

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 requests an upgrade to honorable and a narrative reason change to "Disability, Severance Pay."

The applicant seeks relief contending, in effect, the discharge and the characterization are unjust and inequitable because the applicant received insufficient counseling and treatment following the second severe concussion in the line of duty. The applicant would not have received the same discharge if current Army policies and procedures to handle and identify post-traumatic stress disorder (PTSD) and related behavior had been available at the time of the discharge. The applicant's exceptional military service record warrants the discharge be upgraded to honorable on equitable grounds. The applicant should have been separated with a medical discharge instead of for the commission of a serious offense. The applicant requests the characterization be upgraded to honorable and the reason for discharge should be changed to "Disability, Severance Pay."

A discharge is improper where it is determined "discretion exists associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby" and inequitable where an individual was incapable of service because the individual failed to meet "normal military standards of acceptability for military service" and where the individual is experiencing family and personal problems "that may have affected the applicant's ability to serve satisfactorily." The applicant sustained multiple traumatic brain injuries during military service because of at least one improvised explosive device (IED) explosion and a separate tank accident in the midst of active combat in Iraq. The Army failed to properly diagnose and treat the applicant's injury, which led to post-traumatic stress disorder (PTSD) and other types of emotional trauma and resulted in unusual behavioral issues. This failure is evident in Dr. H.'s diagnosis the applicant suffered from PTSD during military service. The applicant's medical issues as well as marital problems resulted in diminishing the applicant's capabilities as a Soldier. Instead of supporting the applicant in addressing these issues, the Army discharged the applicant. The applicant requires medical and other types of assistance as a Soldier who gave three tours (Iraq, from 2000 to 2001, in 2004, and from 2005 to 2006), and seven years of service to the country. Counsel further details the contentions in the Legal Brief submitted with the application. Counsel requests, before initiating the decision process, to be furnished with any documents considered in the discharge review.

b. Board Type and Decision: In a records review conducted on 9 January 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

Please see Section 9 of this document for more detail regarding the Board's decision.

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 29 September 2006

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 28 August 2006

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant had several offenses of communicating a threat to noncommissioned officers (NCOs), disobeying lawful orders, and disorderly conduct.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 28 August 2006

(5) Administrative Separation Board: On 28 August 2006, the applicant unconditionally waived consideration of the case before an administrative separation board pursuant the Offer to Plead Guilty.

(6) Separation Decision Date / Characterization: 19 September 2006 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 21 July 2005 / 4 years

b. Age at Enlistment / Education / GT Score: 27 / HS Graduate / 88

c. Highest Grade Achieved / MOS / Total Service: E-4 / 19K10, M1 Armor Crewman / 7 years, 10 days

d. Prior Service / Characterizations: RA, 20 September 1999 – 19 September 2002 / HD
USARCG, 20 September 2002 – 27 May 2003 / NA
RA, 28 May 2003 – 20 July 2005 / HD

e. Overseas Service / Combat Service: SWA / Iraq (4 January 2005 – 30 December 2005)

f. Awards and Decorations: AAM, PUC, NDSM-2, GWOTSM, ICM, ASR, CAB, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Company Grade Article 15, 8 September 2005, in Iraq, for behaving with disrespect to Second Lieutenant E. K., a superior commissioned officer, and Sergeant N. C., an NCO, by saying, "I hope that you would all die," "I do not give a fuck what you say," and "Fuck all you guys," (14 August 2005). The punishment consisted of a reduction to E-3; forfeiture of \$458 pay; and extra duty for 7 days.

Electronic Mail message, 25 November 2005, reflects the Magistrate Court of Liberty County, Georgia, awarded a rental company a total judgment of \$3440.46, along with future interest against the applicant.

Offer to Plead Guilty, 11 August 2006, reflects the applicant agreed to plead guilty to all charges and specifications preferred against the applicant; accept a summary court-martial; and unconditionally waive any right to an administrative separation board. In exchange the, convening authority agrees refer the case to a summary court-martial

Report of Result of Trial reflects the applicant was tried in a Summary Court-Martial on 28 August 2006. The applicant was charged with five specifications. The summary of offenses, pleas, and findings:

Violation of Article 91, UCMJ:

Treat with contempt, noncommissioned officer (NCO); guilty, consistent with the plea;
and
Disrespect NCO; guilty, consistent with the plea.

Violation of Article 134, UCMJ:

Disorderly conduct; guilty consistent with the plea;
Disorderly Conduct; guilty, consistent with the plea; and,
Communicating a threat; guilty, consistent with the plea.

Sentence: Reduction to E-1; Forfeiture \$849 pay; and confinement for 30 days. The applicant received credit of 30 days towards the sentence to confinement.

Fifteen Developmental Counseling Forms, for but not limited to:

Communicating a threat,
Provoking speeches or gestures,
Insubordinate conduct towards an NCO,
Referral to medical personnel for behavior,
Taking medication to control outburst,
Breach of peace,
Disorderly conduct on multiple occasions,
Failing to obey an order or regulation on all support occasions,
Sale, loss, damage, or wrongful destruction to military property,
Failing to correct the same deficiency on a weapon for the third day,
Failing to be at appointed place of duty,
Failing to maintain healthy living condition at on post quarters,
Being a high-risk Soldier upon redeployment because of conduct, financial, and personal problems,
Absence without leave, and
Not having a family care plan.

Numerous Sworn Statements, further describe the applicant's disrespectful or disorderly conduct, including during deployment.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided: Report of Medical Examination (ME), 13 June 2006, the examining medical physician noted in the significant or disqualifying effects section: Depression.

Report of Medical History (MH), 13 June 2006, the examining medical physician noted in the comments section: Depression, currently having mental health follow-up.

Memorandum for Record, subject: Certificate of Psychiatric Examination on [Applicant], 26 June 2006, reflected the applicant was hospitalized and evaluated from 21 to 26 June 2006. The applicant was diagnosed with personality disorder. The applicant was cleared for any administrative actions deemed appropriate by the command, but the psychiatrist recommended separation under AR 635-200, chapter 5-13, expeditiously. The applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements.

Progress Notes from 14 November 2006 to 8 May 2014, reflect the applicant was diagnosed with PTSD; personality disorder, not otherwise specified (NOS); history of traumatic brain injury (TBI); bipolar disorder I; poor social support; recent discharge from military; and chronic psychiatric illness.

(2) AMHRR Listed: The ME, MH, and psychiatric examination as described in previous paragraph 4j(1).

Report of Mental Status Evaluation, 26 June 2006, further details the psychiatric examination and includes behavioral manifestations as indications of the applicant's personality disorder.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 214; DD Form 215; DD Form 293; Legal Brief with all listed exhibits 1 through 14.

6. POST SERVICE ACCOMPLISHMENTS: The applicant provided primary care for an ailing relative, reestablished a relationship with the applicant's child, and volunteered at nursing homes and veterans' hospitals.

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) 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.

(5) 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.

(6) 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 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 contends the narrative reason for the discharge needs changed to "Disability, Severance Pay." The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a general (under 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 that a General Discharge based on misconduct is unjust, inequitable, and improper because it fails to consider the role of the applicant's PTSD played in the commission of the offense. The applicant further contends that the serious offenses that served

the basis of separation (communicating a threat to an NCO, disobeying lawful orders, and disorderly conduct) do not warrant a punitive discharge as required by AR 635-200, paragraph 14-12c.

The applicant contends that had the DoD policy requiring servicemembers to receive a medical examination to assess whether the effect of PTSD is the underlying reason that the member is administratively separated, the applicant would likely not have been discharged for the applicant's offenses.

The applicant's General Discharge is unjust, inequitable, and improper because it was based on a series of incidents that occurred over a short period, in contrast to the five years of exemplary service that contained no other adverse action.

The applicant contends misdiagnosed PTSD, TBI, and related conditions from three combat tour affected behavior, which led to the discharge. The applicant provided documents reflecting a diagnosis of personality disorder; PTSD; bipolar disorder; depression; and TBI. The applicant underwent a psychiatric examination on 26 June 2006, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The applicant was cleared for any administrative actions deemed appropriate by the command, but the psychiatrist recommended separation under AR 635-200, chapter 5-13, expeditiously. The applicant provided third party letters, which described the applicant's behavior after returning from combat and supported the applicant's PTSD and TBI contention. The applicant's AMHRR contains the psychiatric examination as described previously, along with a Report of Mental Status Evaluation (MSE). The psychiatric examination and MSE were considered by the separation authority.

The applicant contends that the applicant's discharge is unjust, inequitable, and improper because the applicant would likely not have received the same discharge, in terms of both characterization of service and reason for discharge, if the applicant's PTSD had been properly diagnosed.

The applicant contends family issues affected behavior which contributed to the discharge. There is no evidence in the AMHRR the applicant ever sought assistance before committing the misconduct, which led to the separation action under review.

The applicant contends the applicant's discharge and discharge characterization is unjust and inequitable because the applicant received insufficient counseling and treatment following the second severe concussion in the line of duty. The applicant's AMHRR reflects the applicant was counseled on numerous occasions and was being treated by mental health personnel. The record does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends the applicant's exceptional military service record warrant that the applicant's discharge be upgraded to Honorable on equitable grounds. The record is void of any combat tours other than the service in Iraq between 4 January 2005 and 30 December 2005.

The applicant's discharge for reasons other than a medical disability is unjust, inequitable, and improper because it is premised on the erroneous and untrue belief that the applicant was not suffering from PTSD at the time of the applicant's discharge. The applicant contends the discharge is unjust and inequitable because the applicant should have been with a medical discharge instead of for the commission of a serious offense, and correspondingly, the applicant should have an honorable discharge, instead of an Other than Honorable Conditions Discharge.

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 providing primary care for an ailing relative, reestablishing a relationship with the applicant's child, and volunteering at nursing homes and veterans' hospitals. 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.

In reference to counsel's request for pre-decisional documents, it is not the practice of the Army Review Boards Agency to provide pre-decisional documents prior to adjudication. Once the case has been adjudicated, the applicant and counsel will be provided a copy of the final decision.

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 determined that, based on the Board Medical Advisor review of the applicant's official medical records and opine, the applicant has the following potentially-mitigating diagnoses/experiences: PTSD (adjustment disorder, anxiety, and depression subsumed by PTSD), Bipolar Disorder, and mTBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board determined that, based on the Board's Medical Advisor opine and the applicant's medical and service records, found the applicant's PTSD, mTBI, and Bipolar Disorder existed during the applicant's military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board determined, based on the Board Medical Advisor opine and the applicant's service records that the applicant's PTSD mitigates the applicant's minor offenses of disobeying lawful orders related to verbal outbursts and disrespect based on the nexus between PTSD and anger/irritability. However, none of the applicant's behavioral health conditions mitigate the applicant's offenses of communicating a threat, remaining disobeying lawful orders, and disorderly conduct (see paragraph 4h, above) as there is no nexus between these conditions and the applicant's offenses. Specifically, the applicant's Bipolar Disorder does not mitigate any of the applicant's misconduct because, while the applicant's medical records reflect a Bipolar Disorder diagnosis, the medical opine more proximal to the applicant's hospitalization reflects that there insufficient evidence to support that the applicant suffered a manic or hypomanic episode. Rather, the evidence reflects that the applicant has an anti-social personality disorder diagnosis, history of assaultive behavior prior to and during military service including deployments, disrespect for authority figures, and lacks remorse. Further, the applicant's mTBI does not mitigate any of the applicant's misconduct because the medical evidence reflects that the applicant's mTBI was not of the severity to result in changes in behavior, judgement, or cognition, during the period of the applicant's misconduct and did not impair the applicant's ability 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 opine, the Board determined that, while the applicant's PTSD mitigates the applicant's minor offenses relating to disobeying lawful order related to verbal outbursts and disrespect, none of the applicant's behavioral health conditions (PTSD, mTBI, and Bipolar Disorder) outweigh the applicant's medically unmitigated offenses - communicating a threat to NCOs, remaining disobeying lawful orders, and disorderly conduct as referenced in paragraph 4h, above.

b. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed to "Disability, Severance Pay." The Board considered this contention and determined the applicant's narrative reason for discharge is appropriate. The applicant's request does 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.

(2) The applicant contends that a General Discharge based on misconduct is unjust, inequitable, and improper because it fails to consider the role of the applicant's PTSD played in the commission of the offense. The applicant further contends that the serious offenses that served the basis of separation (communicating a threat to an NCO, disobeying lawful orders, and disorderly conduct) do not warrant a punitive discharge as required by AR 635-200, paragraph 14-12c. The Board considered this contention and determined that the applicant's discharge is proper and equitable because the Board found that the notification of separation for the applicant's misconduct, including the applicant's disorderly conduct offenses, did not prejudice the rights of the applicant because the applicant's offenses of communicating a threat and disobeying lawful orders individually and collectively warrant separation for serious misconduct.

(3) The applicant contends that had the DoD policy requiring servicemembers to receive a medical examination to assess whether the effect of PTSD is the underlying reason that the member is administratively separated, the applicant would likely not have been discharged for the applicant's offenses. The Board considered this contention and determined that discharge upgrade is not warranted because the applicant received a medical assessment prior to separation that revealed that the applicant's behavioral manifestations were indicative of the applicant's personality disorder. Further, the Board determined that, despite the applicant's post-service PTSD diagnosis and the change of policy requiring the Separation Authority to assess whether there was a nexus between the applicant's PTSD and the applicant's misconduct, the totality of the applicant's record support that the applicant's misconduct was secondary to the applicant's pre-existing Antisocial Personality Disorder and the applicant's PTSD only partially mitigated the applicant's misconduct as stated in paragraph 9, above.

(4) The applicant's General Discharge is unjust, inequitable, and improper because it was based on a series of incidents that occurred over a short period, in contrast to the five years of exemplary service that contained no other adverse action. The Board considered this contention and determined that a discharge upgrade is not warranted because, despite the applicant's prior periods of Honorable service, the totality of the applicant's service did not outweigh the applicant's medically unmitigated misconduct as stated in paragraph 9b(4) above.

(5) The applicant contends that the applicant's discharge is unjust, inequitable, and improper because the applicant would likely not have received the same discharge, in terms of both characterization of service and the reason for discharge if the applicant's PTSD had been properly diagnosed. The Board considered this contention and determined that a discharge

upgrade is not warranted as the Board determined that, based on the Board Medical Advisor opine, the applicant's misconduct was secondary to the applicant's pre-existing Antisocial Personality Disorder and the applicant's PTSD only partially mitigated the applicant's misconduct as stated in paragraph 9, above.

(6) The applicant contends misdiagnosed PTSD, TBI, and related conditions from three combat tours affected behavior, which led to the discharge. The Board determined that, while the applicant's PTSD mitigates the applicant's disobeying lawful orders offense related to verbal outbursts and the applicant's minor disrespect offenses, none of the applicant's behavioral health conditions (PTSD, mTBI, and Bipolar Disorder) outweigh the applicant's medically unmitigated offenses - communicating a threat to NCOs, disobeying lawful orders, and disorderly conduct (threatening to kill members within the applicant's unit, disobeying lawful orders, destruction of military property, destruction of rental property, and physical assault by choking another Soldier).

(7) The applicant contends family issues affected behavior which contributed to the discharge. The Board considered this contention and determined that the applicant's family issues does not mitigate or excuse the applicant's offenses of communicating a threat to NCOs, disobeying lawful orders, and disorderly conduct as the Army affords many avenues to Soldier's including seeking separation for hardship.

(8) The applicant contends the applicant received insufficient counseling and treatment following the second severe concussion. The Board considered this contention and determined that, based on the Board Medical Advisor opine and the applicant's medical and service records, that a discharge upgrade is not warranted. The applicant's medical records reflect that the received treatment for the applicant's mTBIs for which the applicant did not lose consciousness and there is no evidence that the applicant's mTBI was of severity to result in changes in behavior, judgement, or cognition or impair the applicant's ability to differentiate between right and wrong and adhere to the right. Therefore, no upgrade is warranted.

(9) The applicant contends good service, including a combat tour. The Board considered the applicant's seven (7) years of service, including a combat tour in Iraq and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's medically unmitigated offenses of communicating a threat to NCOs, disobeying lawful orders, and disorderly conduct.

(10) The applicant contends the discharge should have been for medical reasons and requests a medical discharge. The Board determined that the applicant's requested change to the DD Form 214 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 149 regarding this matter. A DD Form 149 may be obtained from a Veterans' Service Organization.

(11) 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.

(12) The applicant contends providing primary care for an ailing relative, reestablishing a relationship with the applicant's child, and volunteering at nursing homes and Veterans' hospitals. The Board considered this contention and determined that the applicant's post-service accomplishments do not outweigh the misconduct based on the seriousness of the applicant's offenses of communicating a threat to NCOs, disobeying lawful orders, and disorderly conduct.

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 the applicant's 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 of all the evidence before the Board, the applicant's PTSD, Bipolar Disorder, and mTBI did not outweigh the applicant's medically unmitigated offenses of communicating a threat to NCOs, disobeying lawful orders, and disorderly conduct. The Board also considered the applicant's contentions regarding misdiagnosed PTSD, TBI, and related conditions from three combat tours affected behavior and found that totality of the applicant's record does not warrant a discharge upgrade. 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
- c. **Change Reason / SPD Code to:** No Change
- d. **Change RE Code to:** No Change
- e. **Change Authority to:** No Change

Authenticating Official:

6/11/2024

X

Presiding Officer, COL, U.S. ARMY
Army Discharge Review Board

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health

CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police

MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210001364

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