

1. Applicant's Name: [REDACTED]

a. Application Date: 26 April 2021

b. Date Received: 26 April 2021

c. Counsel: [REDACTED]
[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 under other than honorable conditions. The applicant, through counsel, requests an upgrade to honorable.

The applicant seeks relief contending, in effect, being unjustly discharged from the U.S. Army Reserve through the recommendation of an administrative separation board without proper notification, a misapplication of the regulations, and numerous fabrications. The applicant entered active duty on 22 June 1982 and obtained the rank of Staff Sergeant (SSG). The applicant was convicted of driving under the influence (DUI) in February 2004, and received a General Officer Letter of Reprimand. The applicant voluntarily attended counseling because of the actions. Because of significant health issues, the applicant was considered for a medical evaluation board (MEB) in 2005. The applicant continues to suffer from several service-connected disabilities. On 6 May 2005, the applicant reenlisted for the last time. In May 2006, the applicant was convicted of aggravated assault after reenlisting and reporting to a new duty station. On 6 May 2010, the applicant was subjected to an administrative separation board and was separated with an Other Than Honorable discharge. The applicant was discharged with 64 days of leave, which was never reimbursed. The administrative separation process was erroneous for multiple reasons, resulting in an unjust discharge. The applicant was unable to acquire the Department of Veterans Affairs (VA) disability benefits and retirement the applicant deserves for the almost 28 years of service.

The Notification of Separation was full of prejudicial and purposeful errors, which likely swayed the board's opinion to discharge the applicant with the least favorable characterization. There is no evidence the applicant was driving under the influence of marijuana, as indicated on the Notification. The false information was likely provided to taint the board. The Notification also indicated the applicant was guilty of forgery. Although the board substantiated this basis, there is irrefutable evidence the charge was erroneous. The applicant had over 60 days of use or lose leave, negating any motive to prevent leave being counted against the applicant. SFC C. provided an affidavit proving the charge was unfounded, and the board refused to consider these facts. The Notification of Separation claimed the applicant was also absent without leave, but no evidence was submitted regarding this basis, and the board did not substantiate this charge; however, having this charge before the board created substantial bias. The misrepresentations likely fatally impacted the applicant's chances of retention, after 28 years of service, or a more favorable characterization of service. The applicant was never notified of being separated under paragraph 14-12b; however, the board used that as a basis for separation. The separation authority conceded this error in the Recommendation of Separation after the board. Paragraph 3-18 provides the characterization will be determined solely by the Soldier's military record, which includes the Soldier's behavior and performance of duty during the current enlistment or period of separation. Counsel further details the contentions in the Legal Brief.

b. Board Type and Decision: In a records review conducted on 27 August 2024, and by a 5-0 vote, the Board determined that the characterization of service was inequitable based on the applicant's Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) partially mitigating the medically unmitigated separating offenses of felony DUI causing severe injuries and forging a commander's signature. Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them.

*Please see Section 9 of this document for more details regarding the Board's decision.
Board member names available upon request.*

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 30 August 2010

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 27 May 2009

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

On 21 May 2006, the applicant was involved in a motor vehicle accident, which the applicant failed to report to proper military authorities and was charged with driving under the influence of marijuana and alcohol, and aggravated injury to two persons. The applicant was found guilty on 12 February 2009, and sentenced on 13 April 2009, to a fine for the DUI and four years confinement for each of the assaults which were suspended in the plea agreement.

On 13 April 2009, under plea agreement the applicant obtained a 14 day leave extension to leave confinement service with three remaining confinements of 45 days each on 1 June 2010, 1 June 2011, and 1 June 2012.

On 17 November 2008, the applicant presented a completed DA Form 31 with the beginning date of 15 December 2008, which commander Lieutenant Colonel (LTC) M. Y., stated it was not LTC's M. Y.'s signature and it was forged.

On 20 November 2008, the applicant was absent from the place of duty without proper authority until reporting to the applicant's new assignment on 12 January 2009, to wit: to 2291st, U.S. Army Hospital, Albuquerque, New Mexico.

The above actions constituted numerous acts of serious misconduct which merited the applicant's separation in accordance with Army Regulation 635-200, paragraph 14-12c.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 22 June 2009

(5) Administrative Separation Board: On 22 June 2009, the applicant signed the Election of Rights reflecting the applicant understood the applicant could not waive the right to a board because the applicant had 18 years or more of active federal service.

On 6 May 2009, the administrative separation board convened, and the applicant appeared with counsel. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

On 2 August 2010, the separation authority approved the board's findings and recommendations, except for being separated under Army Regulation 635-200, paragraph 14-12b, but directed separation under paragraph 14-12c, Commission of a Serious Offense.

(6) Separation Decision Date / Characterization: 2 August 2010 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

- a. Date / Period of Enlistment:** 6 May 2005 / Indefinite
- b. Age at Enlistment / Education / GT Score:** 40 / HS Graduate / 97
- c. Highest Grade Achieved / MOS / Total Service:** E-6 / 68W30, Health Care Specialist / 27 years, 6 months, 15 days / The applicant was in the delayed entry program for 5 months 25 days of prior inactive service.
- d. Prior Service / Characterizations:**
 - RA, 22 June 1982 – 13 June 1985 / HD
 - USARCG, 14 June 1985 – 7 March 1987 / NA
 - USAR, 8 March 1987 – 27 December 1987 / HD
(Break in Service)
 - USAR, 16 February 1989 – 14 February 1991 / HD
 - AD, 1 November 1990 – 8 June 1991 / HD
(Concurrent Service)
 - USAR, 15 February 1991 – 7 February 2002 / HD
 - AD, 3 January 1993 – 12 August 1993 / HD
(Concurrent Service)
 - ADT, 11 July 1997 – 26 November 1997 / UNC
(Concurrent Service)
 - AD, 4 April 1999 – 7 February 2002 / HD
(Concurrent Service)
 - USAR, 8 February 2002 – 5 May 2005 / HD
 - AD, 8 February 2002 – 5 May 2005 / HD
(Concurrent Service)
- e. Overseas Service / Combat Service:** Germany, SWA / Kuwait (NIF); Saudi Arabia (NIF)
- f. Awards and Decorations:** EFMB, ARCOM, AAM, AGCM, NDSM-BSS, SWASM-3BSS, GWOTSM, NCOPDR, ASR, OSR, KU-LIB-MDL-SA, KU-LIB-MDL-KU
- g. Performance Ratings:**
 - January 2005 – December 2005 / Fully Capable
 - January 2006 – February 2006 (NIF)
 - 1 March 2006 – 28 February 2007 / Among the Best
 - 1 March 2007 – 29 February 2008 / Among the Best
 - 29 February 2008 – 1 January 2009 / Fully Capable
 - 2 January 2009 – 1 January 2010 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record:

Memorandum, subject: Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter), 10 May 2007, reflects the applicant completed 20 years of qualifying service, earning 50 points each retirement year.

Physical Evaluation Board, 15 July 2008, reflects the PEB found the applicant fit for duty regarding the medical conditions hip and back pain, in which an MEB found were medically unacceptable.

Two U.S. Army Physical Disability Agency (USAPA), letters, 14 April 2005, and 4 August 2008, reflect the USAPDA approved the PEB findings.

The applicant provided a Judicial District 11 Judgment, 13 April 2009, reflecting the applicant plead guilty to reckless aggravated assault, and was found guilty of assault, felony. The applicant was sentenced to incarceration for four years, with probation for four years (incarceration for six months before being released for probation).

Formal AR 15-6 Investigation Findings and Recommendations, 6 May 2010, reflect the administrative separation board found:

The applicant committed a serious offense when on 4 February 2004, the applicant was arrested for driving under the influence of alcohol from which on 27 August 2004, the applicant was convicted by Bexar County, Texas, of driving under the influence of an intoxicant, to wit: alcohol, resulting in a GOMOR.

The applicant committed a serious offense when on 26 May 2006, while driving under the influence of alcohol, the applicant drove the applicant's vehicle eastbound in the westbound lanes of interstate 24 in Chattanooga, Tennessee, colliding with another vehicle and causing serious permanent injuries of two occupants of the vehicle, resulting in a felony conviction.

The applicant committed a serious offense when on 17 November 2007, the applicant or someone at the applicant's direction forged the applicant's commander's signature on DA Form 31, Request for Leave.

The applicant did engage in a pattern of misconduct as defined by Army Regulation 635-200, paragraph 14-12b, by committing aforementioned serious offenses, constituting discreditable involvement with civil authorities and discreditable conduct prejudicial to good order and discipline of the military, violating acceptable standards of personal conduct found in the UCMJ.

The board found each warranted separation and recommended an under other than honorable conditions characterization of service.

The applicant provided Department of the Air Force memorandum, 10 August 2009, reflecting the applicant visited the Kirtland Air Force Base, Alcohol and Drug Abuse Program and treatment (ADAPT) Clinic on 3 August 2009 for a substance abuse evaluation because of an alcohol-related incident DUI in 2006. The applicant was never referred to an Army-based treatment facility for DUI in 2006, to the clinic's knowledge.

The applicant provided memorandum for record, 31 January 2014, reflecting SFC C. C., Human Resource NCO, indicated the applicant did not forge LTC M. Y.'s signature because the commander authorized the use of a rubber stamp to sign documents once authorization was

received from LTC M. Y. telephonically or by email. Daily actions, including leave requests were authorized through this method. SFC C. C. attempted to explain this to the administrative separation board, but the board did not allow SFC C. C. to present the facts. SFC C. C. described the applicant as knowledgeable and a delight to work with and stated the separation was improper.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Medical Evaluation Board (MEB) Proceedings, 30 May 2008, found the applicant's medical conditions low back pain and right hip pain, medically unacceptable and recommended a physical evaluation board. The MEB found the applicant's mild cognitive disorder, history of traumatic brain injury (TBI); right knee pain; history of acute renal failure; hypertension; sleep apnea; hearing loss; and sensory loss left lower jaw, medically acceptable.

(2) AMHRR Listed: MEB proceedings 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 149; Legal Brief with all listed enclosures 1 through 14.

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

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

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

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

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when

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

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

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

d. Army Regulation 635-200 (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.

(4) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based

on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Paragraph 3-18 provides the characterization will be determined solely by the Soldier's military record which includes the Soldier's behavior and performance of duty during the current enlistment or period of service to which the separation pertains. Prior service activities including, but not limited to, records of convictions by courts-martial, records of nonjudicial punishment, records of absence without leave, or commission of other offenses for which punishment was not imposed will not be considered in determining the characterization of service. To the extent that such matters are considered on the issue of retention or separation, the record of proceedings will reflect express direction that such information will not be considered on the issue of characterization. In the case of an ARNGUS or USAR Soldier on AD or ADT, the character of the period of service from which he/she is discharged will be based solely on military behavior and performance of duty during the current period of service while performing AD or ADT.

(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 14-3 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.

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

e. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c, misconduct (serious offense).

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waivable and nonwaivable 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 waivable. 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'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 14, paragraph 14-12c, AR 635-200 with a under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8 (Separation Processing and Documents) governs the preparation of the DD Form 214 and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1 (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 separation code (SPD) should be changed. Separation codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (Separation Program Designator (SPD) Codes) to track types of separations the SPD code specified by Army Regulations for a discharge under Chapter 14, paragraph 14-12c, is "JKQ."

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 "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes if appropriate.

The applicant contends the separation was unjust because it included prior service behavior. Army Regulation 635-200, paragraph 3-18, cited by counsel, provides characterization will be determined solely by the Soldier's military record which includes the Soldier's behavior and performance of duty during the current enlistment or period of service. Prior service activities will not be considered in determining the characterization of service. If considered on the issue of retention or separation, the record of proceedings will reflect express direction that such information will not be considered on the issue of characterization. The applicant's AMHRR reflects the Notification of Separation basis for separation included a DUI from a prior enlistment and the administrative separation board found the DUI warranted separation. The record is void of any direction the DUI would not be considered in determining the characterization of service.

The applicant contends the Notification for Separation was deficient and contained false information, which purposely tainted the administrative separation board. The Notification of Separation included as a basis for separation the applicant was arrested in 2006 for driving under the influence of marijuana and alcohol; was absent without leave; and the applicant forged a DA Form 31 (Request and Authority for Leave). The applicant provided a third party statement to support the contention the applicant did not forge the DA Form 31. The administrative separation board findings did not include a finding regarding the applicant being

absent without leave or driving under the influence of marijuana but found evidence to support the other reasons for separation contained in the notification.

The applicant contends the administrative separation board erroneously considered separation under Army Regulation 635-200, paragraph 14-12b, A Pattern of Misconduct, which was not included in the Notification of Separation. The applicant's AMHRR reflects the administrative separation board found the applicant committed serious offenses and the applicant engaged in a pattern of misconduct. The separation authority approved the board's findings and recommendations, with exception of the finding of a pattern of misconduct. The separation authority separated the applicant under the provisions of Army Regulation 635-200, paragraph 14-12c, Commission of a Serious Offense, as notified in the Notification of Separation. 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 should have referred the applicant to the Army Substance Abuse Program. Army Regulation 600-85, paragraph 7-3 entitled voluntary (self) identification and referral, states voluntary (self) ID is the most desirable method of identifying substance use disorder. The individual whose performance, social conduct, interpersonal relations, or health becomes impaired because of these problems has the personal obligation to seek help. Soldiers seeking self-referral for problematic substance use may access services through BH services for a SUD evaluation. The Limited Use Policy exists to encourage Soldiers to proactively seek help.

The applicant contends being diagnosed with service-connected disabilities, which were considered by an MEB. The applicant's AMHRR reflects the applicant was diagnosed with low back pain; right hip pain; mild cognitive disorder, history of traumatic brain injury (TBI); right knee pain; history of acute renal failure; hypertension; sleep apnea; hearing loss; and sensory loss left lower jaw. In 2005, an MEB found the applicant's medical condition of low back pain medically unacceptable. In 2008, an MEB found the applicant's medical conditions of low back pain and hip pain medical unacceptable. Both cases were referred to PEBs and the PEBs found the applicant to be fit for duty.

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

The applicant requests restoration of rank to Staff Sergeant; restoration of time in service with an initial entry date of 28 December 1981; and backpay and reimbursement for leave lost. 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 an upgrade of the discharge would allow veterans benefits. Eligibility for veteran's benefits does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The third-party statement provided with the application speak highly of the applicant. It recognized the applicant's good military service.

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, the Board Medical Advisor's opine, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: PTSD, Concussion with Loss of Consciousness, and Cognitive Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board found the applicant is 100 percent service connected for PTSD.

(3) Does the condition or experience 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 the use of substances to self-medicate, and PTSD and avoidant behavior, the applicant's DUI and AWOL could be mitigated. However, due to the severity of the conduct and its repercussions, the Board found that, in this instance, the offenses are not sufficiently mitigated. Furthermore, the applicant's failure to report the incident to proper military authorities and forging a DA 31 (or having someone forge it at his direction) are not mitigated as that subsequent misconduct is not natural sequela of PTSD. The misconduct is also not mitigated by the diagnoses of Concussion with LOC and Cognitive Disorder. The evidence in medical records indicate the applicant did not report the accident for several years and the forged document incident occurred in December 2008. Given that the applicant conditions were found to meet retention standards in 2007, the evidence shows that the conditions were not of a severity to render the applicant unable to differentiate between right and wrong and adhere to the right.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's PTSD or TBI (concussion with LOC/cognitive disorder) outweighed the medically unmitigated separating offenses of felony DUI causing severe injuries and forging a commander's signature.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with service-connected disabilities, which were considered by an MEB. The Board liberally considered this contention and determined that the applicant's case was transferred to a PEB where the applicant was found fit for duty within the limits of the applicant's profile. Thus, medical separation was not warranted. Notwithstanding the propriety of the applicant's non-processing for a medical discharge, the Board found that the applicant's behavioral health conditions provide a degree of mitigation for the applicant's misconduct. While there is not sufficient mitigation to warrant upgrade to an honorable characterization of service, a general characterization is warranted.

(2) The applicant contends the Notification for Separation was deficient and contained false information, which purposely tainted the administrative separation board. The Board liberally considered this contention and determined that the contended deficiencies in the notification process did not substantially alter the ultimate outcome of this matter, especially after considering the upgrade to the General characterization of service that is being granted based on medical mitigation as discussed above in 9b(1).

(3) The applicant contends the narrative reason for the discharge needs changed. The Board liberally considered this contention and determined that the Misconduct (Serious Offense) narrative reason for separation is proper and equitable given the medically unmitigated offense

of driving under the influence and causing an accident resulting in permanent injuries to other parties.

(4) The applicant requests a reentry eligibility (RE) code change. The Board liberally considered this contention and voted to maintain the RE-code at RE-3, which is a waivable code, due to the BH conditions and service connection. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes, if appropriate

(5) The applicant contends the separation was unjust because it included prior service behavior. The Board liberally considered this contention but found that evidence of misconduct from a prior period of service did not substantially prejudice the applicant on the issue of characterization given the severity of the applicant's felony DUI offense, which was misconduct within the period of service and sufficiently egregious to justify the discharge and characterization. The Board's Medical Advisor considered the misconduct in the current period of service only.

(6) The applicant contends the administrative separation board erroneously considered separation under Army Regulation 635-200, paragraph 14-12b, a Pattern of Misconduct, which was not included in the Notification of Separation. The Board liberally considered this contention and found that the notification error did not substantially prejudice the ultimate outcome in this case.

(7) The applicant contends the chain of command should have referred the applicant to the Army Substance Abuse Program (ASAP). The Board liberally considered this contention and determined that the applicant's misconduct was of a severity to warrant separation, regardless of ASAP referral. The evidentiary record did not reflect a failure on the command's part, or any malicious intent.

(8) The applicant contends good service, including two combat tours. The Board liberally considered the totality of the applicant's service record, including length and quality of service and determined that it did not mitigate or outweigh the serious medically unmitigated offenses of felony DUI causing severe injuries and forging a commander's signature.

(9) The applicant requests restoration of rank to Staff Sergeant; restoration of time in service with an initial entry date of 28 December 1981; and backpay and reimbursement for leave lost. The Board determined that the applicant's requests for restoration of rank, time in service, and for backpay 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.

(10) The applicant contends an upgrade of the discharge would allow veterans benefits. The Board liberally considered this contention and determined that eligibility for Veteran's benefits, to include educational benefits under the Post-9/11 or Montgomery GI Bill, healthcare or VA loans, do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

c. The Board determined that the characterization of service was inequitable based on the applicant's behavioral health conditions partially mitigating the basis of separation misconduct.

Accordingly, the Board voted to grant relief in the form of an upgrade to the characterization of service to General. The Board determined the narrative reason/SPD code and RE code were proper and equitable and voted not to change them. The applicant has exhausted all appeal options available with ADRB. However, the applicant or applicant's representative may still apply to the Army Board for Correction of Military Records. The applicant or applicant's representative 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 General because the applicant's behavioral health conditions only partially mitigated the applicant's medically unmitigated offenses of felony DUI causing severe injuries and forging a commander's signature. The Board found that, even with the partial medical mitigation, the applicant's conduct fell below that level of meritorious service warranted for an Honorable characterization.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code, as the applicant's Misconduct (Serious Offense) narrative reason for separation is both proper and equitable considering the severity of the medically unmitigated misconduct.

(3) The RE code will not change given the behavioral health conditions and 100 percent VA service connection. The current code is also consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

6/29/2025



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

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE
AR20210001292

SPD – Separation Program
Designator
TBI – Traumatic Brain Injury

UNC – Uncharacterized
Discharge

UOTHC – Under Other Than
Honorable Conditions

VA – Department of Veterans
Affairs