

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** None**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

a. Applicant's Requests and Issues: The current characterization of service for the period under review is general (under honorable conditions). The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the discharge was inequitable because it was based on one isolated incident, which was out of character, in 36 months of service in the Army, with no other adverse action. The applicant's discharge was unjust and improper. The misconduct would not have occurred if the applicant had received the proper support or treatment the applicant sought from the chain of command. The evidence shows the errors and omissions on the applicant's DD Form 214. The applicant had read numerous articles pertaining to discharges from the Army. If the applicant understood the articles, it would appear it was the Army's policy or procedure to use discharges as the last resort for Soldiers who did not conform. The applicant's record is clean of acts of misconduct. The applicant faced a trial by special court-martial for the applicant's first and only act of misconduct. The applicant, knowing the applicant was not prepared physically or psychologically to deploy to Iraq, went absent without leave (AWOL) only as a last resort, and after the applicant's chain of command ignored the applicant pleas for help. At the time of the discharge, the applicant was not aware of what was wrong. Only recently, when the applicant sought help from Dr. J. H., clinical psychologist, who specialized in treating post-traumatic stress disorder (PTSD). The applicant was diagnosed with PTSD along with a possible traumatic brain injury (TBI) sustained from the applicant's head wound in Iraq. The applicant provided evidence, including a letter from Dr. H., along with a photo of the applicant's head wound. There is a memorandum for record in the applicant's separation packet which indicated the desertion charges were dismissed. The applicant is confused and believes the applicant should not have been court-martialed for the same charges. Counsel and applicant further detail the contentions in legal briefs, declarations, and court documents from related cases.

b. Board Type and Decision: In a records review conducted on 11 July 2024, and by a 5-0 vote, the Board found the applicant, pursuant to an Army Board for Correction of Military Records (ABCMR) decision issued after this application was docketed, has been granted a permanent medical disability retirement effective the original date of discharge. The Board found the current separation was inequitable based on the applicant's PTSD and Major Depressive Disorder (MDD) mitigating the applicant's AWOL basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable. The RE code will not change due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

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: Disability, Permanent / AR 635-40, Chapter 4 / SFJ1 / 4R / General (Under Honorable Conditions)

b. Date of Discharge: 13 March 2008

c. Separation Facts:

(1) Pursuant to Special Court-Martial Empowered to Adjudge a Bad-Conduct Discharge: As announced by Special Court-Martial Order Number 12, 13 April 2007, on 23 October 2006, the applicant was found guilty of The Charge, in violation of Article 85, UCMJ, The Specification: On 16 November 2005, with intent to shirk important service, namely deployment to and service in Iraq, quit the unit and did remain so absent in desertion until on or about 5 June 2006. Plea: Guilty.

(2) Adjudged Sentence: Reduction to E-1; forfeiture of \$849 pay per month for four months; to be confined for four months, and to be discharged from the service with a Bad Conduct discharge.

(3) Date / Sentence Approved: 30 April 2007 / The sentence was approved and, except for the part of the sentence extending to a bad conduct discharge, would be executed.

(4) Appellate Reviews: The Record of Trial was forwarded to The Judge Advocate General of The Army for review by the Court of Military Review. The United States Army Court of Criminal Appeals affirmed the approved findings of guilty and the sentence.

(5) Date Sentence of BCD Ordered Executed: 20 December 2007

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 2 April 2003 / 5 years

b. Age at Enlistment / Education / GT Score: 18 / HS Graduate / 99

c. Highest Grade Achieved / MOS / Total Service: E-3 / 31B10, Military Police / 4 years, 1 month, 14 days / The applicant's AMHRR reflects the applicant was on excess leave for 373 days: 7 March 2007 to 13 March 2008.

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Kuwait and Iraq (1 October 2003 – 31 March 2004)

f. Awards and Decorations: ASR, ICM-BSS, NDSM, GWOTSM

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Special Court-Martial Order Number 12, as described in previous paragraph 3c.

The applicant provided Pre-Deployment Health Assessment, 7 November 2005, reflecting the assessment was for deploying to Iraq. The applicant indicated the applicant was in excellent health and answered "No," to the health questions. The health provider determined the applicant was deployable.

The applicant provided Orders 313-02, 9 November 2005, reflecting the applicant's unit was assigned to U.S. Central Command (CENTCOM) and was directed to proceed to temporary change of station (TCS) from Fort Hood to CENTCOM area of responsibility (AOR) and return to Fort Hood, for deployment in support of Operation Iraqi Freedom (OIR), effective 28 November 2005, for 365 days.

Three Personnel Action forms, reflect the applicant's duty status changed as follows:

From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 16 November 2005;

From AWOL to Dropped From Rolls (DFR), 17 December 2005; and

From DFR to PDY, effective 5 June 2006.

The applicant provided a Military Police Report, 23 January 2006, reflecting the applicant was reported AWOL as of 0630, 16 November 2005 and dropped from rolls as of 0630, 17 December 2005.

The applicant provided Developmental Counseling Form, 9 June 2006, for being AWOL, being dropped from the rolls, and pending a Field Grade Article 15, UCMJ.

Report of Return of Absentee, 16 June 2006, reflects the applicant's absence began on 16 November 2005, and the applicant surrendered to military authorities on 5 June 2006.

The applicant provided a Memorandum for Record, subject: Dismissal of Desertion and AWOL Charges Against [Applicant], 31 August 2006, reflecting Major P. W. dismissed the charges of Article 85, UCMJ, without prejudice, which were preferred on 13 February 2006, against the applicant in the applicant's absence by Captain (CPT) J. J.

Charge Sheet, 11 September 2006, reflects CPT R. C., trial counsel, preferred charges against the applicant for violating Article, 85, UCMJ, for desertion from 16 November 2005 to 5 June 2006.

The applicant provided the court-martial proceedings Stipulation of Fact, 17 October 2006, reflecting the applicant before the Veteran's Day weekend in 2005, received a Red Cross Message, regarding the death of the applicant's grandparent. Instead of being placed on emergency leave, the applicant was allowed a pass for the long weekend to the attend the applicant's grandparent's funeral but did not return when the pass expired.

The applicant provided numerous photographs, one which the applicant described as taken after the applicant had fallen off the tower in Iraq, showing the Soldier with a bloody face, hands, and clothing.

The Army Review Boards Agency Case Tracking System (ACTS) reflects the U. S. Court of Federal Claims, Memorandum Opinion and Order, 2 May 2023, shows the applicant sued the United States Army, to alter the service records to receive retirement benefits for the applicant's disabilities, alleging the applicant developed PTSD and TBI during deployment. The applicant went AWOL to avoid a second deployment to Iraq. The Court concluded the ABCMR's decision on 29 April 2020, finding the applicant was not entitled to DES processing, was arbitrary and capricious.

The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty), reflects the applicant had not completed the first full term of service. The applicant was discharged under

the authority of AR 635-200, Chapter 3, with a narrative reason of "Court-Martial, Other," with a general (under honorable conditions) characterization of service, a separation code of "JJD" and a reentry code of "4." The DD Form 214 was not authenticated with the applicant's electronic signature. The applicant had lost time for the period 16 November 2005 to 5 June 2006 and 23 October 2006 to 30 January 2007.

In September 2023, the ABCMR directed the applicant's records be corrected to reflect the applicant was retired for permanent disability with an 80 percent disability rating effective 13 March 2008, with placement on the Permanent Disability Retired List (PDRL) the following day. The applicant's original discharge orders were revoked and the applicant was issued disability retirement orders. The applicant's DD Form 215 (Correction to DD Form 214), reflects the applicant's DD Form 214 was corrected to read the applicant was retired under the authority of AR 635-40, Chapter 4, with a narrative reason of Disability, Permanent, a separation code of SFJ1, and a reentry code of "4R."

i. Lost Time / Mode of Return: 302 days:

AWOL, 16 November 2005 – 5 June 2006 / Surrendered to Military Authorities
Confined by Military Authorities, 23 October 2006 – 30 January 2007 / Released from
Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: Chronological Record of Medical Care, Mental Status Exam, 30 June 2004, reflects the applicant was seeking help for depression because the applicant could not take military life away from home. The applicant had been absent without leave on two occasions, a total of three days. The applicant requested to be chaptered out of the military. The note states: "Diagnosis: AXIS I: Adjustment D/O. The record was signed by Specialist J. K., Mental Health.

Dr. J. H., private psychologist letter, 21 December 2012, reflecting the applicant was evaluated by the psychologist and the psychologist believed the applicant suffered from PTSD stemming from the experience in the Iraq War, with possible contribution or exacerbation by the experiences at Fort Hood. The psychologist believed the applicant may have sustained some degree of closed-head injury when the applicant fell from the guard tower. The psychologist recommended the applicant receive a neurological evaluation to assess potential damage sustained in the fall and any treatment offered by the VA.

Department of Veterans Affairs (VA) Rating Decision, 20 February 2014, reflecting the VA rated the applicant 50 percent disability for PTSD; 10 percent for tinnitus (claimed for ringing ears). The claim for TBI, face trauma (scar), blurred vision, extreme mood swings, depression, bleeding ulcers, and headaches were denied because of lack of medical evidence.

Psychiatric Evaluation, 17 March 2014, reflecting the applicant's attorney requested the evaluation to determine whether the applicant's PTSD had a role in the applicant going AWOL, which led to the applicant characterization of service. The examiner, Dr. B. L., Assistant Clinical Professor of Psychiatry Law and Psychiatry Division, Yale University, determined the applicant had a debilitating psychiatric illness, at the time of the actions leading to the court-martial, which likely did not allow the applicant full control of the applicant's behavior. Rather than receiving treatment, the applicant received punishments that likely worsened the condition, which remains severe to this day. The applicant suffered from PTSD, MDD, and TBI.

Two Department of Veterans Affairs letters, 12 July 2016 and 29 September 2016, reflecting the VA rated the applicant 70 percent disabled for PTSD and MDD, recurrent (claimed as depression and extreme mood swings), with TBI (claimed as head injury); 50 percent disabled for headaches; 20 percent for gastric ulcers (claimed as bleeding ulcers); 70 percent for TBI; 10 percent for disfigurement of forehead scar; 20 percent for convergence insufficiency with accommodative disorder and photosensitivity (previously characterized as blurred vision); a combined rating of 100 percent.

Review Post-Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire, 29 March 2018, reflecting the applicant had been struggling with symptoms of PTSD, depression, and anxiety since the applicant returned from Iraq in 2004, which severely interfered with the applicant's ability to interact with others socially. The applicant continued to experience difficulties with mood variability, sleep, poor appetite, concentration and focus, and interaction with others. The applicant indicated, leaving briefly because of anxiety symptoms surrounding the impending deployment.

Physical Disability Evaluation System, WestPoint Narrative Summary (NARSUM), 2 April 2018, reflecting the following conditions did not meet medical retention standards: PTSD; generalized anxiety disorder (GAD); major depressive disorder (MDD), recurrent, moderate; mild TBI (mTBI), with residuals of migraine headache and cognitive impairment.

(2) AMHRR Listed: U.S. Army Physical Disability Agency (USAPDA) Revised Physical Evaluation Board (PEB) Proceedings, 11 October 2023, reflects the board found the applicant was physically unfit and recommended a rating of 80 percent and the applicant's disposition be permanent disability retirement. The Army Board for Correction of Military Records (ABCMR) directed 70 percent permanent disability retirement for PTSD, MDD, and GAD; and 40 percent for TBI, resulting in a combined disability rating of 80 percent

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j(1) and (2) above.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 293; Background and Timeline; parent's letter to appellate defense counsel; appellate defense counsel's letter; Dr. J. H's letter; three third party character references / statements; numerous photographs; Coalition Forces Land Component Command U.S. Army Forces Central Command letter; memorandum for record, dismissal of charges; numerous electronic mail messages; federal tax documents; court-martial documents; Enlisted Record Brief; request for excess leave; Military Police one station training graduation letter; Documents from related cases: two Legal Briefs, with all listed exhibits 1 through 42; Administrative Record Index with enclosures 1 through 24; Supplemental Administrative Record Index with enclosures 25 through 37.

6. POST SERVICE ACCOMPLISHMENTS: The applicant was employed for three years, completing courses and training in Magnetic Particle Inspection Review and Magnetic Particle Testing; and training in emergency management through the Federal Emergency Management Agency (FEMA) independent study of the Incident Command System and National Incident Management System.

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. Chapter 61, Title 10, United States Code, (Retirement or Separation for Physical Disability) provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making

authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

(1) Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

(2) The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

(3) The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

d. Section 1201, Title 10, United States Code, (Regulars and Members on Active Duty for more than 30 days: Retirement) provides for the physical disability retirement of a member who has at least 20 years of service or a disability rating of at least 30 percent. Section 1203, Title 10, provides for the physical disability separation of a member who has less than 20 years of service and a disability rating of less than 30 percent.

e. Section 1110, Title 38, United States Code, (General – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

f. Section 1131, Title 38, United States Code, (Peacetime Disability Compensation – Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this

subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

g. 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.

h. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

(1) Paragraph 3-1 states the mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier reasonably may be expected to perform because of their office, grade, rank, or rating. The overall effect of all disabilities present in a Soldier whose physical fitness is under evaluation must be considered. All relevant evidence must be considered in evaluating the fitness of a Soldier. Findings with respect to fitness or unfitness for military service will be made on the basis of the preponderance of the evidence.

(2) Paragraph 3-2 states disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

(3) Paragraph 3-4 states Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(4) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(5) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

(6) Appendix E, effective at the time of discharge, states service of enlisted Soldiers discharged by reason of physical disability normally will be characterized as honorable, or described as uncharacterized for those in entry level status. However, characterization of general (under honorable conditions) is authorized for Soldiers beyond entry level status whose service is satisfactory, but not sufficiently meritorious to warrant honorable characterization.

i. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 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) Paragraph 3-7a states 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) Paragraph 3-7b states 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization.

j. 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 "SFJ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-40, Chapter 4, Disability, Permanent.

k. Army Regulation 635-8 (Separation Processing and Documents), governs 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 Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes). The regulation stipulates no deviation is authorized. The DD Form 214 will not be prepared for Soldiers separated or discharged who have been furnished a prior edition of the DD Form 214 unless that form is in need of reissuance for some other reason. Prepare a DD Form 215 in response to a request for a Soldier or veteran to correct a previously issued DD Form 214. Do not issue a DD Form 215 to correct block 24 (Character of Service); issue a new DD Form 214. On direction of the Army Board for Correction of Military Records (ABCMR) and the Army Discharge Review Board or in other instances when appropriate, the Deputy Assistant Secretary of the Army, Army Review Boards Agency, may issue or reissue DD Form 214 and DD Form 215.

l. 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:

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.

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.

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.

RE-4R Applies to: Person retired for length of service with 15 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.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 4, AR 635-40 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Disability, Permanent," and the separation code is "SFJ." Army Regulation 635-8 stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends the DD Form 214 should be modified to remove all indications the applicant was convicted by court-martial. The applicant's DD Form 214 reflects the applicant was discharged under AR 635-200, Chapter 3, with a narrative reason of Court-Martial (Other), and SPD Code "JJD." The DD Form 214 was amended by DD Form 215, to reflect the applicant retired, with narrative reason "Disability, Permanent." Army Regulation 635-8, authorizes the board to reissue the DD Form 214 when there is a need to reissue the form or when there is a change in characterization of service.

The applicant contends being misdiagnosed with adjustment disorder by an unqualified medical technician, but subsequently diagnosed with service-connected PTSD and TBI, and the conditions affected the applicant's behavior which led to the discharge. The applicant submitted several medical documents reflecting the applicant was diagnosed with adjustment disorder by a SPC/E-4 assigned to Mental Health. The VA rated the applicant 70 percent disabled for PTSD and MDD, recurrent (claimed as depression and extreme mood swings), with TBI (claimed as head injury); 50 percent disabled for headaches; 20 percent for gastric ulcers (claimed as bleeding ulcers); 70 percent for TBI; 10 percent for disfigurement of forehead scar; 20 percent for convergence insufficiency with accommodative disorder and photosensitivity (previously characterized as blurred vision). The applicant provided a third party letters from family members and Soldiers which described the applicant's change in behavior after returning from combat and supported the applicant's contention. The applicant's AMHRR contains U.S. Army Physical Disability Agency (USAPDA) Revised Physical Evaluation Board (PEB) Proceedings, 11 October 2023, which reflects the board found the applicant was physically unfit and recommended a rating of 80 percent and the applicant's disposition be permanent disability retirement. The Army Board for Correction of Military Records (ABCMR) directed 70 percent permanent disability retirement for PTSD, major depressive disorder (MDD), and generalized anxiety disorder (GAD); and 40 percent for TBI.

The applicant contends good service, including a combat tour. The Board considered the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends the charges were dismissed and the applicant should not have been court-martialed for the same charges. The applicant provided a memorandum reflecting the charges were preferred in the applicant's absence and were dismissed, without prejudice, upon the applicant's return to the unit. Subsequently, the trial counsel preferred the same charge against the applicant. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the chain of command failed to acknowledge the signs of the applicant's serious condition and the applicant should have been considered for disability before the discharge. Subsequent to the discharge, the U. S. Court of Federal Claims, concluded the ABCMR's decision on 29 April 2020, finding the applicant was not entitled to DES processing, was arbitrary and capricious.

The applicant contends the severity of the discharge was excessively harsh in light of the totality of the mitigating factors. Army Regulation 635-40, Appendix E, effective at the time of discharge, states service of enlisted Soldiers discharged by reason of physical disability normally will be characterized as honorable. Characterization of general (under honorable conditions) is authorized for Soldiers beyond entry level status whose service is satisfactory, but not sufficiently meritorious to warrant honorable characterization.

The applicant contends being employed for three years, during which the applicant completed various courses and training, including emergency management through the Federal Emergency Management Agency (FEMA). The Army Discharge Review Board is authorized to consider post -service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

The third party statements provided with the application speak highly of the applicant. They all recognize the applicant's good military service and/or good conduct after leaving the Army.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by A.M. Kurta, 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 Disorder, PTSD, TBI, MDD, Generalized Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found evidence that the following BH conditions existed during military service: Adjustment Disorder, PTSD, TBI, MDD, and Generalized Anxiety Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that there is evidence that the following BH conditions existed during military service: Adjustment Disorder, PTSD, TBI, Major Depressive Disorder, and Generalized Anxiety Disorder. Given the nexus between PTSD, Major Depressive Disorder, and avoidance, the applicant's AWOL is mitigated by these conditions.

(4) Does the condition or experience outweigh the discharge? **Yes.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the Board determined that the applicant's PTSD and MDD outweighed the AWOL basis for separation.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention and determined the applicant currently has a permanent medical disability; no further upgrade is available to the applicant.

(2) The applicant contends the DD Form 214 should be modified to remove all indications the applicant was convicted by court-martial. The Board considered this contention and determined the applicant's current DD 214 does not reflect the applicant was convicted by court-martial as the change was granted prior by the ABCMR.

(3) The applicant contends being misdiagnosed with adjustment disorder by an unqualified medical technician, but subsequently diagnosed with service-connected PTSD and TBI, and the conditions affected the applicant's behavior which led to the discharge. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD and MDD fully outweighing the applicant's AWOL basis for separation.

(4) The applicant contends good service, including a combat tour. The Board recognizes and appreciates the applicant's willingness to serve and considered this contention during board proceedings along with the totality of the applicant's service record.

(5) The applicant contends the charges were dismissed and the applicant should not have been court-martialed for the same charges. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD and MDD fully outweighing the applicant's AWOL basis for separation.

(6) The applicant contends the chain of command failed to acknowledge the signs of the applicant's serious condition and the applicant should have been considered for disability before the discharge. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD and MDD fully outweighing the applicant's AWOL basis for separation.

(7) The applicant contends the severity of the discharge was excessively harsh in light of the totality of the mitigating factors. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD and MDD fully outweighing the applicant's AWOL basis for separation.

(8) The applicant contends being employed for three years, during which the applicant completed various courses and training, including emergency management through the Federal Emergency Management Agency (FEMA). The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on the applicant's PTSD and MDD fully outweighing the applicant's AWOL basis for separation.

c. The Board determined an ABCMR decision issued after this application was docketed, has been granted a permanent medical disability retirement effective the original date of discharge. The Board found the current separation was inequitable based on the applicant's PTSD and MDD mitigating the applicant's AWOL basis for separation. Accordingly, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable.

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE**AR20210000415**

The RE code will not change due to applicant's BH diagnosis warranting consideration prior to reentry of military service. The applicant has exhausted their 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 to change the applicant's characterization of service to Honorable because the applicant's PTSD and MDD mitigated the applicant's misconduct of marijuana abuse and AWOL. Thus, the prior characterization is no longer appropriate.

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

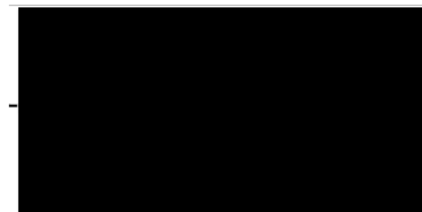
(3) The RE code will not change due to applicant's BH diagnosis warranting consideration prior to reentry of military service.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

1/13/2025

**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
UOTH – Under Other Than
Honorable Conditions
VA – Department of Veterans
Affairs