

1. Applicant's Name:

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** Yes

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, suffering from numerous unfitting medical conditions before their separation from service. These conditions were never properly evaluated and accordingly never referred into the Disability Evaluation System (DES). These conditions, including chronic post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), anxiety disorder, and adjustment disorder, were serious enough to cause the applicant to be rated at 100 percent disabled by the Department of Veterans Affairs (VA). The applicant's unfortunate administrative separation, which occurred after 12 years of honorable active duty service, was caused by manifestations of their service-connected diagnoses. Pursuant to the Hagel Memo and the Settlement Agreement reached in *Kennedy v. McCarthy*, this must be considered and given liberal consideration. Before these diagnoses, the applicant was a stellar Soldier, having been awarded multiple awards and decorations, including the Combat Action Badge. The behavior leading to the discharge was beyond the applicant's control. The applicant continues to suffer from these service-connected conditions. The applicant petitioned the Army Discharge Review Board, which denied relief; however, on 17 August 2021, the Army Review Boards Agency wrote the applicant a letter indicating the applicant was eligible for a discharge upgrade based on the settlement agreement in *Kennedy v. McCarthy*. Considering the seriousness of the applicant's conditions, and the fact the diagnoses were never referred to the disability evaluation system (DES) or treated while the applicant was on active duty, the applicant suffered an injustice. Based on past medical records and the applicant's current condition, it is clear the applicant would have been medically retired from service had their conditions been properly evaluated and referred. By not doing this, the applicant was set up for failure and separated without a retirement and with a less than an honorable discharge. Counsel and the applicant further detail the contentions in the Legal Brief and self-authored statement submitted with the application, respectively.

b. Board Type and Decision: In a records review conducted on 19 November 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Board Discussion and Determination 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-3 / General (Under Honorable Conditions)

b. Date of Discharge: 28 November 2007

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 30 August 2007

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant's conduct on and off duty was entirely incompatible with military service. The applicant's complete lack of maturity and failure to perform as a productive member of the Army could no longer be tolerated. Required rehabilitative efforts were made. There was a lack of potential for continued Army service and rehabilitation efforts were no longer practical. The applicant had three domestic violence offenses and other counseling:

On 4 September 2006, the applicant was charged with domestic violence, minor injuries, 4th degree assault, and on 9 November 2006, the charge was dismissed.

On 19 January 2007, the applicant was charged with domestic violence, minor injuries, 4th degree assault, and the charge was dismissed. The applicant received a Military Protective Order and two Emergency Orders Of Protection and Summons.

On 25 March 2007, the applicant was charged with domestic violence, minor injuries, 4th degree assault. On 25 July 2007, the applicant was found guilty and sentenced to 10 days civilian confinement beginning 1 August 2007.

On 22 August 2006, the applicant was absent from their place of duty.

On 24 August 2006, the applicant missed first formation, and on 12 September 2006, received a Summarized Article 15.

On 25 March 2007, the applicant disobeyed Captain (CPT) P.'s no contact order and on 3 April 2007, received a Field Grade Article 15.

On 25 March 2007, the applicant was absent from their place of duty because of civilian confinement.

(3) Recommended Characterization: Under Other Than Honorable Conditions / The brigade commander recommended general (under honorable conditions).

(4) Legal Consultation Date: 21 September 2007

(5) Administrative Separation Board: On 21 September 2007, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than general (under honorable conditions) discharge.

(6) Separation Decision Date / Characterization: 31 October 2007 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 6 April 2005 / 5 years

b. Age at Enlistment / Education / GT Score: 34 / HS Graduate / 107

c. Highest Grade Achieved / MOS / Total Service: E-6 / 19D30, Calvary Scout / 12 years, 6 months, 3 days.

d. Prior Service / Characterizations: RA, 14 May 1995 – 30 October 1997 / HD
RA, 31 October 1997 – 26 February 2002 / HD
RA, 27 February 2002 – 5 April 2005 / HD

e. Overseas Service / Combat Service: Germany, Kosovo, SWA / Iraq (16 March 2004 – 21 February 2005)

f. Awards and Decorations: ARCOM-4, AAM, JMUA, VUA, AGCM-2, NDSM, GWOTEM, GWOTSM, KCM, AFSM, NCOPDR-2, ASR, OSR-4, CAB

g. Performance Ratings: February 2005 – May 2005 / Fully Capable
June 2005 – November 2005 / Among the Best
1 December 2005 – 30 November 2006 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record: Military Police Report, 6 September 2006, reflects the applicant was apprehended by civilian authorities for: assault in the 4th degree, domestic violence (off post). Investigation reveals on 3 September 2006, the applicant and B. were involved in a verbal altercation that turned physical when the applicant threw B. to the ground and pulled B.'s hair. B. sustained scrapes on the left arm and B's hair was pulled out. The applicant was detained and released on \$500 cash bond.

Summarized Article 15, 12 September 2006, for failing to go at the time prescribed to the appointed place of duty (x2) (24 August and 7 September 2006). The punishment consisted of extra duty for 14 days.

Case History Commonwealth court document, 7 December 2006, reflects the applicant was charged with assault 4th degree domestic violence minor injury on 3 September 2006. On 9 November 2006, the charge was dismissed because the witness failed to appear on the trial date and the commonwealth was unable to go forward.

Emergency Order of Protection and Summons, 22 January 2007, reflects S. B., A. C., and J. B. were granted protection against the applicant, effective until the scheduled hearing on 5 February 2007.

Military Protective Order, 22 January 2007, the commander issued the protective order to the applicant because the applicant was arrested for domestic assault 4th degree and the past history with the victim.

Military Police Report (Blotter), 24 January 2007, reflects the applicant was apprehended by civilian authorities for: assault 4th degree, domestic violence with minor injury. Investigation revealed on 19 January 2007, the applicant and S. B. became involved in a verbal altercation which turned physical when the applicant struck S. B. in the face and left shoulder with a closed hand. S. B. sustained a bloody nose, swollen upper lip, swollen left arm, and complained of back pain, but declined medical treatment.

Ireland Army Community Hospital Social Work Service memorandums, 14 February 2007, and 17 October 2006, reflects the applicant was pending investigation by the Fort Knox Review Committee (CRC) for a report of alleged spouse physical abuse involving S. B. The CRC and unit commander or commander's representative determined mild spouse physical abuse was substantiated as S.B. was a victim and the applicant as the offender.

Memorandum, 8 March 2007, reflects the commander referred the applicant for a mental health evaluation to determine whether the applicant should be retained on active duty because of the applicant's behavior and/or verbal expressions; two domestic assault charges; evasive answers to simple questions; being enrolled in the Army Substance Abuse Program on three occasions; and prior incidents in Germany where assault and alcohol were involved.

CourtNet Criminal History Record, Not an Official Court Record, 25 March 2007, reflects on 9 November 2006, the charge of assault 4th degree domestic violence minor injury, 3 September 2006, was dismissed because the witness failed to appear on the trial date and the commonwealth was unable to go forward. On 12 March 2007, the applicant was found guilty of the charge of assault 4th degree domestic violence minor injury, 19 January 2007. The applicant was sentenced to jail for 120 days (suspended); probation for 2 years; and no contact with S. B.

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

From Present for Duty (PDY) to Confined by Civil Authorities (CCA), effective 25 March 2007;

From CCA to PDY, effective 26 March 2007;

From PDY to CCA, effective 1 August 2007

From CCA to PDY, effective 11 August 2007 / The applicant sentenced to 10 days civilian confinement for domestic violence, third offense.

Military Police Report, 27 March 2007, reflects on 25 March 2007, the applicant was apprehended for: assault in the 4th degree, domestic violence with minor injury; and child abuse, civilian victim (off post). Investigation revealed the applicant was involved in a physical altercation when the applicant choked J. B. and J. B. sustained red marks on the neck. A police officer observed the applicant leaving the scene. The applicant was apprehended at the Fort Knox gate. The assault was witnessed by S. B.

Field Grade Article 15, 3 April 2007, for willfully disobeying a lawful command from Captain M. P., a commissioned officer, to have no contact with S. B. (25 March 2007); and without authority being absent from the place of duty (25 March 2007). The punishment consisted of a reduction to E-5; forfeiture of \$1275 pay per month for two months (suspended); and extra duty and restriction for 45 days.

Headquarters, U.S. Army Medical Department Activity memorandum, 4 April 2007, reflects the ASAP licensed clinical social worker recommended the applicant be separated from military service because the applicant had five previous ASAP referrals and three previous enrollments; the applicant denied of ASAP enrollment; refused to follow recommendation; was non-compliant with recommended treatment; lack of follow through for assessment, and continued intension of drinking. The applicant was considered a high risk to resume use of intoxicants based on the lengthy history of alcohol-related problems.

Report of Mental Status Evaluation, 4 June 2007, reflects the applicant was cleared for Chapter 14 proceedings. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements.

Harden Commonwealth Probation Revocation Hearing, 25 July 2007, reflects the applicant was sentenced to jail for 10 days because for probation violation of (illegible).

Memorandum, 24 October 2007, reflects the adjutant recommended the separation authority approve the separation action as recommended by the brigade commander, discharge with a general (under honorable conditions). The adjutant indicated the separation authority had two options: a) Approve the recommendation by the brigade commander and direct a General (Under Honorable Conditions) or b) Disapprove the recommendation by the brigade commander and notify the applicant of their entitlement to a separation board. Coordination was made with a judge advocate from Military Law and Ethics and Lieutenant Colonel B., and both indicated there was no legal objection.

Army Substance Abuse Program (ASAP) Enrollment form, date unavailable, reflects the applicant was referred in the ASAP because of investigation / apprehension, and the applicant had been drinking when the incident occurred. The applicant's AMHRR is void of the second page of the form.

Numerous Developmental Counseling Forms, for requesting emergency leave because of the death of a sibling; domestic abuse; being at high risk because of death of family member, involvement with the law, recent divorce; and past serious encounters with the chain of command; leaving the appointed place of duty; being recommended for Field Grade Article 15 for disobeying the no contact order; missing formation; pending separation under Chapter 14-12b for two arrests for domestic assault and being uncooperative in the Army Substance Abuse program.

i. Lost Time / Mode of Return: 12 days:

CCA, 25 March 2007 – 26 March 2007 / Released from Confinement

CCA, 2 August 2007 – 11 August 2007 / Released from Confinement

j. Behavioral Health Condition(s):

(1) Applicant provided: Department of Veterans Affairs Summarization of Episode Note, 15 September 2014, reflecting the applicant's problems, in pertinent part, as: Personal history of traumatic brain injury (TBI); agoraphobia with panic attacks; short-term memory, sleep pattern disturbance; nocturnal enuresis; depressive disorder; anxiety state; mood disorder in conditions classified elsewhere; urinary incontinence; and alcohol abuse, episodic.

Department of Veterans Affairs Rating Decision, 31 May 2018, reflecting the VA rated the applicant 100 percent disabled for PTSD, previously rated at 70 percent disabling, but the condition had progressed.

(2) AMHRR Listed: None

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: Certificate of Release or Discharge from Active Duty; Application for the Review of Discharge; Legal Brief with all listed exhibits 1 through 10; self-authored statement; VA medical records; Power of Attorney; military awards; training certificates; five NCO Evaluations; Enlisted Record Brief; promotion certificate; family court documents; separation documents; Army Review Boards Agency letter; and Hagel memorandum.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is a loving parent and spouse, has raised two members of the extended family, and has been a law-abiding citizen.

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

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

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

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

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

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

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

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

(1) Paragraph 1-17b(1), in effect at the time, provides no Soldier will be considered for administrative separation under Chapter 14, because of conduct that has been the subject of judicial proceedings resulting in an acquittal or action having the effect thereof. Only Headquarters, Department of the Army (HQDA) will decide that an action does not have the effect of an acquittal. The convening authority must submit a request for such a determination through command channels to HQDA.

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

(3) Paragraph 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "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.

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

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 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 suffering from chronic PTSD, TBI, depression, anxiety disorder, and adjustment disorder; the conditions and a tumultuous relationship led to the discharge; and the VA rated the applicant 100 percent disabled. The applicant provided medical documents reflecting the applicant's problems, in pertinent part, as: Personal history of traumatic brain injury (TBI); agoraphobia with panic attacks; short-term memory, sleep pattern disturbance; nocturnal enuresis; depressive disorder; anxiety state; mood disorder in conditions classified elsewhere; urinary incontinence; and alcohol abuse, episodic. The VA rated the applicant 100 percent service-connected disabled for PTSD. The AMHRR shows the applicant underwent a mental status evaluation (MSE) on 4 June 2007, which indicates the applicant was mentally responsible and recognized right from wrong. The MSE does not indicate any diagnosis.

The applicant contends the event which led to the discharge from the Army was an isolated incident, and the 2007 civilian domestic violence charges were dismissed. Army Regulation 635-200, paragraph 3-5, in pertinent part, stipulates there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization. The applicant's AMHRR reflects the separation was based on three charges of domestic violence by civilian authorities and other violations of the UCMJ. Army Regulation 635-200, paragraph 1-17b(1), provides no Soldier will be considered for administrative separation under Chapter 14, because of conduct that has been the subject of judicial proceedings resulting in an acquittal or action having the effect thereof. The record does not show any evidence the domestic violence charges were acquitted.

The applicant contends the command did not assist the applicant with challenging the separation. The applicant's AMHRR reflects the command provided the applicant with the opportunity to consult with counsel and present evidence before separation. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends 12 years of honorable service, including a combat tour.

The applicant contends the discharge should have been for medical reasons. Army Regulation 635-200, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct.

The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board does not grant relief to gain employment or enhance employment opportunities.

The applicant contends the applicant should receive disability retirement, and requests the case be referred to IDES. 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.

The applicant contends being a loving parent and spouse, being a guardian for two members of the extended family and being a law-abiding citizen. 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.

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: Post Traumatic Stress Disorder, Major Depressive Disorder with Psychotic Features, Anxiety State, Traumatic Brain Injury.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the applicant is 100 percent SC for PTSD.

(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 PTSD and avoidance, the applicant's FTRs on 22 August and 24 August 2006 are mitigated. However, the applicant's offenses of domestic violence and breaking a no contact order are not mitigated as the misconduct is not natural sequela of PTSD, MDD, Unspecified Mood Disorder, or Anxiety State. The applicant's offense of absenting from the place of duty on 25 March 2007 is not mitigated given the applicant made an informed decision and acted with willful intent to leave the appointed place of duty in order to violate a protective order. The applicant's misconduct is not mitigated by the history of mTBI as the condition was not of a severity to impair judgement, cognition, or behavior at the time of the applicant's misconduct. Finally, even though the applicant reported auditory hallucinations in 2016, there is no indication, in the records, that the applicant experience A/V/H during 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 Post Traumatic Stress Disorder, Major Depressive Disorder, Anxiety State, and Traumatic Brain Injury outweighed the applicant's medically unmitigated offenses of domestic violence, breaking a no contact order, and absenting from the place of duty.

b. Response to Contention(s):

(1) The applicant contends suffering from chronic PTSD, TBI, depression, anxiety disorder, and adjustment disorder; the conditions and a tumultuous relationship led to the discharge; and the VA rated the applicant 100 percent disabled. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Post Traumatic Stress Disorder, Major Depressive Disorder, Anxiety State, and Traumatic Brain Injury outweighed the applicant's medically unmitigated offenses of domestic violence, breaking a no contact order, and absenting from the place of duty.

(2) The applicant contends the narrative reason for the discharge needs to be changed. The Board considered this contention but determined that the applicant's Pattern of Misconduct narrative reason for separation is proper and equitable given the applicant's unmitigated offenses of domestic violence, breaking a no contact order, and absenting from the place of duty.

(3) The applicant contends the event which led to the discharge from the Army was an isolated incident, and the 2007 civilian domestic violence charges were dismissed. The Board liberally considered this contention but found that the applicant's misconduct took place over a period of time.

(4) The applicant contends the command did not inform the applicant of the applicant's separation options. The Board liberally considered this contention but found it unpersuasive as the applicant was involuntarily separated for misconduct.

(5) The applicant contends 12 years of honorable service, including a combat tour. The Board liberally considered the entirety of the applicant's service record, including a combat tour in Iraq, but found that the applicant's record did not outweigh the offenses of domestic violence, breaking a no contact order, and absenting from the place of duty.

(6) The applicant contends the discharge should have been for medical reasons. The Board determined that the applicant's request for a medical discharge does 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

(7) The applicant contends an upgrade of the discharge will allow the applicant to obtain better employment. The Board considered this contention but does not grant relief to gain employment or enhance employment opportunities.

(8) The applicant contends the applicant should receive disability retirement, and requests the case be referred to IDER. The Board determined that the applicant's request for a referral to IDER and a disability retirement does 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.

(9) The applicant contends being a loving parent and spouse, being a guardian for two members of the extended family and being a law-abiding citizen. The Board liberally considered the applicant's post-service accomplishments but found that they do not outweigh the unmitigated offenses of domestic violence, breaking a no contact order, and absenting from the place of duty.

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

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration to all evidence before the Board, the applicant's Post Traumatic Stress Disorder, Major Depressive Disorder, Anxiety State, and Traumatic Brain Injury did not outweigh the medically unmitigated offenses of domestic violence, breaking a no contact order, and absenting from the place of duty. The Board also considered the applicant's contentions regarding good service and post-service conduct but found that the totality of the applicant's record does not warrant a discharge upgrade. The Board considered the applicant's Conditional Waiver request to the Separation Authority and found that the lack of an option for an Honorable characterization of service did not substantially prejudice the applicant. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable discharge.

(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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210000888

c. Change Reason / SPD Code to: No Change

d. Change RE Code to: No Change

e. Change Authority to: No Change

Authenticating Official:

2/11/2025

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