May 2017 - 25 September 2017 / Not Qualified
26 September 2017 - 25 September 2018 / Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) APFT Scorecard shows a passing record APFT on 1 June 2018, however, the name is marked out.

(2) The applicant's promotion point worksheet (PPW), 23 July 2018, shows the applicant's latest APFT scorecard as 1 February 2018 with a 195 APFT score and 21 awarded promotion points. The applicant's college credit is listed as Southampton University England awarding 720 promotion points (two points for each semester hour).

(3) The applicant's PPW, 4 August 2018, shows the applicant's latest APFT scorecard as 1 June 2018 with a 273 APFT score and 118 awarded promotion points. The applicant's college credit is listed as Southampton University England awarding 720 promotion points (two points for each semester hour).

(4) An audit report for physical qualification shows the applicant's APFT was updated by D__ S__ in the Electronic Military Office (eMILPO) on 2 August 2018 with a passing result as of June 2018.

(5) Orders 302-30, Headquarters, 2d Striker Brigade Combat team, 2d Infantry Division, 29 October 2018, shows the applicant was promoted from Sergeant (SGT/E-5) to Staff Sergeant (SSG/E-6) effective 1 November 2018.

(6) Sworn Statement by CPT R__ H. A__, 29 March 2019, shows CPT A__ took their APFT on 1 June 2018 with an E-3 at the Jensen Family Gym on main post which the applicant did not attend. There was no other APFT administered by the company on 1 June 2018.

(7) Sworn Statement by First Lieutenant (1LT) K__ B__, 1 April 2019, shows an APFT was not scheduled for the Rear Detachment on 1 June 2018. 1LT B__ did not know if the applicant was with the company that morning or if the applicant did physical training with Headquarters and Headquarters Company before reporting.

(8) Sworn Statement by Specialist (SPC) D__ S__, 3 April 2019, shows SPC S__ updated the applicant's APFT and college records in eMILPO after the applicant provided official documentation.

(9) On 29 April 2019

(a) Orders 119-01, Headquarters, 2d Striker Brigade Combat team, 2d Infantry Division, 29 April 2019, shows Orders 302-30, 29 October 2018, pertaining to the rank of Staff Sergeant (E-6) were revoked.

(b) The applicant provided an email that they sent to Lieutenant General G__ J. V__, explaining how the battalion commander and command sergeant major violated the applicant's 3-5 days bed rest issued by the hospital.

(10) Sworn Statement by the applicant, 30 May 2019, shows the applicant was under investigation and this interview was solely about the applicant's time in England while attending the University of Southampton. The applicant states their transcript and diploma was already verified by a place the education center recommended. The applicant could not remember requested information about their time in England because it has been over 18 years. The applicant believed this was a witch hunt by members in the chain of command.

(11) Memorandum for Record, Stone Education Center Student Memorandums, 3 June 2019, shows the investigating officer received information on 15 May 2019 that foreign degrees must be evaluated by the National Associate for Credential Evaluation Services (NACES), then taken to the Education Center for production of a memorandum of support to accompany the degree documents in order to be officially recorded in a service members military records.

(12) Memorandum, Addendum to the Initial Findings and Recommendations for AR 15-6 Investigation, (Applicant), 11 June 2019, shows:

(a) On 16 May 2019, the new 2-1 Infantry commander reopened the investigation to answer four new questions; 1) do recruiters dissuade recruits from presenting degrees from foreign institutions?; 2) what documentation should have been requested for the applicant's degree to be uploaded in eMILPO?; 3) why was Higher Education Degree Database (HEDD) used to determine if the applicant's degree was valid?; 4) does the applicant's SF 86 (National Security Positions) confirm the applicant lived in England?

(b) A preponderance of the evidence shows the applicant did not attend the University of Southampton. It is possible a recruiter may have advised the applicant to not include their degree in their 2006 enlistment documents, but it is more likely than not that the degree did not exist in 2006. The applicant has been unable to produce any documents, photographs, contacts, personal knowledge or evidence showing they attended the University of Southampton. Further investigation into the HEDD shows that it is an organization partially founded by the United Kingdom government and the official verification source of the University of Southampton. The applicant's initial entry SF 86 shows the applicant listed their address from 2001-2007 as Philadelphia, PA, and never listed any travel to England. The applicant's lack of records and knowledge of the university, combined with HEDD records showing zero information regarding a student with the applicant's name, combined with the applicant listing their residence as PA during the time they state they were in England shows it is more likely than not the applicant's transcript is not authentic.

(c) A preponderance of the evidence shows the applicant was not dissuaded from presenting their foreign degree to a recruiter. The applicant stated in their sworn statement that their recruiter wanted them to submit their degree but the applicant chose not to because the applicant did not want to be an officer and did not want to enter as a specialist. However, it is more likely than not, that the reason the applicant did not present their degree was because the applicant's transcript did not exist at the time they entered the Army.

(d) A preponderance of the evidence shows the 2d Brigade Support Battalion S1 clerk, Private First Class (PFC) S__ did not follow the proper process for entering a foreign degree into eMILPO since they did not request the applicant to produce an evaluation from the NACES. A preponderance of the evidence shows that the reason PFC S__ did not follow the process is

that eMILPO lists University of Southampton in its educational institutional drop down menu and can be selected without realizing additional documents are required.

(e) A preponderance of the evidence shows that HEDD was used to determine the legitimacy of the applicant's degree because it is the official organization used by the University of Southampton and other public United Kingdom universities to validate degrees. A preponderance of the evidence shows the University of Southampton was contacted directly and referred the unit to HEDD. A preponderance of the evidence shows the Foundation for International Services is an organization certified by the NACES but that its primary purpose is to translate foreign grades and degrees into their American equivalent and it does not verify degrees.

(f) A preponderance of the evidence from the SF 86 shows that the applicant lived in Philadelphia, PA from 2002 to 2007, and did not live in England. A preponderance of the evidence shows the applicant worked as a laborer during this time period and did not attend the University of Southampton. A preponderance of the evidence shows that from 2000 to 2007, the applicant did not travel to England.

(g) The totality of the evidence shows the applicant did not attend or graduate from the University of Southampton. The applicant was unable to produce any further documentation they attended the university, and was unable to provide any specifics of people they knew or places they lived while attending the university.

(h) There was no change to the investigating officer's previous recommendations that in accordance with AR 600-8-19 (Enlisted Promotions and Reductions), paragraph 1-16, the applicant's rank should remain reduced from E-5 to E-6 [E-6 - E-5]. The applicant does not meet the de facto status for erroneous promotion and should be charged the extra pay and allowances they received as an E-6 and disciplinary action for submitting false official documents.

(13) Memorandum for Record, Chronology of Incidents involving (Applicant), 11 June 2019, shows the investigating officer received the applicant's SF 86 from 2007. The applicant's information states they moved to the United States (U.S.) in 2001 where they lived and worked the entire time. The only foreign travel listed was a 3 month trip to Ghana. All residency and work information was supported with contacts who knew the applicant and could verify the applicant's presence and activity. No visits or residence in England were annotated between 2000 and 2007.

(14) Charge Sheet, shows on 28 August 2019 the following charges were preferred against the applicant:

(a) Charge I, in violation of Article 87: On or about 4 March 2019, through design missed company movement, with which the applicant was required in the course of duty to move.

(b) Charge II, in violation of Article 90: On or about 4 March 2019, willfully disobeyed a lawful command from CPT C__.

(c) Charge III, in violation of Article 115: On or about 22 April 2019, wrongfully communicated to CPT C__ and 1SG H__ Jr. a threat, by stating, "If I have to remove my rank, I am going to kill them," or words to that effect.

(15) On 29 August 2019, the applicant's company, regiment, and brigade commanders recommended trial by special (bad conduct discharge) court-martial.

(16) On 5 September 2019, the separation authority referred the charges and specifications to a special court martial.

(17) Statement of Trial Results shows on 7 January 2020 [9 January 2020 per Memorandum, Certification of Completion of Appellate Review ICO U.S. v. (Applicant), 18 August 2020]:

(a) The applicant was found guilty of Charge III, in violation of Article 115.

(b) Adjudged Sentence: Reduction from E-5 to E-3; and 45 days hard labor.

(18) Memorandum, Applicant (Major (MAJ) J__ A. M__, Battalion Physician Assistant Medical Opinion), 5 February 2020, states there was no medical reason for the applicant to not show up to work and perform military duties. It was the opinion of primary care and pertinent medical specialists that the applicant was abusing the medical system in order to avoid work, recent legal consequences, and the unit.

(19) Memorandum, Telephonic Interview with W__ B__ (2 December 2019), 7 February 2020, states on 7 January 2020, the applicant's defense counsel called W__ B__ as a witness in the applicant's court-martial. On direct examination, W__ B__ testified that they first met the applicant in approximately 2002, and that they lived in the same house in Philadelphia, PA for "three to four years." During cross-examination, General Crimes Prosecutor asked W__ B__ if they was aware that the applicant told the Army about attending college in the United Kingdom from 2003 through 2006. W__ B__ said that they were not aware of that fact.

(20) On 21 February 2020:

(a) U.S. Court-Martial, Judgement of the Court, 21 February 2020, shows modifications or supplements to the Statement of Trial Results. A request for deferment of reduction in grade was approved, started on 23 January 2020, and terminated upon entry of judgment.

(b) The applicant was counseled for notification of an involuntary separation/field initiated (BA) flag initiation.

(c) The applicant was flagged for involuntary separation/field initiated (BA), effective 10 February 2020.

(21) On 2 March 2020, the applicant's duty status changed from present for duty (PDY) to absent without leave (AWOL) effective 26 February 2020. On this same date, the separation authority directed the pending separation action against the applicant be referred to the administrative separation board for recommendations on separation and characterization of service.

(22) On 4 March 2020:

(a) Sworn Statement by 1SG M__ T. B__, states on 4 March 2020 the applicant was detained at the gate while attempting to enter post. The applicant refused to return to the unit, disobeyed all orders, and was disrespectful to CPT R__ and two noncommissioned officers. The applicant was notified that they would remain in an AWOL status if they continued to refuse the orders. The applicant stated they did not care and left the company area.

(b) Memorandum for Record by company commander, (Applicant's) Refusal to Report to Place of Duty, 4 March 2020, states at approximately 0820 they was notified by 1SG B__ that the applicant had been detained at the gate. This was after they changed the applicant's duty status to AWOL due to refusal to report to the unit and to execute hard labor punishment. Upon return to the unit with 1SG B__, the applicant refused orders and claimed to fear for their life, and would never return to the unit. The company commander told the applicant that they were disobeying a direct order, however the applicant stated not to care and was not scared of them, walked away from the unit, and disappeared.

(c) 1SG B__ produced a developmental counseling form for failure to follow a direct order. The applicant was not present for signature.

(23) On 20 March 2020, the administrative separation board convened, the applicant was not present, and counsel appeared on behalf of the applicant. The Board determined the three allegations listed in the notification of separation (see paragraph 3c(2) above) were supported by a preponderance of the evidence. Allegations in paragraph 3c(2) (a) and (b) above, did not warrant separation. Allegation in paragraph 3c(2) (c) above, warranted separation. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

(24) On 23 March 2020, the administrative law attorney found the administrative separation board legally sufficient.

(25) On 27 March 2020, the separation authority approved the findings and recommendations of the administrative separation board.

(26) The applicant's DD Form 214, shows the applicant had completed the first full term of service. On 7 April 2020, the applicant was discharged under the authority of AR 635-200, paragraph 14-12c, with a narrative reason of Misconduct (Serious Offense). The DD Form 214 was not authenticated with the applicant's electronic signature. The applicant had lost time for the period 26 February - 7 April 2020.

(27) Memorandum, Completed Review pursuant to Article 65(d), Uniform Code of Military Justice (UCMJ), for (Applicant), 5 July 2020, shows a military judge found the court had jurisdiction over the accused and the offenses; each charge and specification stated an offense; and the sentence was within the limits prescribed as a matter of law. The subject case was forwarded for issuance of the Certification of Completion of Appellate Review.

(28) Memorandum, Certification of Completion of Appellate Review ICO U.S. v. (Applicant), 18 August 2020, shows the findings of guilty and sentence, adjudged on 9 January 2020 and as entered by the judgment on 21 February 2020, was determined to be correct in law and fact. The appellate review was complete and the conviction was final.

i. **Lost Time / Mode of Return:** 42 days (AWOL, 26 February - 7 April 2020) / Separated from the Army

j. Behavioral Health Condition(s):

(1) Applicant provided:

(a) Exhibit G - South Sound Behavioral Hospital Intake Assessment, 25 February 2020, states the applicant came to their hospital for a second opinion mental evaluation after spending 2 days at the Fort Lewis emergency department from 4-6 February 2020. Fort Lewis prescribed

the applicant Amlopidine. The applicant self-medicates with alcohol and has attempted suicide. The applicant was diagnosed with PTSD and depressive disorder unspecified.

(b) Exhibit K - Shows a photo of Sertraline HCL 100mg prescribed by the VA for depression.

(c) VA disability rating decision, 7 March 2022, reflecting the applicant was rated 50 percent disability for adjustment disorder with depressed mood, with mixed disturbance of emotions and conduct, chronic (claimed as insomnia, depression, and PTSD) effective 8 April 2020.

(2) AMHRR Listed: Report of Mental Status Evaluation, 3 February 2020, shows the applicant was psychologically cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for PTSD and TBI with negative results. The medical record did not contain substantial evidence that the applicant currently met criteria for a condition requiring referral to the Integrated Disability Evaluation System, but had not yet received the diagnosis. The applicant was diagnosed with occupational stress.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; DD Form 293; 12 pages of hand-written self-authored statements and questions; exhibits A-I and K.

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the application.

7. STATUTORY, REGULATORY AND POLICY REFERENCE(S):

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

b. Multiple Department of Defense Policy Guidance Memoranda published between 2014 and 2018. The documents are commonly referred to by the signatory authorities' last names (2014 Secretary of Defense Guidance [Hagel memo], 2016 Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness [Carson memo], 2017 Official Performing the Duties of the Under Secretary of Defense for Personnel and Readiness [Kurta memo], and 2018 Under Secretary of Defense for Personnel and Readiness [Wilkie memo].

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in

whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

(2) Conditions documented in the service record that can reasonably be determined to have existed at the time of discharge will be considered to have existed at the time of discharge. In cases in which a mental health condition, including PTSD; TBI; or sexual assault/harassment may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the characterization of service in question. All Boards will exercise caution in weighing evidence of mitigation in cases in which serious misconduct precipitated a discharge with a less than Honorable characterization of service. Potentially mitigating evidence of the existence of undiagnosed combat related PTSD, PTSD-related conditions due to TBI or sexual assault/harassment as causative factors in the misconduct resulting in discharge will be carefully weighed against the severity of the misconduct. PTSD is not a likely cause of premeditated misconduct. Caution shall be exercised in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct.

c. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

(1) Chapter 3, Section II provides the authorized types of characterization of service or description of separation.

(2) An honorable discharge is a separation with honor and is appropriate when the quality of the Soldier'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.

(3) A general discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) An under other than honorable conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, and commission of a serious offense, to include abuse of illegal drugs, convictions by civil authorities and desertion or being absent without leave. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed.

(6) Paragraph 14-3 prescribes a discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

(7) Paragraph 14-12c prescribes a Soldier is subject to action per this section for commission of a serious military or civilian offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial.

(8) Chapter 15 provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

e. 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 codes to be entered on the DD Form 214. It identifies the SPD code of "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

f. Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

(1) RE-1 Applies to: Person completing his or her term of active service who is considered qualified to reenter the U.S. Army. Eligibility: Qualified for enlistment if all other criteria are met.

(2) RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

8. SUMMARY OF FACT(S): The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

a. The applicant requests an upgrade to honorable, and changes to the SPD and RE codes, and narrative reason. In addition, correction of lost time and the applicant's rank. The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 12 years, 11 months, and 4 days during which the applicant served 2 years, 6 months, and 28 days of foreign service, including Iraq (27 September 2009 - 20 September 2010). On 28 August 2019, charges were preferred against the applicant for missing company movement, disobeying a lawful command, and wrongfully communicating a threat. On 9 January 2020, the applicant was found guilty of Charge III, in violation of Article 115, was reduced from E-5 to E-3, and received 45 days hard labor. On 20 March 2020, an administrative separation board convened. The Board determined the three allegations of wrongfully communicating a threat, disrespectful in department, and false official documents were supported by a preponderance of the evidence. The third allegation warranted separation and the board recommended an under other than honorable conditions discharge. On 7 April 2020, the applicant was discharged with an under other than honorable conditions characterization of service.

c. The applicant requests the narrative reason for the discharge to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8, Separation Processing and Documents, governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1, SPD Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. The applicant requests the SPD to be changed. Separation codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 to track types of separations the SPD code specified by Army Regulations for a discharge under Chapter 14, paragraph 14-12c, is "JKQ."

e. The applicant requests the RE code to be changed. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on AR 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment.

f. The applicant requests correction of their lost time. The applicant did not specify why the lost time should be corrected. The applicant's AMHRR contains a DA Form 4187 (Personnel Action) that shows the applicant's duty status changed from PDY to AWOL effective 26 February 2020. A Memorandum for Record from the company commander, 4 March 2020, states the applicant walked away from the unit and disappeared. The applicant's DD Form 214 shows the applicant was AWOL from 26 February - 7 April 2020. On 7 April 2020, the applicant was separated from the Army.

g. The applicant requests correction of their rank. The applicant's AMHRR contains:

(1) Orders 119-01, Headquarters, 2d Striker Brigade Combat team, 2d Infantry Division, 29 April 2019, reflecting Orders 302-30, 29 October 2018, pertaining to the rank of Staff Sergeant (E-6) were revoked.

(2) Memorandum, Addendum to the Initial Findings and Recommendations for AR 15-6 Investigation, (Applicant), 11 June 2019, shows the applicant was under investigation for a degree from a foreign institution that was updated in their eMILPO record. There was no change to the investigating officer's previous recommendations that in accordance with AR 600-8-19 (Enlisted Promotions and Reductions), paragraph 1-16, the applicant's rank should remain reduced from E-5 to E-6 [E-6 - E-5]. The applicant does not meet the de facto status for erroneous promotion and should be charged the extra pay and allowances they received as an E-6 and disciplinary action for submitting false official documents. A copy of the initial AR 15-6 is not in the applicant's AMHRR.

h. The applicant contends, in effect, the judge kicked out one of the key witnesses from the courtroom. The applicant did not specify the witness and did not provide evidence. The AMHRR has no record of removal of a witness from the court-martial.

i. The applicant contends, in effect, the applicant was given medication by the unit physician assistant to silence (make unfit) the applicant 2 days before the trial and after the trial drugs was found in the applicant's system. The unit compromised the applicant's health and medical which can be verified by the VA. The applicant provided exhibit I - photo of prescription of Lisinopril 20mg for blood pressure prescribed by MAJ M__, Battalion Physician Assistant. The photo does not show the date prescribed.

j. The applicant contends, in effect, the African American 1SG that was used to start a witch hunt, harass, bully, and target the applicant was the main focus in the trial, however, they refused to bring this person to the court-martial. The applicant provided Exhibit A:

(1) Sworn Statement by SGT L__ Q__, 10 December 2018, states that SGT Q__ only heard 1SG H__ asking the applicant "why do you think you have to know that" and "If were for me none of you were in the Army long time ago." SGT Q__ have never heard 1SG H__ say something discriminating against the applicant.

(2) Sworn Statement by SGT R__ E__, 10 December 2018, states that SGT E__ noticed a difference in treatment of the applicant since being promoted. The applicant's engagement with leadership was not negative before the promotion. SGT E__ has not witnessed any explicit, racist, or prejudice actions or comments toward the applicant. SGT E__ has not heard 1SG H__ say negative comments about the applicant's nationality, has not witnessed any explicit bullying, or teasing of the applicant about nationality. But SGT E__ does feel there was a bias towards the applicant based on nationality. This bias manifests itself in negative treatment and additional scrutiny.

(3) Sworn Statement by SGT R__ E__, 11 December 2018, states SGT E__ was asked to clarify the following statement from 10 December 2018, "But I feel there is a bias towards [the applicant] based on [the applicant's] nationality. This bias manifest itself in negative treatment and additional scrutiny." SGT E__ felt this way because it was a "Gut" feeling about the situation.

k. The applicant contends, in effect, they never committed a crime. Rank and race was used to target an innocent black person because the applicant refused the Article 15 which resulted in reprisal against the applicant. The applicant provided Exhibit D, text messages between the applicant and Master Sergeant (MSG) K__, EO representative, stating the

applicant should cooperate with the investigating officer and if still unsatisfied afterwards the applicant could appeal. The applicant states there has been retaliation because the applicant was told to do a shift from 2100 hours to 0900 hours after working from 0630 hours to 1700 hours knowing the applicant had a spouse and child at home. MSG K__ spoke to the chain of command and was tracking that the applicant was removed from the detail. The applicant's AMHRR has no record of a Record of Proceedings under Article 15, UCMJ. The applicant's AMHRR shows the applicant was AWOL from 26 February - 7 April 2020, which is a violation of Article 86, UCMJ. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

l. The applicant contends, in effect, the applicant did not attend the separation board due to being diagnosed with PTSD, depression, and anxiety. The applicant provided Exhibit G - South Sound Behavioral Hospital Intake Assessment, 25 February 2020, showing the applicant came to their hospital for a second opinion mental evaluation after spending 2 days at the Fort Lewis emergency department from 4-6 February 2020. Fort Lewis prescribed the applicant Amlopidine. The applicant self-medicates with alcohol and has attempted suicide. The applicant was diagnosed with PTSD and depressive disorder unspecified. The applicant's AMHRR shows the administrative separation board convened on 20 March 2020.

m. The applicant contends, in effect, the court-martial was compromised and the applicant did not receive a fair trial because MAJ M__, Battalion Physician Assistant was used to prescribe the applicant medication 2 days before the trial and after the trial, Bentos was found in the applicant's system when the applicant was admitted to the hospital on 4 February 2020 during an emergency room visit. The applicant's AMHRR shows the special court-martial was adjudged on 9 January 2020.

n. The applicant contends, in effect, the applicant's EO complaint was compromised and the applicant never received a copy of the EO investigation. The applicant provided Exhibits C and F:

(1) Email between Colonel (COL) M__, Brigade Commander and the applicant, 7 December 2018 -

(a) The applicant filed an EO complaint against 1SG H__ and the investigation was on going. On 6 December 2018, the battalion commander told the applicant the EO complaint was not proven by evidence and there was no harassment and the applicant had 7 days to appeal.

(b) COL M__ states after reviewing the initial investigation, the Brigade Judge Advocate determined that the investigation was not legally sufficient. The investigating officer was instructed to speak to several Soldiers in the battalion and follow up on the EO complaint with the applicant. Once the investigation was completed and legally sufficient, Lieutenant Colonel F__ would review the investigation and make a determination whether or not there has been an EO violation. COL M__ would ensure that neither CPT C__ nor 1SG H__ made attempts to interfere with the ongoing investigation.

(c) Through text, MSG K__, EO representative, informed the applicant that legal found issues with the case and they were going to have the investigating officer talk to the applicant again.

o. The applicant contends, in effect, the unit refused the applicant to take treatment after an off post hospital (25 February 2020) diagnosed the applicant with PTSD and chronic depression. The applicant did not provide evidence and the applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

p. The applicant contends, in effect, the applicant's wife was silenced when the lawyer told the wife not to explain the incidents that occurred. The applicant did not provide evidence and the applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by counsel.

q. The applicant contends, in effect, they did not out process and did not receive a separation packet. The applicant's AMHRR contains a DA Form 4187 (Personnel Action) that shows the applicant's duty status changed from PDY to AWOL effective 26 February 2020. A Memorandum for Record from the company commander, 4 March 2020, states the applicant walked away from the unit and disappeared. The applicant's DD Form 214 shows the applicant was AWOL from 26 February - 7 April 2020. On 7 April 2020, the applicant was separated from the Army.

r. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

9. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE: In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented by the applicant at the personal appearance hearing.

a. **The applicant submitted the following additional document(s):** None

b. **The applicant presented the following additional contention(s):** None

c. **Counsel / Witness(es) / Observer(s):** None

10. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by [REDACTED] the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment DO with mixed emotional features; Adjustment DO with mixed disturbance of emotions and conduct; Chronic Adjustment DO (CAD) (50%SC).

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found both diagnoses of Adjustment DO were made during military service. VA service connection for Chronic Adjustment DO establishes it existed during military service. [Note-Adjustment DO with mixed emotional features and Adjustment DO with mixed disturbance of emotions and conduct are subsumed under VA diagnosis of Chronic Adjustment DO.]

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has a BH condition, Chronic Adjustment DO, which mitigates some of his misconduct. As there is an association between Chronic Adjustment DO (CAD) and interpersonal difficulties with authority figures, there is a nexus between his diagnosis of CAD and his disrespect towards his

superiors. CAD does not mitigate the offense of threatening a superior officer and a superior NCO or submitting false documents given that CAD does not affect one's ability to distinguish right from wrong and act in accordance with the right. In the BH Advisor's opinion, the totality of the applicant's misconduct outweighs any mitigation afforded by liberal consideration.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the available evidence did not support a conclusion that the applicant's conditions outweighed the medically unmitigated list offenses. Although the CAD mitigated some of the misconduct, the CAD did not mitigate the more serious offenses of threatening a superior officer, NCO and submitting false documents. Based on these facts, the Board agreed the overall misconduct outweighs the mitigation of the disrespect.

b. Response to Contention(s):

(1) The applicant contends, in effect, the judge kicked out one of the key witnesses from the courtroom. The Board considered this contention and determined there was no corroborating evidence presented to support the applicant's assertions. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

(2) The applicant contends, in effect, the applicant was given medication by their physician to silence (make unfit) the applicant 2 days before the trial and after the trial drugs was found in the applicant's system. The unit compromised the applicant's health and medical which can be verified by the VA. The Board considered this contention and determined there was no corroborating evidence presented to support the applicant's assertions. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

(3) The applicant contends, in effect, the African American first sergeant that was used to start a witch hunt, harass, bully, and target the applicant was the main focus in the trial, however, they refused to bring this person to the court-martial. The Board considered this contention and determined there was no corroborating evidence presented to support the applicant's assertions of capricious acts by the chain of command. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

(4) The applicant contends, in effect, they never committed a crime. Rank and race was used to target an innocent black person because the applicant refused the Article 15 which resulted in reprisal against the applicant. The Board considered this contention and determined there was no corroborating evidence presented to support the applicant's assertions of capricious acts by the chain of command. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

(5) The applicant contends, in effect, the applicant did not attend the separation board due to being diagnosed with PTSD, depression, and anxiety.

(6) The applicant contends, in effect, the court martial was compromised and the applicant did not receive a fair trial. The Board considered this contention and determined there was no corroborating evidence presented to support the applicant's assertions of capricious acts by the chain of command. The applicant is responsible for satisfying the burden of proof

and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

(7) The applicant contends, in effect, the applicant's EO complaint was compromised and the applicant never received a copy of the EO investigation. The Board considered this contention and determined there was no corroborating evidence presented to support the applicant's assertions of capricious acts by the chain of command. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

(8) The applicant contends, in effect, the unit refused the applicant to take treatment after an off-post hospital diagnosed the applicant with PTSD and chronic depression. The Board considered this contention and determined there was no corroborating evidence presented to support the applicant's assertions of capricious acts by the chain of command. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

(9) The applicant contends, in effect, the applicant's wife was silenced when the lawyer told the wife not to explain the incidents that occurred. The Board considered this contention and determined there was no corroborating evidence presented to support the applicant's assertions. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

(10) The applicant contends, in effect, they did not out process and did not receive a separation packet. The Board considered this contention and determined there was no corroborating evidence presented to support the applicant's assertions. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. The applicant has exhausted all available appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration to all the evidence before the Board, the applicant's Chronic Adjustment Disorder did not outweigh the applicant's more serious offenses of threatening a superior officer, NCO and submitting false documents. Based on these facts, the Board agreed the overall misconduct outweighs the mitigation of the disrespect. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or meritorious service warranted for an upgrade to Honorable discharge.

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(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, and the reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

11. BOARD ACTION DIRECTED:

- a. **Issue a New DD-214 / Separation Order:** No
- b. **Change Characterization to:** No Change
- c. **Change Reason / SPD Code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** No Change

Authenticating Official:

1/31/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

OAD – Ordered to Active Duty
OBH (I) – Other Behavioral
Health (Issues)
OMPF – Official Military
Personnel File
PTSD – Post-Traumatic Stress
Disorder
RE – Re-entry
SCM – Summary Court Martial
SPCM – Special Court Martial

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury
UNC – Uncharacterized
Discharge
UOTHC – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs