

**1. Applicant's Name:**

- a. **Application Date:** 26 April 2021
- b. **Date Received:** 26 April 2021
- c. **Counsel:** None

**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:**

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

The applicant seeks relief contending, in effect, the timeline will clearly show the court-martial and the show cause were two separate events. The court-martial held on 23 June 2010, found the applicant guilty of Article 134, Unauthorized Wear of Medals and Decorations, and Article 107, Making a False Statement. The applicant's punishment consisted of a General Officer Letter of Reprimand; confinement for 30 days; and forfeiture of \$1000 pay per month for 5 months. The general court-martial did not dismiss or provide any type of characterization of discharge. The applicant returned to full duty after incarceration. Immediately following the court-martial and the incarceration, on or about 1 August 2010, the applicant was notified to appear before a board of inquiry to determine the applicant's fitness to remain on active duty. This elimination action was delayed because of the applicant's court-martial proceedings appeals process. The applicant remained on active duty and on duty until the applicant received another notification, a year and a day after the appeal was final by the U.S Court of Appeals. On 25 July 2012, the Commander, United States Army Maneuver Center of Excellence, once again notified the applicant of a board of inquiry to determine if the applicant should remain on active duty or be separated for misconduct, moral and professional dereliction for the offenses which the applicant was convicted by court-martial. The result of the board was immediate elimination. This was epitome of double jeopardy and unfair for the following reasons which are addressed in the "Request for Redress under Article 138, UCMJ". Even the Commanding General agreed the final result and appeal where the appellate authority upheld the board's decision, they did not have all of the evidence. The evidence submitted with the evidence include all the documents pertaining to the court-martial and the board of inquiry.

b. **Board Type and Decision:** In a records review conducted on 25 April 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:** Unacceptable Conduct / AR 600-8-24, Paragraph 4-2b / JNC / General (Under Honorable Conditions)
- b. **Date of Discharge:** 27 November 2012
- c. **Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 26 July 2011 / The applicant's AMHRR reflects an elimination action was initiated on 6 July 2010; however, the action was terminated because it was initiated prematurely before the appellate review in the applicant's court-martial case was completed.

**(2) Basis for Separation:** The applicant was informed to show cause for retention on active duty under the provisions of AR 600-8-24, paragraph 4-2b for misconduct, moral, or professional dereliction, because of the following reasons:

On 23 June 2010, the applicant was convicted by a General Court-Martial of the following offense: at or near Fort Benning, on divers occasions between 16 October 2006 and 12 November 2009, the applicant wrongfully and without authority wore upon the applicant's uniform the Combat Infantryman Badge; Ranger Tab; Sapper Tab; Southwest Asia Service medal, with three Bronze Service Stars; and the Kuwait Liberation Medal, Government of Saudi Arabia, in violation of Article 134, Uniform Code of Military Justice (UCMJ).

On 23 June 2010, the applicant was also convicted of the following offense: at or near Fort Benning, on 16 October 2006, with intent to deceive, the applicant made to the United States Army a false official statement, namely a Department of the Army photograph, 16 October 2006, which statement was false in that the applicant was wrongfully and without authority wearing upon the applicant's uniform the Combat Infantryman Badge; Ranger Tab; Southwest Asia Service Medal, with three Bronze Service Stars; and the Kuwait Liberation Medal, Government of Saudi Arabia, then known by the applicant to be false, in violation of Article 107, UCMJ.

**(3) Legal Consultation Date:** NIF / On 25 August 2011, the applicant submitted rebuttal matters, including rebuttal to show cause board, six letters of support, medical documents, retirement calculation, OERs, NCOERs, and two letters of recommendation.

**(4) Board of Inquiry (BOI):** On 22 December 2012, the applicant was notified to appear before a board of inquiry and advised of rights.

On 12 January 2012, the board of inquiry convened, and the applicant appeared with military and civilian counsels. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

On 16 February 2012, the applicant was notified of the results of the board of inquiry and notified of the right to submit an appellate brief and any other statements.

On 1 November 2012, the separation authority approved the board of inquiry recommendation to eliminate the applicant for misconduct and moral or professional dereliction under AR 600-8-24, paragraph 4-2b.

**(5) GOSCA Recommendation Date / Characterization:** On 11 September 2012, the GOSCA recommended the applicant be involuntarily eliminated from service. / Under Other Than Honorable Conditions

**(6) DA Board of Review for Eliminations:** On 19 July 2012, the Army Board of Review for Eliminations considered the GOSCA's request to involuntary separate the applicant for unacceptable conduct in accordance with AR 600-8-24, Chapter 4-2b. The Board recommended the applicant's discharge with characterization of service of under other than honorable conditions.

**(7) Separation Decision Date / Characterization:** 1 November 2012 / Under Other Than Honorable Conditions / The separation authority indicated a physical evaluation board (PEB) convened and recommended the applicant be placed on the temporary disability retired list (TDRL) with a 50 percent rating.

#### 4. SERVICE DETAILS:

**a. Date / Period of Appointment:** 25 June 2004 / 3 years / The applicant incurred an additional active duty service obligation (ADSO) of 3 years on 13 September 2007. The AMHRR is void of any orders extending the applicant on active duty after the additional ADSO period.

**b. Age at Appointment: / Education:** 31 / Bachelor's Degree

**c. Highest Grade Achieved / MOS / Total Service:** O-3 / 91A, Maintenance and Munition Material Officer / 19 years, 6 months, 4 days

**d. Prior Service / Characterizations:** ARNG, 25 June 1990 – 12 March 1992 / HD  
IADT, 10 June 1991 – 12 September 1991 / UNC  
(Concurrent Service)  
RA, 13 March 1992 – 3 March 1996 / HD  
RA, 4 March 1996 – 26 May 1998 / HD  
RA, 27 May 1998 – 29 June 1999 / HD  
RA, 30 June 1999 – 29 June 2001 / HD  
(Break in Service, including ROTC)  
USAR, 17 May 2004 – 24 June 2004 / NA

**e. Overseas Service / Combat Service:** Somalia, Italy, SWA / Iraq (25 June 2007 – 29 March 2008), Kuwait (24 September 2005 – 25 September 2006)

**f. Awards and Decorations:** BSM, ARCOM-2, AAM-9, JMUA, ASUA, AGCM-3, NDSM-2, AFEM, GWOTSM, AFSM, HSM, ICM-CS, NCOPDR-2, ASR, OSR-3, NATOMDL, EIB, CAB

**g. Performance Ratings:** 16 February 2005 – 9 April 2009 / Best Qualified  
10 April 2009 – 14 August 2009 / Fully Qualified  
14 August 2009 – 13 August 2010 / Do Not Promote  
14 August 2010 – 26 November 2012 / Fully Qualified

**h. Disciplinary Action(s) / Evidentiary Record:** Commander's Inquiry, 26 August 2009, found the applicant violated Article 134, UCMJ, Wearing Unauthorized Insignia, Decoration, Badge, Ribbon, Device, or Lapel Button. The investigating officer recommended the matter be reviewed by a higher convening authority.

Informal AR 15-6 Investigation Findings and Recommendations, 11 November 2009, reflects the investigating officer (IO) based on the preponderance of the evidence found:

The applicant wore the Ranger Tab knowing the applicant did not earn it;

The applicant falsified orders for the Ranger Tab;

The applicant could not have participated in the Persian Gulf War during the period June 1990 and December 1991 as indicated on the Officer Record Brief (ORB);

The applicant was not authorized to wear awards associated with service in the Persian Gulf; and

The applicant made a false official statement regarding the awards by signing the DA Form 2-1 on 30 January 1998.

The investigating officer further found the Combat Infantryman Badge, Sniper School, and Sapper School questionable. The IO could neither confirm nor discredit the Expert Infantry Badge. The Parachutist Badge and other decorations awarded after 1994 appeared to be legitimate. The IO's recommendations are illegible.

The Charge Sheet, 19 January 2010, reflects charges were preferred against the applicant under Articles 107 and 134, UCMJ.

Memorandum, subject: Resignation for the Good of the Service (RFGOS) in Lieu of General Court-Martial, undated, reflects the applicant tendered the resignation and requested an honorable or general (under honorable conditions) discharge.

Memorandum, subject: Resignation for the Good of the Service [Applicant], 26 February 2010, and chain of command recommendations reflect the Acting General Court-Martial Convening Authority (GCMCA) recommended the applicant's RFGOS be disapproved. The chain of command recommended disapproval, with the exception of the company commander, who recommended approval with a general (under honorable conditions) discharge.

Memorandum, subject: Resignation for the Good of the Service, 23 March 2010, reflects the separation authority denied the applicant's RFGOS and returned the case to the GCMCA for action.

General Court-Martial Order Number 10, 20 September 2010, reflects on 23 June 2010, the applicant was found guilty of the following:

Charge I, in violation of Article 134, UCMJ, The Specification: On divers occasions between 16 October 2006 and 12 November 2009, wrongfully and without authority wore upon the uniform the CIB, a Ranger Tab, a Sapper Tab, Southwest Asia Service Medal, with three bronze service stars, and the Kuwait Liberation Medal, Government of Saudi Arabia. Plea: Guilty.

Charge II, in violation of Article 107, UCMJ, The Specification: On divers occasions on 16 October 2006, with intent to deceive, made to the US Army, an official statement, to wit: a DA photograph dated 16 October 2006, which statement was false in that the applicant was wrongfully and without authority wearing upon the uniform the CIB, a Ranger Tab, a Sapper Tab, Southwest Asia Service Medal with three bronze service stars, and the Kuwait Liberation Medal - Government of Saudi Arabia; and was then known by the accused to be false. Plea: Guilty. The Specification was amended to delete the words "a Sapper Tab."

The sentence consisted of a reprimand; confinement for 30 days; and forfeiture of \$1,000 pay per month for five months. On 20 September 2010, the sentence was approved and ordered executed.

On 29 June 2011, the appellate review of the court-martial proceedings was completed and the findings of guilty and the sentence were affirmed.

Formal AR 15-6 Investigation Findings and Recommendations, 12 January 2012, reflects the board of inquiry found the allegation in the notice of administrative separation in accordance with AR 600-8-24, Chapter 4 was supported by preponderance of the evidence.

Memorandum, subject: Request for Recall of PEB for [Applicant], 15 March 2012, reflects the senior trial counsel requested a recall of the PEB pertaining to the applicant to allow the General Officer Show Cause Authority (GOSCA) to make an informed and proper recommendation to

the Human Resource Command (HRC) as whether the applicant should be eliminated pursuant to the MEB or officer elimination process.

Memorandum Request for Redress under Article 138, UCMJ, 15 August 2012, reflects the applicant requested redress based on an unfair board of inquiry, convened on 12 January 2012, which imposed excessive and unusual punishment above and beyond what was expected by the courts-martial.

Memorandum, subject: Request for Redress Under Article 138, UCMJ, 29 August 2012, reflects the commanding general directed an examination of the applicant's Request for Redress pursuant to Army Regulation 27-10, paragraphs 19-10 and 19-11, with an expected examination and review completion date of no later than 15 September 2012.

The applicant provided memorandum, subject: Response to Request for Redress Under Article 138, UCMJ, 11 September 2012, reflects the commanding general denied the request for redress because the actions were inappropriate for review under Article 138, UCMJ, since other procedures existed to provide more effective and efficient avenues to resolve the matters raised.

The applicant provided memorandum, subject: Reconsideration of Elimination Action [Applicant], 11 September 2012, the GOSCA indicated the applicant's complete file was reconsidered because when the elimination packet was forwarded to the Human Resources Command, BOI appeal matters were missing from the packet. The GOSCA considered the matters, the BOI, and supporting documents and recommended an under other than honorable conditions discharge.

**i. Lost Time / Mode of Return:** None / The AMHRR reflects the applicant had an approved court-martial sentence to confinement for 30 days, which is not reflected on the DD Form 214.

**j. Behavioral Health Condition(s):**

**(1) Applicant provided:** Letters from Doctor D. M., Psychiatry, 28 January 2010, and 7 June 2012, reflecting the applicant had been under the doctor's care since 2010, and was diagnosed with PTSD, bipolar disorder, and manic depression.

Letters from licensed clinical psychologist, 1 February 2010, and 4 June 2012, reflecting the applicant was treated in outpatient psychotherapy since 9 October 2009 for emotional distress stemming from legal charges. The applicant reported symptoms of PTSD associated with combat-related experiences. The symptoms included dissociation, which frequently occurred with patients with combat-related PTSD. The applicant appeared to have developed and engaged this "defense," before combat, likely because of childhood experiences. The early experiences also established the applicant's narcissistic tendencies and pathological lying behavior.

QTC Medical Group report, 2 November 2011, reflecting diagnoses PTSD; bipolar II disorder, most recent episode depressed; alcohol dependence in early remission; alcohol dependence, related to PTSD and depressive symptoms; and social and occupational problems.

Memorandum for Record, subject: [Applicant], 5 January 2012, reflecting the Martin Army Community Hospital physician reviewed the applicant's outpatient medical records (on and off post), MEB, and letters from the applicant. The physician diagnosed the applicant with alcohol

dependence, remission; bipolar not otherwise specified (NOS), medically unacceptable, S3; anxiety NOS, medically acceptable, S2; and narcissistic personality disorder.

Department of Veterans Affairs (VA) benefits estimation, 26 March 2012, reflecting a proposed rating of 50 percent for PTSD with bipolar disorder and alcohol dependency, claimed as bipolar disorder. The VA proposed traumatic brain injury (TBI) was not related to the applicant's military service.

Informal Physical Evaluation Board (PEB) Proceedings, 20 August 2012, determined the applicant was physically unfit because of bipolar disorder III, rated by the VA as PTSD, and recommended a rating of 50 percent disability and the applicant be placed on the temporary disability retirement list. The PEB found the medical condition anxiety disorder; headache, post-traumatic; and other medical conditions met medical retention standards. On 22 September 2012, the PEB was approved.

**(2) AMHRR Listed:** Letters from Doctor D. M., Psychiatry and K. G, licensed clinical psychologist, and Informal PEB, as described in previous paragraph 4j(1).

**5. APPLICANT-PROVIDED EVIDENCE:** Two DD Forms 214; DD Form 293; RFGOS documents; elimination documents; rebuttal to show cause board documents; estimated retirement benefits documents; Article 138 Complaint documents; medical documents; MEB and PEB documents; VA medical documents; numerous Officer Evaluation Reports; numerous Noncommissioned Officer Evaluation Reports; Officer Record Brief; enlistment documents; other military service documents; court-martial order; letter to congress representative; letter from applicant's spouse; and ADRB Decision AR20150008644.

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

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

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

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

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

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

c. Army Regulation 15-6 sets forth procedures for investigations and boards not specifically authorized by any other regulation or directive.

(1) Paragraph 3-20a, states harmless errors are defects in the procedures or proceedings that do not have a material adverse effect on an individual's substantial rights. A harmless error does not prevent the approval authority from taking final action on the investigation or board.

(2) Paragraph 3-20c, states substantial errors are those that have a material adverse effect on an individual's substantial rights. Examples involving a board include failing to meet board composition requirements or denying a respondent's right to counsel.

(3) Paragraph 3-20d, states no error is substantial within the meaning of this paragraph if there is a failure to object or otherwise bring the error to the attention of the IO, legal advisor, or board president, prior to the board adjourning. Accordingly, errors in board proceedings described in subparagraph c, may be treated as harmless if the respondent or respondent's counsel fails to object.

d. Army Regulation 15-180 (Army Discharge Review Board), sets forth the policies and procedures under which the Army Discharge Review Board is authorized to review the character, reason, and authority of any Servicemember discharged from active military service within 15 years of the Servicemember's date of discharge. Additionally, it prescribes actions and

composition of the Army Discharge Review Board under Public Law 95-126; Section 1553, Title 10 United States Code; and Department of Defense Directive 1332.41 and Instruction 1332.28.

e. Army Regulation 600-8-24 (Officer Transfers and Discharges), sets forth the basic authority for the separation of commissioned and warrant officers.

(4) Paragraph 1-23, provides the authorized types of characterization of service or description of separation.

(5) Paragraph 1-23a, states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer.

(6) Paragraph 1-23b, states an officer will normally receive a general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A separation under general (under honorable conditions) normally appropriate when an officer: Submits an unqualified resignation; Separated based on misconduct; discharged for physical disability resulting from intentional misconduct or neglect; and, for final revocation of a security clearance.

(7) Chapter 4 outlines the policy and procedure for the elimination of officers from the active Army for substandard performance of duty.

(8) Paragraph 4-2b, prescribes for the elimination of an officer for misconduct, moral or professional dereliction, or in the interests of national security.

(9) Paragraph 4-4e, states punishment resulting from trial by court martial or under the provisions of UCMJ, Article 15, for misconduct and subsequent use of this fact in support of elimination under this regulation do not constitute double jeopardy.

(10) Paragraph 4-20a (previously 4-24a), states an officer identified for elimination may, at any time during or prior to the final action in the elimination case elect one of the following options: (1) Submit a resignation in lieu of elimination; (2) request a discharge in lieu of elimination; and (3) Apply for retirement in lieu of elimination if otherwise eligible.

f. 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 "JNC" as the appropriate code to assign commissioned officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 4-2b, unacceptable conduct.

**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 being diagnosed with PTSD, bipolar disorder, and other mental health conditions. The applicant provided several medical documents reflecting the applicant was diagnosed with in-service PTSD; bipolar disorder; anxiety disorder; manic depression; alcohol



dependence; narcissistic personality disorder; headache, post-traumatic; social and occupational problems; and TBI. The VA proposed the applicant be rated 50 percent disabled for PTSD. The applicant provided a third party letter from the spouse which described the applicant's behavior as what the spouse believed to be PTSD, which supported the applicant's contention. The applicant's AMHRR contains documentation which supports in-service diagnoses. The record shows the applicant underwent a PEB on 20 August 2012, which determined the applicant was physically unfit because of bipolar disorder III, rated by the VA as PTSD, and recommended a rating of 50 percent disability and the applicant be placed on the temporary disability retirement list (TDRL). The medical condition anxiety disorder; headache, post-traumatic; and other medical conditions met medical retention standards. The PEB was considered by the separation authority.

The applicant contends the court-martial proceedings along with the elimination proceedings were double jeopardy and the punishment was beyond the court-martial's intent. Army Regulation 600-8-24, paragraph 4-4e, states punishment resulting from trial by court martial or under the provisions of UCMJ, Article 15, for misconduct and subsequent use of this fact in support of elimination under this regulation do not constitute double jeopardy.

The applicant contends the board of inquiry was unfair because the BOI did not have all the allied documents to make an informed decision, did not consider the applicant's more than 18 years of honorable service; and deliberated for less than 20 minutes. Army Regulation 15-6, paragraph 3-20, provides harmless error does not prevent the approval authority from taking final action on the investigation or board. No error is substantial within the meaning of this paragraph if there is a failure to object or otherwise bring the error to the attention of the investigating officer, legal advisor, or board president, prior to the board adjourning. The applicant's AMHRR does not contain any indication or evidence the applicant or applicant's counsel objected to the BOI proceedings prior to the board adjourning or any evidence of arbitrary or capricious actions by the command.

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

#### **9. BOARD DISCUSSION AND DETERMINATION:**

a. As directed by the 2017 memo signed by A.M. Kurta, the board considered the following factors:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor, a voting member, reviewed the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially-mitigating diagnoses/experiences: Adjustment Disorder, Depression, Anxiety Disorder NOS, Bipolar II Disorder, PTSD.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found that the applicant was diagnosed in service with an Adjustment Disorder, Depression, Anxiety Disorder NOS, Bipolar II Disorder, and PTSD. The VA has service connected the PTSD and Bipolar II Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions partially mitigate the misconduct. Given that individuals with Bipolar II Disorder who are in a hypomanic state can experience grandiosity, inflated self-esteem, excessive involvement in pleasurable activities, an increase in goal-directed behavior,

and impaired judgment, it is more likely than not that the Bipolar II Disorder contributed to the applicant's unauthorized wear of medals and decorations. So, the unauthorized wear of medals and decorations is mitigated. However, there is no evidence that the applicant's Bipolar II Disorder, PTSD, Anxiety Disorder NOS, Depression, or Adjustment Disorder contributed to the applicant making a false official statement. On the contrary, there is evidence in the medical record that the applicant had a problem with lying that appeared conscious, self-motivated, and was independent of any of his BH conditions. Therefore, making a false official statement is not mitigated by any of the applicant's BH conditions.

(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 Adjustment Disorder, Depression, Anxiety Disorder NOS, Bipolar II Disorder, and Post Traumatic Stress Disorder outweighed the medically unmitigated offense of making a false official statement.

**b. Response to Contention(s):**

(1) The applicant contends being diagnosed with PTSD, bipolar disorder, and other mental health conditions. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Depression, Anxiety Disorder NOS, Bipolar II Disorder, and Post Traumatic Stress Disorder outweighed the medically unmitigated offense of making a false official statement.

(2) The applicant contends the court-martial proceedings in conjunction with the elimination proceedings were double jeopardy and the punishment was beyond the court-martial's intent. The Board considered this contention but determined that double jeopardy protections do not prevent criminal proceedings and administrative actions from addressing the same offenses. Therefore, a discharge upgrade is not warranted.

(3) The applicant contends the board of inquiry was unfair because the BOI did not have all the allied documents to make an informed decision, did not consider the applicant's more than 18 years of honorable service; and deliberated for less than 20 minutes. The Board considered this contention but found insufficient evidence to support the Board of Inquiry's decision was improper or inequitable.

**c.** The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. 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 Adjustment Disorder, Depression, Anxiety Disorder NOS, Bipolar II Disorder, and Post Traumatic Stress Disorder did not outweigh the medically unmitigated offenses of making a false official statement. The Board also considered the applicant's contention regarding good service and found that the totality of the applicant's record does not warrant a discharge upgrade. The Board found that the applicant's contentions that the applicant faced double jeopardy and that the discharge was improper due to a short deliberation period by the BOI were not supported by the available evidence. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation

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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.

**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 Authority to:** No Change

**Authenticating Official:**

5/16/2024

**X**

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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