

1. Applicant's Name:

- a. **Application Date:** 12 December 2020
- b. **Date Received:** 12 December 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 honorable conditions (general). The applicant requests an upgrade to honorable.

b. The applicant states in effect, soldier member has completed first full term of service, see block 18 remarks on the DD Form 214 and see attached medical documents. Investigation(s) number DIH 21-0177.

c. The applicant submitted a whistleblower complaint through their chain of command for violations of rules, laws, and regulations and shortly after they were fired illegally under false pretenses. The chain of command violations are supported by the time stamp evidence. They were fired because of an imaginary DUI, they were never arrested, never processed for DUI or anything else of that nature. Everything was completely fabricated and occurred on 14 August 2020. It was a violation of protected communications and an act of reprisal against them. They are now completely housebound and disabled because of the chain of commands disregard to rules and regulation on numerous occasions.

d. The applicant is requesting a discharge upgrade to honorable: medical discharge, reinstatement of their rank (E-5), removal of all derogatory records towards their service and removal of the GOMAR.

e. **Board Type and Decision:** In a records review conducted on 9 February 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable. Please see Section 9 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 / JKQ / RE-3 / Under Honorable Conditions (General)

b. **Date of Discharge:** 13 November 2020

c. Separation Facts:

(1) **Date of Notification of Intent to Separate:** NIF (applicant provided evidence provides 19 October 2020)

(2) **Basis for Separation:** The applicant was found at the unit sitting in their vehicle with the engine running smoking a cigarette, they were acting strange, stumbling, and slurring their speech. The applicant told their platoon leader they were drunk; they were administered a breathalyzer test; their blood alcohol content level was .13.

(3) **Recommended Characterization:** General, under honorable conditions

(4) **Legal Consultation Date:** NIF

(5) **Administrative Separation Board:** N/A

(6) **Separation Decision Date / Characterization:** Date NIF / General under honorable conditions.

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 8 September 2015 / 6 years, 2 months

b. **Age at Enlistment / Education / GT Score:** 26 / Associate Degree / 109

c. **Highest Grade Achieved / MOS / Total Service:** E-5 / 31B20 Military Police, 5 years, 2months, 6 days.

d. **Prior Service / Characterizations:** None

e. **Overseas Service / Combat Service:** Netherlands / None

f. **Awards and Decorations:** ARCOM-2, ACM-2, AGCM, NDSM, GWTSM, NCOPDR, ASR, OSR

g. **Performance Ratings:** 1 October 2019 – 15 May 2020; Qualified
16 May 2020 – 30 August 2020; Not Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) An Enlistment/ Reenlistment Document provides that the applicant enlisted in the United States Army Reserve at the rank of private (E-3) with an active duty obligation of 5 years on 16 June 2015.

- The applicant voluntary extended their enlistment for a period of 14 months on 1 February 2018; their new ETS date was 7 November 2021

(2) An Enlisted Record Brief (ERB) provides the applicant advanced to the rank of E-5 on 1 October 2019.

- Flagged with code V (Alcohol abuse adverse action); effective 13 August 2020
- Flagged with code B (Involuntary discharge); effective 16 October 2020

(3) A memorandum, subject Command Direct Intoxilyzer dated 13 August 2020 provides the command requested for the applicant to be blown on the intoxilyzer due to suspicion of them being impaired on duty.

(4) A Developmental Counseling Form dated 13 August 2020 provides the applicant reported to work at 0500 intoxicated under the influence of alcohol. The applicant was witnessed acting strange, stumbling, and slurring their speech; they told their platoon leader they were drunk. They were ordered to not drink alcohol and was command referred to SUDCC; they signed the counseling and selected "I agree" VS "disagree with the information above"

- Their blood alcohol level was .13
- They drove their vehicle to work while intoxicated

(5) A Sworn Statement document dated 20 August 2020 provides a SFC witnessed the applicant sitting in their vehicle with the engine running smoking a cigarette, they applicant told the SFC they were sitting in the truck and not in the motor pool because everyone was busy packing for the range, and they would only be in the way.

(6) Record of Proceedings UCMJ dated 31 August 2020 provides the applicant received a NJP for violating Articles 112 and 113 of the UCMJ. They were found drunk while on duty as an NCO on 13 August 2020 and physically controlled a vehicle while the alcohol concentration in their breath equaled or exceeded the applicable limit on 13 August 2020. Punishment consisted of reduction in rank to E-4 (specialist), forfeiture of \$1317 pay and extra duty for 45 days.

(7) A memorandum, Headquarters 8th Theater Sustainment Command, Fort Shafter, Hawaii, subject: A General Officer Memorandum of Reprimand, dated 25 September 2020, provides the applicant was reprimanded for reporting to duty intoxicated; the applicant's company commander ordered them to provide a breath sample that showed they had a .130 percent blood alcohol content.

(8) On 5 October 2020 the applicant submitted matters in response to the General Officer Memorandum of Reprimand. The applicant provides they were on a profile that prohibited them from being issued a weapon, handling ammunition, attending live fire drills, ranges, and combat simulation events. On 12 August 2020 they took multiple sleeping pills, had severe amnesia, was sleepwalking and drank approximately 1500ML of alcohol without knowing. They reported to the motor poll on 13 August 2020 to begin movement to the range, they gathered weapons and equipment and reported they were drunk on duty.

- The applicant stated on more than one occasion they touched weapon systems and ammunition and the unit violated AR 40-502, Medical Readiness and Profiling; addresses how command should react to profiles.
- The applicant stated receiving the GOMAR, they felt the unit was unjustly treating them for uncontrollable medical conditions.
- The applicant stated they were not read their 5th amendment rights and there was no case on file at the Schofield Barracks Provost Marshall Office.

(9) Report of Mental Status Evaluation document dated 6 October 2020, provides the applicant received a separation mental health evaluation and was cleared for administrative action; "there were no behavioral health conditions that may have been a mitigating factor in the alleged behavior leading to discharge".

(10) A memorandum, 57th Military Police Company, Schofield Barracks, Hawaii subject: SPC [applicant] profile and second platoon profile counseling dated 30 October 2020, provides the immediate commander verbally counseled the applicant's leadership on the importance of following profiles.

(11) A Commander's Report memorandum provides the applicant's immediate commander recommended the applicant was separated from the Army prior to the expiration of their current term of service.

- No rehabilitation attempts were made

(12) The chain of command endorsed and concurred with the commander's recommendation and the appropriate authority approved the separation and directed a General, under honorable conditions characterization of service.

(13) A DD Form 214 shows the applicant was discharged accordingly on 13 November 2020. Item 18 (Remarks) of their DD Form 214 has administrative error: "member has completed first full term of service". The applicant requested to extend their contractual obligation by 14 months to meet an overseas assignment to Hawaii, their new obligation was 6 years and 2 months; the applicant completed 5 years, 2 months, and 6 days of their contractual obligation.

i. **Lost Time / Mode of Return:** None

j. **Behavioral Health Condition(s):**

(1) Applicant provided: A Department of Veteran Affairs benefits document the provides the applicant was diagnosed with anxiety, alcohol use disorder, insomnia disorder, and major depressive disorder. Medical records that provides the applicant was admitted for suicidal ideation and enrolled in SUDCC

(2) AMHRR Listed: Adjustment Disorder with Anxiety.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Discharge Review) application, a copy of DD Form 293 online application, a copy of their separation packet, a copy of Army Regulation 40-502, a memorandum/letter they wrote to their congresswoman on 5 October 2020 requesting a congressional inquiry, a copy of their medication list, a timeline of events that happened in their life, a prime for life email, a copy of their physical profile, medical documentation the provides the applicant was admitted into a medical facility for suicidal ideation and enrolled in SUDCC, 3 Department of Veteran Affairs letters that provides the applicant is 100 percent service connected, a Department of Veteran Affairs benefits document the provides the applicant was diagnosed with anxiety, alcohol use disorder, insomnia disorder, and major depressive disorder; the applicant submitted 9 additional enclosures in support of their application that includes photographic images, and screenshots of text messages.

- A self-authored memorandum that provides the applicant received their intent to separate notification on 19 October 2020 and their first SUDCC appointment was scheduled for 28 October 2020
- A self-authored memorandum with Article 31 Rights Warning regulation; applicant provides the were issued an intoxilyzer test without being issued the rights warning procedure/waiver
- A proof of violations packet
- A whistleblower Reprisal Complaint packet
- A micromanagement packet
- A violation of SUDCC appointments packet
- A DA Form 3349 violations packet
- A Proof of disregard of their spouse packet
- Two letter's the applicant received from the Office of The Inspector General that provides they submitted an inquiry which resulted in their application to the Army Discharge Review Board

6. POST SERVICE ACCOMPLISHMENTS: None submitted in support of their 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), dated 25 September 2019, 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 provides the authorized types of characterization of service or description of separation.

(1) 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.

(2) 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.

(3) 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.

(4) 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. 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. A soldier subject to this discharge under this regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so. Paragraph 14-12c, states 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.

(5) 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 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. It provides the ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's missions.

- Alcohol abuse resulting misconduct will not be condoned. On-duty impairment due to alcohol consumption will not be tolerated. Impairment of Soldiers is defined as having a blood alcohol content equal to or greater than .05 grams of alcohol per 100 milliliters of blood.
- Commanders may use unannounced unit inspections and fitness for duty testing for alcohol with no evidentiary DOT-approved alcohol testing devices to:
 - Promote military fitness, good order, and discipline
 - Promote safety
 - Increase awareness of the effects of alcohol consumption on duty performance, health, and safety
 - Deter alcohol abuse
- Military personnel will not be impaired on duty any violation of this provision provides a basis for disciplinary action under the UCMJ and a basis for administrative action, to include characterization of service at separation. Only results from evidentiary tests may be used in support of disciplinary or administrative actions. (Refer to AR 190-5 for guidance related to alcohol testing)

f. Army Regulation 190-5 (Motor vehicle Traffic Supervision) covers motor vehicle traffic supervision. It implements the 0.08 blood alcohol content as the standard for adverse administrative action; adopts the National Highway Traffic Safety Administration technical standards for breathalyzer equipment.

- Implied consent to blood, breath, or urine tests. Persons who drive on the installation shall be deemed to have given their consent to evidential tests for alcohol or other drug content of their blood, breath, or urine when lawfully stopped, apprehended, or cited for any offense allegedly committed while driving or in physical control of a motor vehicle on military installations to determine the influence of intoxicants.
- Army commanders will take appropriate action against intoxicated drivers. A written reprimand, administrative in nature, will be issued to active duty soldiers in the cases described below. Any general officer, and any officer frocked to the grade of brigadier general, may issue this reprimand. These actions may include the following: Driving or being in physical control of a motor vehicle on post when the

BAC is 0.08 percent or higher, irrespective of other charges, or on off post when the BAC is in violation of the law of the State involved.

g. Army Regulation 600-8-2 (Suspension of Favorable Personnel Actions (Flag)) provides the policies, operating rules and steps governing the suspension of favorable personnel actions. A flag is emplaced during some type of disciplinary or administrative action until that action is concluded. The Flag should be initiated within 3 working days after identification of the soldiers'

unfavorable status and removed within 3 working days after determination of the final disposition. Commanders and general office staff will establish necessary internal controls to ensure requirements are met: DA Form 268 is prepared to reflect that favorable personnel actions are suspended; the Flag is input into HR systems without delay.

- Flag code “V” is to be used for alcohol abuse averse actions; the effective date of the Flag is the date of the offense
- Flag code “B” is a nontransferable code used when involuntary separation or discharge is initiated (field)

h. 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 “JKK” as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (drug abuse).

i. 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 waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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.

j. Army Regulation 635-5 (Separation Documents) This regulation prescribes policy and procedural guidance relating to transition management. It consolidates the policies, principles of support, and standards of service regarding processing personnel for transition and explains separation document preparation. It provides the following for Block 18 (Remarks):

(1) Mandatory entry: “The information contained herein is subject to computer matching within the Department of Defense (DOD) or with any other affected Federal or non-Federal agency for verification purposes and to determine eligibility for, and/or continued compliance with, the requirements of a federal benefits program.”

(2) Mandatory entry: “SOLDIER (HAS) OR (HAS NOT) COMPLETED FIRST FULL TERM OF SERVICE.” This information assists the State in determining eligibility for unemployment compensation entitlement. The following guidance will help determine which entry to use:

(a) To determine if an enlisted Soldier has completed the first full term of enlistment, refer to the enlistment contract and any extensions to those initial enlistment documents and compare the term of enlistment to the net service in block 12c of the DD Form 214. If Soldier has completed or exceeded the initial enlistment, enter "HAS." If block 12c of the DD Form 214 is less than the Soldier's commitment, enter "HAS NOT."

(b) Routinely, a Soldier should not be considered to have completed the first full term of service if separation occurs before the end of the initial contracted period of service. However, if a Soldier reenlists before the completion of that period of service, the first term of service is effectively redefined by virtue of the reenlistment contract.

k. Title 38, U.S. Code, sections 1110 and 1131, permits the VA to award compensation for a medical condition which was incurred in or aggravated by active military service. The VA, however, is not required by law to determine medical unfitness for further military service. The VA, in accordance with its own policies and regulations, awards compensation solely on the basis that a medical condition exists and that said medical condition reduces or impairs the social or industrial adaptability of the individual concerned. Consequently, due to the two concepts involved, an individual's medical condition, although not considered medically unfitting for military service at the time of processing for separation, discharge, or retirement, may be sufficient to qualify the individual for VA benefits based on an evaluation by that agency.

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. The applicant's DD-214 provides that the applicant received a General (under honorable conditions) characterization of service, rather than an under other than honorable conditions (UOTCH) discharge, which is normally considered appropriate for a soldier discharged under CH 14 for misconduct.

b. Based on the available evidence the applicant enlisted in the army at the age of 26 as a 31B (military police), they advanced to the rank of sergeant and voluntary extended their contractual obligation by 14 months so they could PCS to Hawaii. The applicant reported to work at 0500 on 13 August 2020 and was observed sitting in their vehicle while it was on smoking a cigarette, it was suspected that they were under the influence. The applicant told their immediate supervisor that they were drunk. The applicant's immediate commander requested an intoxilyzer test which was administered at the Provost Marshall Office; their BAC level was .13. The applicant was counseled and received a non-judicial punishment for reporting to duty intoxicated. The received a General Officer Memorandum of Reprimand for the incident and was processed for administrative separation.

c. A review of the AMHRR provides administrative irregularity occurred in the proper retention of required records; specifically the AMHRR is void of the applicant's acknowledgement of the intent to separate, counsel consult, election of rights and the required medical examination. Notwithstanding the lack of evidence the applicant admitted to leadership that they were drunk and provided a statement to the Major General (who issued their GOMAR) that included a timeline of events which indicated they drank approximately 1500ML of alcohol the night before they reported to work. Applicant provided evidence shows they were issued the intent to separate on 19 October which was 2 months after they reported to work intoxicated.

d. Review of the available evidence provides administrative error in Item 18 (Remarks) of the DD Form 214 which state "member has completed first full term of service" the applicant's initial contract was for 5 years; they extended their contract by 14 months; new obligation became 6 years and 2 months. The applicant completed 5 years, 2 months, and 6 days of their

contractual obligation. They were discharged on 13 November 2020 under the provisions AR 635-200, CH 14-12c for misconduct (serious offense).

e. Chapter 14 establishes policy and prescribes procedures for members being separated for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. 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.

f. 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. 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: the applicant was diagnosed in-service with an Adjustment Disorder. Post-service, the applicant was initially service connected for Adjustment Disorder, currently PTSD. However, the provider explicitly stated applicant did not have PTSD in-service.

(2) Did the condition exist or experience occur during military service? **Yes.** The applicant was diagnosed in-service with an Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that while trauma typically mitigates substance use, this advisor strongly recommends an exception as the exam diagnosing PTSD raises validity concerns and the provider themselves explicitly stated the applicant did not have PTSD in-service.

(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 Adjustment Disorder or PTSD outweighed the medically unmitigated DUI and impaired on duty.

b. Response to Contention(s):

(1) The applicant contends they were never arrested, never processed for DUI or anything else of that nature. The Board considered this contention and found substantiating evidence to the applicant's intoxication in the applicant's file and determined an upgrade was not warranted.

(2) The applicant contends everything was completely fabricated and was a violation of protected communications and an act of reprisal against them. The Board considered this

contention and found no corroborating evidence to support the applicant's assertion. 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. However, the applicant may request a personal appearance hearing to address the issues before the Board. 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 of all the evidence before the Board, the applicant's Adjustment Disorder and PTSD did not excuse or mitigate the offenses of DUI and impaired on duty. 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. The Board concurred with the conclusion of the medical advising official that the applicant's current service-connected PTSD is not mitigating as the VA provider indicated the applicant did not have PTSD in-service that mitigates the misconduct (impaired on duty and DUI).

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as 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.

10. 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:

3/12/2024

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