

1. Applicant's Name: [REDACTED]**a. Application Date:** 26 April 2021**b. Date Received:** 26 April 2021**c. Counsel:** [REDACTED]**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, through counsel, requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the initial diagnosis of adjustment disorder was found to be inaccurate. A private psychologist, Dr. J. R., and neuropsychologist, Dr. B. Y., have concluded the applicant suffers from severe post-traumatic stress disorder (PTSD), moderate to severe traumatic brain injury (TBI), and chronic depression. Performance high-definition brain scans conducted in 2010, indicated the applicant's disabilities based on injuries suffered on active duty, were far more serious than simple adjustment disorder and personality disorder. These factors were not available to the applicant's discharge board in 2008; therefore, the applicant requests the new medical evidence be considered in adjudication of the applicant's request for an upgrade of the character of the discharge. The applicant's first period of enlistment was both honorable and distinguished, and the applicant was awarded the Army Commendation Medal. It was not until after the applicant's TBI the applicant developed symptoms, which resulted in the applicant's discharge from the Army. The applicant's psychiatric evaluation strongly indicates the applicant's disability began with the TBI, and the applicant's character of service was also adversely affected by the same injury. Counsel and the applicant further detail the contentions in the 200-page Power Point presentation submitted with the application, and the applicant's self-authored statement.

b. Board Type and Decision: In a records review conducted on 31 October 2024, and by a 5-0 vote, the Board determined the discharge is inequitable based on the applicant's Adjustment Disorder, Depression, Dysthymic Disorder, Anxiety, Traumatic Brain Injury, and self-asserted Post Traumatic Stress Disorder outweighing the applicant's offenses of insubordinate conduct, disrespect, failure to obey an order, and failing to pay debts. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it. *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: Pattern of Misconduct / AR 635-200, Paragraph 14-12b / JKA / RE-4 / General (Under Honorable Conditions)

b. Date of Discharge: 8 January 2008

c. Separation Facts:

(1) Date of Notification of Intent to Separate: Undated (Acknowledgment portion) / The Notification of Separation, with the attached Acknowledgment, reflects 30 July and 21 August 2007.

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

The applicant had insubordinate conduct towards a Warrant Officer, noncommissioned officer (NCO), or Petty Officer;

The applicant committed assault consummated by battery;

The applicant failed to report on numerous occasions;

The applicant failed to pay just debts;

The applicant failed to obey order or regulation;

The applicant was drunk on duty;

The applicant was driving drunk in a reckless operation of a vehicle; and

The applicant was disrespectful towards a superior commissioned officer.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 5 September 2007

(5) Administrative Separation Board: On 5 September 2007, the applicant requested consideration of the case before an administrative separation board.

On 9 October 2007, the applicant was notified to appear before an administrative separation board and advised of rights.

The administrative separation board convened, and the board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

On 28 December 2007, the separation authority approved the findings and recommendations of the administrative separation board.

(6) Separation Decision Date / Characterization: 28 December 2007 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 24 October 2006 / 6 years

b. Age at Enlistment / Education / GT Score: 23 / HS Graduate /103

c. Highest Grade Achieved / MOS / Total Service: E-4 / 13R10, Field Artillery Fire Finder Radar Operator / 3 years, 1 month, 16 days

- d. Prior Service / Characterizations:** RA, 23 November 2004 – 23 October 2006 / HD
- e. Overseas Service / Combat Service:** SWA / Iraq (2 December 2005 – 28 October 2006)
- f. Awards and Decorations:** ARCOM, NDSM, GWOTSM, ICM, ASR, OSR
- g. Performance Ratings:** NA
- h. Disciplinary Action(s) / Evidentiary Record:** Criminal Investigation Division Report (CID) of Investigation – Final/SSI, 22 February 2007, reflects an investigation established probable cause to believe the applicant committed the offense of Indecent Acts or Liberties with a Child when the applicant touched [redacted] breast on 22 October 2005. The applicant was interviewed and admitted to the offense. The incident was reported on 29 November 2006.

Field Grade Article 15, 4 April 2007, for:

The applicant, with intent to deceive, made to Staff Sergeant (SSG), R. S., and Sergeant First Class (SFC) B. C., a false official statement, to wit: The applicant's privately owned vehicle was at the dealership, and they had not fixed the car and had made it worse (13 December 2006);

The applicant, with intent to deceive, made to SSG J. N., a false official statement, to wit: "My girlfriend is 18 years old" (16 January 2007);

The applicant committed an indecent act upon S. C., a person not the spouse, by rubbing S. C.'s right breast with the left hand, with intent to gratify the applicant's sexual desires (22 October 2005);

The applicant, without proper authority, willfully damaged the barracks room door of Specialist (SPC) E., by prying it open, military property (6 February 2007); and

The applicant wrongfully appropriated a Class A Uniform, of a value of over \$100, the property of SPC E., (6 February 2007).

The punishment consisted of a reduction to E-1; forfeiture of \$650 pay per month for two months; and extra duty and restriction for 14 days.

Company Grade Article 15, 16 May 2007, for failing to go at the time prescribed to the appointed place of duty (30 April 2007); and on two occasions breaking restriction (15 April and 29 April 2007). The punishment consisted of a forfeiture of \$303 pay and extra duty and restriction for 14 days.

Request for Mental Health Evaluation, 20 June 2007, reflects the commander requested the evaluation because the applicant was pending a Chapter 14. The applicant constantly was lying and having discipline problems. The applicant had been seeing a psychiatrist at Evans Hospital for several months.

Memorandum for Record, subject: Commander's Performance Statement for [Applicant], 20 December 2007, reflects the commander described the applicant's performance while in Iraq as marginal, weak, and poor. The commander indicated, after deployment, the applicant

received a Field Grade Article 15 for child molestation, along with other misconduct. The command sent the applicant to Behavioral Health to rule out any mental health issues.

Commander's Report, 1 August 2007, paragraph 1v states "Other information which may be considered pertinent: None." Paragraph 1w is missing from the report.

Report of Mental Status Evaluation, 13 September 2007, reflects the applicant was cleared for any administrative separation. The applicant could understand and participate in administrative proceedings; was mental responsible; and met medical retention requirements.

Memorandum, subject: Legal Review of Administrative Separation Board [Applicant], 14 November 2007, reflects the Office of the Staff Judge Advocate, Fort Carson, Administrative Law Attorney, found the administrative separation board proceedings were conducted in accordance with applicable laws and regulations (specifically, AR 635-200, section two: proper notice, proper recording of the proceedings, proper composition, etc.). The evidence was sufficient to support the findings of the Board and the recommendations were consistent with the findings.

Findings and Recommendations, undated, reflects in the administrative separation board proceedings, the board unanimously found there was sufficient evidence to support the basis for separation. The board recommended the applicant be discharged with an under other than honorable conditions.

Numerous Developmental Counseling Forms, for breaking restriction; lying to an NCO; late for duty and/or formation on numerous occasions; insubordinate conduct towards NCO; failing to obey order or regulation; destruction of government; larceny and wrongful appropriation; burglary; and being recommended for separation under AR 635-200, a Pattern of Misconduct.

The applicant provided Riley and Associates, INC, polygraph report, 30 January 2014, reflecting the report indicated probable no deception when answering "No," to the question "Did you ever touch [C.'s child] for sexual arousal?" and "Yes," to the question, "Did SSG [S.] put a knife close to your body?"

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Chronological Record of Medical Care, from 27 January 2005 to 20 June 2007, reflecting the applicant was diagnosed with, listed as problems: Adjustment disorder, with depressed mood and disturbance of emotions and conduct; dysthymic disorder (depressive neurosis); personality disorder; depression; occupational problem; and homicidal ideation. The applicant was prescribed Fluoxetine (Prozac – antidepressant) and Zolpidem Tartrate (sedative-hypnotic medicine).

Report of Medical History, 28 June 2007, reflecting the examining medical physician noted the comments section: Severe headaches; loss of consciousness after slip on ice, head trauma; and being treated for depression and anxiety.

(2) AMHRR Listed: Report of Medical History as described in previous paragraph 4j(1).

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; Two DD Forms 293, with all listed exhibits 1 through 10; Counsel's Power Point Slide Presentation (200 pages), with all listed exhibits 1 through 10; separation documents; and congressional documents.

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 15-6 (Procedures for Investigating Officers and Boards of Officers), in effect at the time, established procedures for investigations and boards of officers not specifically authorized by any other directive. This regulation applied to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. Paragraph 3-14, provides for formal investigations, if a verbatim record of the proceedings was directed, the transcript of those proceedings, with a completed DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers) as an enclosure, and other enclosures and exhibits will constitute the report. In other formal boards, a completed DA Form 1574, with enclosures and exhibits, will constitute the report.

d. 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.

e. Army Regulation 600-20 (Army Command Policy), prescribes the policies and responsibilities of command, which include the Army Ready and Resilient Campaign Plan, military discipline and conduct, the Army Military Equal Opportunity (MEO) Program, the Army Harassment Prevention and Response Program, and the Army Sexual Harassment/Assault Response and Prevention (SHARP) Program. Paragraph 1-6c provides Characteristics of command leadership. The commander is responsible for all aspects of unit readiness. Commanders and other leaders will treat their subordinates with dignity and respect at all times and establish a command and organizational climate that emphasizes the duty of others to act in a similar manner toward their subordinates in accomplishing the unit mission.

f. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), provides the basic authority for the separation of enlisted personnel.

(1) Chapter 1, entitled general provisions, prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

(2) Paragraph 1-17b (previously 1-16b), entitled counseling, provides when a Soldier's conduct or performance becomes unacceptable, the commander will ensure that a responsible official formally notifies the Soldier of his or her deficiencies. At least one formal counseling session is required before separation proceedings may be initiated for separation for a pattern of misconduct. Each counseling session must be recorded in writing. DA Form 4856 (Developmental Counseling Form) will be used for this purpose.

(3) Paragraph 1-17c (previously 1-16c), entitled rehabilitation, provides except as provided in paragraph 1-17d, prior to initiating separation proceedings for patterns of misconduct, Soldiers not in training status will be locally reassigned at least once, with a minimum of 3 months of duty in each unit. Reassignment should be between battalion-sized

units or between brigade-sized or larger units when considered necessary by the local commander.

(4) Paragraph 1-17d (previously 1-16d), entitled waivers, provides waiver of the counseling requirement is not authorized. The rehabilitative transfer requirement may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier.

(5) Chapter 2, in effect at the time, provides procedures for separation.

(6) Paragraph 2-10g states except as modified per this regulation, the board will conform to the provisions of Army Regulation 15-6, applicable to formal proceedings with respondents. The proceedings of the board will be summarize as fairly and accurately as possible. They will contain a verbatim record of the findings and recommendations.

(7) Paragraph 2-12a provides the board will determine whether each allegation in the notice of proposed separation is supported by a preponderance of the evidence. The board will then determine whether the findings warrant separation. If more than one basis for separation was contained in the notice, there will be a separate determination for each basis.

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

(9) 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.

(10) 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.

(11) 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.

(12) Paragraph 14-2c, prescribes Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

(13) 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.

(14) Paragraph 14-12b, addresses a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the Uniform Code of Military Justice, Army Regulations, the civilian law and time-honored customs and traditions of the Army.

(15) Paragraph 14-15, Commanding Officer's Report, states when the immediate commander determines that separation for acts or patterns of misconduct is in the best interest of the Service, he/she will report the fact in memorandum form (see fig 2-5) to the separation authority specified in paragraph 1-19 through the intermediate commander.

(16) Figure 2-5, paragraph 1v states, "Where derogatory information has been revealed, make note of any evidence of rehabilitation." Paragraph 1w states, "Make note of any medical or other data meriting consideration in the overall evaluation to separate the Soldier and in the determination as to the appropriate characterization of service."

g. 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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, pattern of misconduct.

h. 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. Delete if NA.

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. Delete if NA.

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.

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 to be changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12b, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Pattern of Misconduct," and the separation code is "JKA." Army Regulation 635-8 (Separation Processing and Documents), governs preparation of the DD Form 214, and dictates entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be exactly as listed in tables 2-2 or 2-3 of AR 635-5-1 (Separation Program Designator (SPD) Codes). The

regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends the applicant suffered from TBI, PTSD, and other mental health issues, and the adjustment disorder diagnosis was inaccurate. The applicant provided a third party letter from the applicant's parent, which described the applicant's change in behavior after returning from combat to support the contention. The applicant provided medical documents reflecting the applicant was diagnosed with adjustment disorder, with depressed mood and disturbance of emotions and conduct; dysthymic disorder (depressive neurosis); personality disorder; depression; occupational problem; and homicidal ideation. The applicant provided a Report of Medical History, 28 June 2007, reflecting the examining medical physician indicated severe headaches; loss of consciousness, head trauma; and the applicant was being treated for depression and anxiety. The applicant provided a Report of Mental Status Evaluation (MSE), 13 September 2007, reflecting the applicant was mentally responsible. The MSE did not indicate a diagnosis. The applicant's AMHRR contains the applicant's Report of Medical History and Report of Mental Status Evaluation, which were considered by the separation authority.

The applicant contends the discharge was based on the applicant's MOS being a critical MOS for deployment and a possible lengthy medical review board process. The applicant provided a third-party statement from the senior enlisted advisor, at the time; various articles / literature; and reports regarding Fort Carson and Soldiers with mental health issues. The applicant's AMHRR is void of any evidence to show applicant was pending an medical evaluation board.

The applicant contends the allegations, upon which the proposed separation action was based, were false and not factual matters of record, and various documents in the record were false, prejudicial to the applicant, and non compliant with Army Regulation 635-200. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the Commander's Report failed to properly include the required information in Figure 2-5, paragraphs 1v and 1w, missing the opportunity to provide evidence in mitigation; and did not describe any rehabilitation attempts; nor if the rehabilitation requirements had been waived. Army Regulation 635-200 states when the immediate commander determines that separation for acts or patterns of misconduct is in the best interest of the Service, the commander will report the fact to the separation authority, through the intermediate commander. The Commander's Report is void of the information in paragraphs 1v and 1w, as shown in the Figure 2-5. Army Regulation 635-200, paragraph 1-17d, entitled counseling and rehabilitative requirements, states the separation authority may waive the rehabilitative transfer requirements in circumstances where common sense and sound judgment indicate such a transfer will serve no useful purpose or produce a quality Soldier. The applicant's AMHRR reflects the rehabilitation attempts made by the unit were described in a separate memorandum to the separation authority. The applicant was transferred from the deployed unit to the rear detachment unit to complete separation processing. The separation authority's memorandum is void of any information regarding a waiver of rehabilitative transfer requirement.

The applicant contends the command showed a lack of empathy and was not in compliance with Army Regulation 600-20, Army Command Policy. Army Regulation 600-200, paragraph 1-6c, states commanders and other leaders will treat their subordinates with dignity and respect at all times and establish a command and organizational climate that emphasizes the duty of others to act in a similar manner toward their subordinates in accomplishing the unit mission. The applicant's AMHRR reflects the commander indicated, after the deployment, the command referred the applicant to Behavioral Health for evaluation and the commander was aware the applicant was being treated by Behavioral Health. The command attempted to assist

the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment.

The applicant contends the command imposed unlawful punishments under Article 15, Uniform Code of Military Justice (UCMJ), which were not in compliance with law and regulatory guidance. The applicant provided a polygraph test which indicated probable non deception regarding the sexual offense involving a child. The applicant's AMHRR reflects the applicant was punished under Article 15, UCMJ, on two occasions, and on both occasions the applicant was provided the opportunity to consult with counsel. The applicant accepted both Article 15s. Army Regulation 635-200, paragraph 14-2c, prescribes commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.

The applicant contends the administrative separation board did not separately determine each allegation was supported by a preponderance of the evidence or each basis for separation warranted separation; therefore, the board's actions were arbitrary and capricious and did not comply with Army Regulation 635-200. Army Regulation 635-200, provides the board will determine whether each allegation in the notice of proposed separation is supported by a preponderance of the evidence. The board will then determine whether the findings warrant separation. If more than one basis for separation was contained in the notice, there will be a separate determination for each basis. Except as modified per this regulation, the board will conform to the provisions of Army Regulation 15-6, applicable to formal proceedings with respondents. Army Regulation 15-6, paragraph 3-14, in effect at the time, provides in formal boards, a completed DA Form 1574, with enclosures and exhibits, will constitute the report. The applicant's AMHRR is void of the complete administrative separation board report, which would include a required summarized testimony and a DA Form 1574.

The applicant contends harassment by members of the unit, including an NCO assaulting and pulling a knife on the applicant in Iraq. The applicant provided third party statements from the applicant's parent and the senior enlisted advisor for the unit, at the time of service, to support the contention of harassment by the NCOs in the unit. The applicant provided a polygraph test which indicated probable non deception regarding an NCO assaulting the applicant. There is no evidence in the AMHRR the applicant sought assistance or reported the harassment.

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 requests a reentry eligibility (RE) code change. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 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.

The applicant contends their rank should be restored to Specialist; the applicant should receive back pay from the separation date; and the reenlistment bonus should be restored. The applicant's requests do not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

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 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, Depression, Dysthymic Disorder, Anxiety, TBI. Additionally, the applicant asserts PTSD, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board found that the applicant was diagnosed in service with an Adjustment Disorder, Depression, Dysthymic Disorder, Anxiety, and TBI. The applicant is also service connected by the VA for Unspecified Mood Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board determined, based on the BMA's opine, that the applicant's behavioral health conditions partially mitigate the discharge. Given the nexus between Depression, Dysthymic Disorder, Anxiety, Unspecified Mood Disorder, avoidance, and self-medicating with substances, the FTRs, drunk on duty, and disrespect are mitigated. While not known in service, the VA has documented that the applicant has a Cognitive Disorder characterized by low intellect and memory difficulties, as well as Autism Spectrum Disorder which impacts understanding of social information and interpersonal effectiveness. There is evidence in the active duty medical record that the applicant exhibited the symptoms associated with these conditions during service. Therefore, it is likely that these developmental conditions contributed to the applicant's insubordinate conduct, disrespect, failure to obey an order, and failing to pay debts. However, none of the applicant's BH conditions have a natural sequela with assault, so this misconduct is not mitigated. Finally, the applicant self-asserts PTSD and while diagnosed post-service by the VA, there is no evidence that the applicant's PTSD existed during military service. Furthermore, PTSD does not provide mitigation for assault, which is the only remaining unmitigated misconduct.

(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 Adjustment Disorder, Depression, Dysthymic Disorder, Anxiety, Traumatic Brain Injury, and self-asserted Post Traumatic Stress Disorder outweighed the applicant's offenses of insubordinate conduct, disrespect, failure to obey an order, and failing to pay debts. The Board determined that the applicant's assault offense did not rise to a level to negate meritorious service due to the lack of evidence to substantiate its occurrence.

b. Response to Contention(s):

(1) The applicant contends the applicant suffered from TBI, PTSD, and other mental health issues, and the adjustment disorder diagnosis was inaccurate. The Board liberally considered this contention and determined that the applicant's Adjustment Disorder, Depression, Dysthymic Disorder, Anxiety, Traumatic Brain Injury, and self-asserted Post Traumatic Stress Disorder outweighed the applicant's offenses of insubordinate conduct, disrespect, failure to obey an order, and failing to pay debts. The Board determined that the applicant's assault offense did not rise to a level to negate meritorious service due to the lack of evidence to substantiate its occurrence. Therefore, a discharge upgrade is warranted.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention during proceedings, but ultimately did not address the

contention due to an upgrade being granted based on medical mitigation of the applicant's misconduct.

(3) The applicant contends the discharge was based on the applicant's MOS being a critical MOS for deployment and a possible lengthy medical review board process. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on medical mitigation of the applicant's misconduct.

(4) The applicant contends the allegations, upon which the proposed separation action was based, were false and not factual matters of record, and various documents in the record were false, prejudicial to the applicant, and non-compliant with Army Regulation 635-200. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on medical mitigation of the applicant's misconduct.

(5) The applicant contends the Commander's Report failed to properly include the required information in Figure 2-5, paragraphs 1v and 1w, missing the opportunity to provide evidence in mitigation; and did not describe any rehabilitation attempts; nor if the rehabilitation requirements had been waived. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on medical mitigation of the applicant's misconduct.

(6) The applicant contends the command showed a lack of empathy and was not in compliance with Army Regulation 600-20, Army Command Policy. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on medical mitigation of the applicant's misconduct.

(7) The applicant contends the command imposed unlawful punishments under Article 15, UCMJ, which were not in compliance with law and regulatory guidance. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on medical mitigation of the applicant's misconduct.

(8) The applicant contends the administrative separation board did not separately determine each allegation was supported by a preponderance of the evidence or each basis for separation warranted separation; therefore, the board's actions were arbitrary and capricious and did not comply with Army Regulation 635-200. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on medical mitigation of the applicant's misconduct.

(9) The applicant contends harassment by members of the unit, including an NCO assaulting and pulling a knife on the applicant in Iraq. The Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on medical mitigation of the applicant's misconduct.

(10) 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 Board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on medical mitigation of the applicant's misconduct.

(11) The applicant requests a reentry eligibility (RE) code change. The Board considered this contention but determined that applicant's RE-4 is proper and equitable given the applicant's diagnosed behavioral health conditions.

(12) The applicant contends their rank should be restored to Specialist; the applicant should receive back pay from the separation date; and the reenlistment bonus should be restored. The Board determined that the applicant's requests for restoration of rank, back pay, and restoration of a bonus payment do not fall within the purview of the ADRB. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using a DD Form 293 regarding this matter. A DD Form 293 may be obtained online at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd0293.pdf> or from a Veterans' Service Organization.

c. The Board determined the discharge is inequitable based on the applicant's Adjustment Disorder, Depression, Dysthymic Disorder, Anxiety, Traumatic Brain Injury, and self-asserted Post Traumatic Stress Disorder outweighing the applicant's offenses of insubordinate conduct, disrespect, failure to obey an order, and failing to pay debts. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed to the separation authority to AR 635-200, paragraph 14-12a, the narrative reason for separation to Misconduct (Minor Infractions), with a corresponding separation code of JKN. The Board determined the reentry code is proper and equitable and voted not to change it.

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's Adjustment Disorder, Depression, Dysthymic Disorder, Anxiety, Traumatic Brain Injury, and self-asserted Post Traumatic Stress Disorder outweighed the applicant's offenses of insubordinate conduct, disrespect, failure to obey an order, and failing to pay debts. The Board determined that the applicant's assault offense did not rise to a level to negate meritorious service due to the lack of evidence to substantiate its occurrence. Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the reason for discharge to Misconduct (Minor Infractions) under the same pretexts, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JKN.

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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

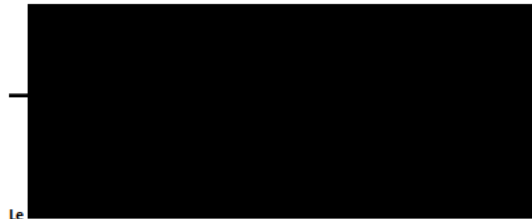
AR20210000506

10. BOARD ACTION DIRECTED:

- a. Issue a New DD-214: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD Code to: Misconduct (Minor Infractions)/JKN
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200

Authenticating Official:

1/21/2025



Le

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