

**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 under other than honorable conditions. The applicant, through counsel, requests an upgrade to honorable, change of narrative reason to "Release from Active Duty Upon Termination of Enlistment", Separation Code (SPD Code) to "MBK", and Reentry Code (RE Code) to "1".

The applicant seeks relief contending, in effect, being an absolute asset to the U.S. Army during a deployment, and developed Post-Traumatic Stress Disorder (PTSD). The applicant brought this home which had a strong negative impact on both the personal and professional life. The condition aided in the destruction of the marriage, which culminated in the barrage of events which ended an otherwise superb career. The applicant was put in positions of special trust and confidence by senior officers and performed with the highest patriotism, valor, fidelity, and professional bearing. Had the command acted upon the numerous and obvious signs of PTSD and taken steps to help the applicant, the applicant could have remained in the Army and completed a career. Instead, the actions of the command only served to the detriment of the applicant, leading to an unfavorable discharge.

**b. Board Type and Decision:** In a records review conducted on 12 September 2023, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable. The applicant previously received relief from the ABCMR as it pertains to the applicant's awards and decorations, which were granted and a new DD 214 was issued. *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:** In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

**b. Date of Discharge:** 3 December 2009

**c. Separation Facts:**

**(1) Date and Charges Preferred (DD Form 458, Charge Sheet):** On 9 November 2009, the applicant was charged with:

Charge I: Violating Article 86, UCMJ. The Specification: On or about 26 September 2008 to on or about 22 June 2009, without authority failed to go at the time prescribed to the appointed place of duty.

Charge II: Violating Article 91, UCMJ. The Specification: On or about 29 October 2009, willfully disobeyed a lawful order from 1SG D. J. L.

Charge III: Violating Article 92, UCMJ.

Specification 1: On or about 25 July 2009, having knowledge of a lawful order issued by 2LT A. C., in the form of a military protective order, which prohibited the applicant from contacting or communicating with SSG V. W., an order which it was the applicant's duty to obey, fail to obey the same by calling the phone and threatening SSG V. W.'s life.

Specification 2: On or about 3 August 2009, having knowledge of a lawful order issued by 2LT A.C., in the form of a military protective order, which prohibited the applicant from contacting or communicating with SSG V. W., an order which it was the applicant's duty to obey, fail to obey the same by reaching out of the car and taking SSG V. W.'s motorcycle key when both vehicles were at an intersection.

Specification 3: On or about 5 August 2009, having knowledge of a lawful order issued by 2LT A. C., in the form of a military protective order, which prohibited the applicant from contacting or communicating with SSG V. W., an order which it was the applicant's duty to obey, fail to obey the same by sending threatening text messages to SSG V. W.'s cell phone.

Specification 4: On or about 2 September 2009, having knowledge of a lawful order issued by 2LT A. C., in the form of a military protective order, which prohibited the applicant from contacting or communicating with SSG V. W., an order which it was the applicant's duty to obey the same by purposely driving in SSG V. W.'s workplace area.

Specification 5: On or about 28 October 2009, having knowledge of a lawful order issued by 2LT A. C., in the form of a military protective order, which prohibited the applicant from contacting or communicating with SSG V. W., an order which it was the applicant's duty to obey, fail to obey the same by following SSG V. W.

Charge IV: Violating Article 134. The Specification: On or about 22 August 2009 and on or about 22 September 2009, having been restricted to the limits of Fort Sill, broke said restriction.

Charge V: Violating Article 134. The Specification: On or about 28 October 2009, wrongfully communicate to CPT J. L. J. II. a threat.

**(2) Legal Consultation Date:** 10 November 2009

**(3) Basis for Separation:** Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial based on the charges Article 86, 91, 92 (five specifications), and 134 (one specification) as reflected in the applicants request for Chapter 10.

**(4) Recommended Characterization:** Under Other Than Honorable Conditions

**(5) Separation Decision Date / Characterization:** 25 November 2009 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 24 July 2005 / 6 years

**b. Age at Enlistment / Education / GT Score:** 26 / HS Letter / NIF

**c. Highest Grade Achieved / MOS / Total Service:** E-6 / 25U30, Signal Support System Specialist / 11 years, 8 months, 10 days

**d. Prior Service / Characterizations:** RA, 8 July 1998 – 24 March 2002 / HD  
RA, 25 March 2002 – 23 July 2005 / HD

**e. Overseas Service / Combat Service:** Korea, SWA / Iraq (2 October 2004 – 21 October 2005; 25 January 2007 – 11 September 2007)

**f. Awards and Decorations:** ARCOM-3, AAM-3, VUA, AGCM, GWOTEM, GWOTSM, KDSM, ICM-2BS, ASR, OSR-3, NATOMDL, CAB

**g. Performance Ratings:** May 2005 – March 2006 / Among the Best  
1 April 2006 – 31 January 2007 / Among the Best  
1 February 2007 – 30 November 2007 / Fully Capable  
1 December 2007 – 30 September 2008 / Fully Capable

**h. Disciplinary Action(s) / Evidentiary Record:** Military Protective Order, 11 June 2009, reflects the applicant's spouse requested it due to feeling threatened by the applicant and claimed the applicant had been to the house unannounced on occasion.

Lawton Police Department Offense Report Incident Number: 200907912-00, 25 July 2009, reflects V. W. stated the separated spouse L. W. called earlier and began to threaten V. W. Two hours later the window to the side of the house was busted by a rock.

Lawton Police Department Offense Report Incident Number: 200908325-00, 3 August 2009, V. W. reports being married to the applicant and being separated and a protective order on file. V. W. was riding a motorcycle and stopped at an intersection and the applicant drove up beside V. W. and reached out of the car and grabbed the key to the motorcycle and drove off.

Lawton Police Department Offense Report Incident Number: 200908398-00, 5 August 2009, V. W. was contacted by the applicant, which made contact with V. W. by instant message. V. W. has received contact from the applicant on two different times and in one of the messages the applicant tells V. W. the applicant better not catch V. W. slipping.

Serious Incident Report, 28 October 2009, reflects the applicant violated a military protective order and civilian protective order when the applicant came to the same football game as V. W. V. W. drove to the MP station and filled out a report of the incident. The applicant later phoned CPT J. and made threats on CPT J.'s life and on all involved with the applicant's separation from the Army. The applicant was apprehended.

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

From "Present for Duty (PDY)," to "Confined by Military Authorities (CMA)" effective 30 October 2009; and

From "Confined by Military Authorities (CMA)," to "Present for Duty (PDY)," effective 30 November 2009.

Developmental Counseling Forms, for failing to go at the time prescribed to the appointed place of duty x2; not being at the appointed place of duty x3; revocation of pass privileges; battle buddy policy.

Charge Sheet as described in paragraph 3c(1).

**i. Lost Time / Mode of Return:** 31 days (CMA, 30 October 2009 – 30 November 2009) / Released from Confinement

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

**(1) Applicant provided:** None

**(2) AMHRR Listed:** None

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 149; attorney brief with listed enclosures 1 through 22; Decorations, Medals, Citations and Award Certificates enclosures 1 through 13.

**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 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) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request

may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

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-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 waiverable. Eligibility: Ineligible unless a waiver is granted.

RE-4 Applies to: Person separated from last period of service with a nonwaiverable disqualification. This includes anyone with a DA imposed bar to reenlistment in effect at time of separation or separated for any reason (except length of service retirement) with 18 or more years active Federal service. Eligibility: Ineligible for enlistment.

**8. SUMMARY OF FACT(S):** The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

The applicant requests an upgrade to honorable. The applicant's Army Military Human Resources Record (AMHRR), the issues, and documents submitted with the application were carefully reviewed.

The evidence in the applicant's Army Military Human Resource Record (AMHRR) confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 10, AR 635-200, with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a

discharge under this paragraph is "In Lieu of Trial by Court-Martial," and the separation code is "KFS." 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 SPD code should be changed. The SPD 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 to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 10, is "KFS."

The applicant requests a reentry eligibility (RE) code change. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment.

The applicant contends good service, including two combat tours. The applicant's AMHRR reflects that the applicant served in Kosovo and Iraq.

The applicant contends family issues affected behavior and ultimately caused 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 suffering from PTSD caused by service in combat. Had the command acted upon the signs of PTSD and taken steps to help the applicant, the applicant could have remained in the Army and completed a career. The applicant did not provide any evidence to support the contention, other than the applicant's statement. The applicant's AMHRR contains no documentation of PTSD diagnosis. The AMHRR does not contain a mental status evaluation. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant requests full reinstatement into the Army at pay grade E-6 effective the date of separation; immediate promotion to E-7; and full back pay and active-duty benefits from the date of separation to present. 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 that the applicant had a military protective order wrongfully issued and enforced against the applicant because the bases of the protective order were based on feelings and allegations which are unsubstantiated and without merit. The applicant's protective order directs that the applicant always remain 50 feet away from the applicant's ex-wife and places. The protective order does not state that the applicant cannot be anywhere near the applicant's former spouse, which occurred when the applicant attended a football game that the applicant's former spouse also attended resulting in the former spouse reporting the applicant to the military policy who wrongfully attempted to apprehend the applicant and a UCMJ, Article 92 charge for violating the military protective order.

The applicant contends that the applicant was subjected to illegal restriction by the applicant's command in violation of Rules for Court-Martial 304 on 28 August 2009, when the applicant's Commander ordered the applicant not to travel outside the footprint of Building 900 on weekends or holidays without a battle buddy of equal or higher rank because the applicant had not been found guilty at any Article 15 hearing, nor had pre-trial confinement been ordered. Further, the applicant was wrongfully charged with violation of the restriction order under Article 92, UCMJ because the applicant cannot be held accountable for violating an illegal order and does not have an obligation to follow an illegal order.

The applicant contends that the applicant was held accountable for violations of the UCMJ and subsequently charged for the same violations. The applicant contends that the Command improperly counseled and given corrective training for failure to report on four occasions and subsequently charged for these offenses in violation of the UCMJ and the Fifth Amendment of the U.S. Constitution.

#### 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, based on the Board's Medical Advisor opine review of the applicant's DOD and VA health records, applicant's statement, and/or civilian provider documentation, found that the applicant has the following potentially-mitigating diagnoses/experiences: PTSD (subsuming anxiety NOS and adjustment disorder, anxiety disorder NOS) and TBI.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board determined based on the Board's Medical Advisor opine and the applicant's official records that the applicant's PTSD (subsuming anxiety NOS and adjustment disorder diagnoses made on active duty) and TBI existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board applied liberal consideration and determined that, based on the Board's Medical Advisor opine and the applicant's official records and records provided by the applicant, the applicant's PTSD mitigates the applicant's FTR offenses as there is a nexus between PTSD and avoidance behaviors. However, the applicant's PTSD and TBI do not mitigate the applicant's offenses of disobeying orders, violation of a military protection order, communicating a threat, or breaking restriction as PTSD does not impair one's ability to differentiate right from wrong and adhere to the right. Further, based on the applicant's medical records, the applicant's TBI was not of the severity to have noteworthy impact on the applicant's behavior, judgment, or appreciation of right and wrong.

(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 applicant's PTSD and TBI do not outweigh the applicant's medically unmitigated offenses of disobeying orders, violation of a military protection order, communicating a threat, or breaking restriction.

b. Response to Contention(s):

(1) The applicant contends the narrative reason, SPD code and reentry eligibility code for the discharge needs changed. The Board considered this contention and determined that



the applicant's PTSD and TBI do not outweigh the applicant's medically unmitigated offenses of disobeying orders, violation of a military protection order, communicating a threat, or breaking restriction.

(2) The applicant contends good service, including two combat tours. The Board considered the totality of the applicant's service, including combat tours, but determined that these factors did not outweigh the applicant's significant misconduct.

(3) The applicant contends family issues affected behavior and ultimately caused the discharge. The Board considered this contention and determined that the applicant's family issues do not mitigate the applicant's medically unmitigated offenses of disobeying orders, violation of a military protection order, communicating a threat, or breaking restriction- as the Army affords many avenues to Soldiers including seeking separation for hardship.

(4) The applicant contends suffering from PTSD caused by service in combat. Had the command acted upon the signs of PTSD and taken steps to help the applicant, the applicant could have remained in the Army and completed a career. The Board considered this contention and determined that the applicant's PTSD did not outweigh the misconduct of disobeying orders, violation of a military protection order, communicating a threat, or breaking restriction. Furthermore, there was no evidence presented of any capricious acts by command that mitigated the discharge. 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.

(5) The applicant requests full reinstatement into the Army at pay grade E-6 effective the date of separation; immediate promotion to E-7; and full back pay and active-duty benefits from the date of separation to present. 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.

(6) The applicant contends that the applicant had a military protective order wrongfully issued and enforced against the applicant because the bases of the protective order were based on feelings and allegations which are unsubstantiated and without merit. The applicant's protective order directs that the applicant always remain 50 feet away from the applicant's ex-wife and places. The protective order does not state that the applicant cannot be anywhere near the applicant's former spouse, which occurred when the applicant attended a football game that the applicant's former spouse also attended resulting in the former spouse reporting the applicant to the military police who wrongfully attempted to apprehend the applicant and a UCMJ, Article 92 charge for violating the military protective order. The Board considered this contention and found there is no impropriety by the Command in this situation.

(7) The applicant contends that the applicant was subjected to illegal restriction by the applicant's command in violation of Rules for Court-Martial 304 on 28 August 2009, when the applicant's Commander ordered the applicant not to travel outside the footprint of Building 900 on weekends or holidays without a battle buddy of equal or higher rank because the applicant had not been found guilty at any Article 15 hearing, nor had pre-trial confinement been ordered. Further, the applicant was wrongfully charged with violation of the restriction order under Article 92, UCMJ because the applicant cannot be held accountable for violating an illegal order and does not have an obligation to follow an illegal order. The Board considered this contention and found there is no impropriety by the Command.

(8) The applicant contends that they were held accountable for violations of the UCMJ and subsequently charged for the same violations. The applicant contends that the Command improperly counseled and given corrective training for failure to report on four occasions and subsequently charged for these offenses in violation of the UCMJ and the Fifth Amendment of the U.S. Constitution. The Board considered this contention and found there is no impropriety for the Command charging the applicant for offenses that the applicant previously received corrective training as corrective training is not punishment.

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. The applicant previously received relief from the ABCMR as it pertains to the applicant's awards and decorations, which were granted and a new DD 214 was issued.

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 and TBI do not outweigh the applicant's medically unmitigated offenses of disobeying orders, violation of a military protection order, communicating a threat, or breaking restriction. 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below that level of satisfactory service warranting a General discharge or meritorious service warranted for an upgrade to Honorable discharge. Additionally, the applicant previously received relief from the ABCMR as it pertains to the applicant's awards and decorations, which were granted and a new DD 214 was issued.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, and 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:**

4/18/2024

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