1. Applicant's Name:

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

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 requests an upgrade to honorable.

The applicant seeks relief contending, in effect, believing the discharge was too harsh. The applicant deployed in 2008 and reenlisted during the deployment, receiving an honorable discharge. The applicant should have received the honorable discharge when the applicant was separated from the Army the second time. While deployed the applicant wanted to commit suicide because of the stress of going on convoys every day and witnessing things the applicant had never seen before, and the fear of being hit with a mortar round which was a daily occurrence. The applicant was under supervision, evaluation, and therapy while deployed. Once the applicant redeployed, the applicant was referred for therapy for anger management and spousal relationship problems. The applicant was diagnosed with post-traumatic stress disorder, adjustment disorder, and spousal relationship problems.

The applicant states these conditions should have been considered carefully when the applicant appeared before the board in Virginia in January 2020. The applicant requests an upgrade to seek proper medical attention. The applicant is an outstanding civilian, neighbor, and coworker, and has not been in any trouble with the law. The applicant fought for the custody of the applicant's children. The applicant has come a long way but believes the applicant has not been treated fairly regarding the discharge. The applicant loved the Army and lives with the regret of losing the best career in the applicant's life. The applicant further details the contentions in the application and the self-authored statements submitted with the application.

b. Board Type and Decision: In a records review conducted on 12 October 2023, 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 (Civil Conviction) / AR 635-200, Chapter 14, Sec II / JKB / RE-3 / Under Other Than Honorable Conditions

b. Date of Discharge: 12 March 2012

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 1 September 2011

(2) Basis for Separation: The applicant was informed of the following reasons: The applicant was convicted of kidnapping in the state of Tennessee on or about 19 September 2011.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 9 September 2011

(5) Administrative Separation Board: On 9 September 2011, the applicant unconditionally waived consideration of the case before an administrative separation board.

(6) Separation Decision Date / Characterization: 16 November 2011 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 19 October 2009 / 5 years

b. Age at Enlistment / Education / GT Score: 28 / 1 Year College / 89

c. Highest Grade Achieved / MOS / Total Service: E-4 / 91B10, Wheeled Vehicle Mechanic / 3 years, 11 months, 1 day

d. Prior Service / Characterizations: RA, 24 September 2007 – 18 October 2009 / HD

e. Overseas Service / Combat Service: SWA / Iraq (30 December 2008 – 3 November 2009) / There appears to be an error on the DD Form 214, which indicates the applicant served in Afghanistan, but the applicant's Army Military Human Resource Record reflects the applicant served in Iraq.

f. Awards and Decorations: ARCOM, AAM, NDSM, GWOTSM, ICM-2CS, NCOPDR, ASR, OSR

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record: Three Personnel Action forms, reflect the applicant's duty status changed as follows:

From "Present for Duty (PDY)," to "Confined by Civil Authorities (CCA)," effective 14 December 2010;

From "CCA" to "PDY," effective 19 January 2011; and From "PDY" to "CCA," effective 25 August 2011.

The applicant provided Summary of Proceedings, reflecting an administrative separation board convened on 26 May 2011, found the preponderance of the evidence did not support the allegation the applicant was arrested on 13 December 2010, for kidnapping and aggravated assault. The administrative separation board recommended the applicant be retained in the service. The applicant's Army Military Human Resource Record (AMHRR) shows, the board convened before the applicant received notification of separation for conviction by civil authorities. The AMHRR is void of the previous notification for separation.

State of Tennessee Case Docket History-04 Circuit Court, Criminal, 22 August 2011, reflects the applicant was charged with Count 1: Especially (ESP) Aggravated Kidnapping; Count 2: Aggravated Kidnapping; Count 3: Aggravated Burglary, and the offenses were committed on 12 December 2010. The applicant plead guilty to Count 2, the lesser charge of kidnapping, a five-year sentence, Range 1 offender (not 100% Range 1), and the remaining charges were dismissed in settlement. The sentence was scheduled to be entered on 25 August 2011.

Developmental Counseling Form, 24 August 2011, for indebtedness to the Government because of early separation. The formed is not signed by the applicant.

i. Lost Time / Mode of Return: 6 months, 19 days:

CCA, 25 August 2011 – 12 March 2012) / Discharged from the Service CCA for 37 days, 14 December 2010 to 19 January 2011. This period is not annotated on the DD Form 214, block 29.

j. Behavioral Health Condition(s):

(1) Applicant provided: Military Family Clinic at Centerstone, 13 September 2019, reflecting the applicant was diagnosed with PTSD; alcohol abuse; generalized anxiety disorder; unspecified depressive disorder; unspecified trauma and stressor related disorder. The applicant screened positive for mild traumatic brain injury (mTBI), but there is no indication whether the applicant was diagnosed with mTBI.

(2) AMHRR Listed: Report of Medical Examination, 3 March 2011, the examining medical physician noted in the comments section: History of anxiety, depression, and anger issues.

Chronological Record of Medical Care, 3 March 2011, reflects the applicant's Problems Chronic lists Adjustment disorder with disturbance of emotions and conduct.

Report of Mental Status Evaluation, 23 March 2011, reflects the applicant was cleared for any administrative actions deemed appropriate by the command. The applicant could understand and participate in administrative proceedings; was mentally responsible; and met medical retention requirements. The applicant had been screened for PTSD and mild traumatic brain injury (mTBI) with negative results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The applicant was diagnosed with: Partner Relational Problem.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 149; DD Form 214; two DD Forms 293; three self-authored statements; electronic mail message; military service record; and numerous character references, including statements from the victim.

6. POST SERVICE ACCOMPLISHMENTS: The applicant is an outstanding citizen and coworker and fought for custody of the applicant's children.

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

a. Section 1553, Title 10, United States Code (Review of Discharge or Dismissal) provides for the creation, composition, and scope of review conducted by a Discharge Review Board(s) within established governing standards. As amended by Sections 521 and 525 of the National Defense Authorization Act for Fiscal Year 2020, 10 USC 1553 provides specific guidance to the Military Boards for Correction of Military/Naval Records and Discharge Review Boards when

considering discharge upgrade requests by Veterans claiming Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), sexual trauma, intimate partner violence (IPV), or spousal abuse, as a basis for discharge review. The amended guidance provides that Boards will include, as a voting board member, a physician trained in mental health disorders, a clinical psychologist, or a psychiatrist when the discharge upgrade claim asserts a mental health condition, including PTSD, TBI, sexual trauma, IPV, or spousal abuse, as a basis for the discharge. Further, the guidance provides that Military Boards for Correction of Military/Naval Records and Discharge Review Boards will develop and provide specialized training specific to sexual trauma, IPV, spousal abuse, as well as the various responses of individuals to trauma.

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

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

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

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

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

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

(2) Paragraph 3-7a states an Honorable discharge is a separation with honor and is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Paragraph 3-7b states a General discharge is a separation from the Army under honorable conditions and is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(4) Paragraph 3-7c states Under Other Than Honorable Conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) 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.

(6) 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.

(7) Section II, Paragraph 14-5, prescribes conditions which subject a Soldier to discharge and reduction in grade. A Soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudication in juvenile proceedings: 1) A punitive discharge authorized for the same or a closely related offense under the MCM 2002, as amended; 2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender; Initiation of separation action is not mandatory. Although the conditions established in a (1) or (2), above, are present, the immediate commander must also consider whether the specific circumstances of the offense warrant separation. If the immediate commander initiates separation action, the case will be processed through the chain of command to the separation authority for appropriate action. A Soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction.

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 "JKB" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, section II, misconduct (civil conviction).

f. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1 defines reentry eligibility (RE) codes: RE-3 Applies to: Person who is not considered fully qualified for reentry or continuous service at time of separation, but disqualification is waiverable. Eligibility: Ineligible unless a waiver is granted.

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

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

Army Regulation 635-200, in pertinent part, stipulates a Soldier may be separated when initially convicted by civil authorities, or when action is taken tantamount to a finding of guilty, if a punitive discharge is authorized for the same or a closely related offense under the Manual for Courts Martial or the sentence by civil authorities includes confinement for six months or more, without regard to suspension or probation. At the time of the applicant's discharge, the applicant had been confined by civilian authorities for 6 months, 19 days / pled guilty to a lesser charge of kidnapping to a five-year sentence. The applicant's AMHRR is void of the applicant's sentence.

The applicant contends being diagnosed with PTSD, adjustment disorder, and spousal relationship problems. The applicant provided medical documents reflecting the applicant was diagnosed with PTSD, alcohol abuse, generalized anxiety disorder, unspecified depressive disorder, and unspecified trauma and stressor related disorder. The applicant screened positive for mTBI. The applicant's AMHRR contains a Report of Medical Examination, which reflects the applicant's history of anxiety, depression, and anger issues. The Chronological Record of Medical Care lists the applicant's problems as adjustment disorder with disturbance of emotions and conduct. The record shows the applicant underwent a mental status evaluation (MSE) on 23 March 2011, which indicates the applicant was mentally responsible and met medical retention requirements. The applicant had been screened for PTSD and mild traumatic brain injury (mTBI) with negative results. The applicant was diagnosed with a partner relational problem. The MSE, medical examination, and record of medical care were considered by the separation authority

The applicant contends the event which led to the discharge from the Army was an isolated incident. Army Regulation 635-200, paragraph 3-5c states there are circumstances in which the conduct or performance of duty reflected by a single incident provides the basis for a characterization.

The applicant contends being unfairly discharged because the applicant was not guilty and pled guilty because the civilian defense attorney deceived the applicant. The applicant provides several statements from the victim to support the applicant's contention. The applicant's AMHRR reflects the applicant pled guilty to Count 2, the lesser charge of kidnapping, with a five-year sentence, and the remaining charges were dismissed in the settlement. The applicant's AMHRR does not contain the final judgement on sentence. The applicant's AMHRR does not contain or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including a combat tour.

The applicant desires to rejoin the Military Service. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on Army Regulation 601-210, the applicant was appropriately assigned an RE code of "3." There is no basis upon which to grant a change to the reason or the RE code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of reentry eligibility (RE) codes if appropriate.

The applicant contends an upgrade would allow educational benefits through the GI Bill and medical benefits. Eligibility for veteran's benefits to include educational benefits under the Post-9/11 or Montgomery GI Bill does not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local office of the Department of Veterans Affairs for further assistance.

The 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 being an outstanding citizen and coworker and fighting for custody of the applicant's children. The Army Discharge Review Board is authorized to consider postservice 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.

The third-party statements, including statements from the victim, provided with the application speak highly of the applicant and recognize the applicant's good military service and/or good conduct after leaving the Army.

The applicant contends the ADRB Case AR20180000141, did not consider the applicant's mental health conditions. The applicant submitted evidence of behavioral health conditions noted in par 4j above.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by **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, Anxiety/Generalized Anxiety Disorder, Depression/Unspecified Depressive Disorder, and PTSD/Unspecified trauma- and stressor related disorder.

(2) Did the condition exist or experience occur during military service? Yes. The Board's Medical Advisor found that the applicant's Adjustment Disorder, Anxiety/Generalized Anxiety

Disorder, Depression/Unspecified Depressive Disorder, and PTSD/Unspecified trauma- and stressor related disorder existed during the applicant's service.

(3) Does the condition or experience excuse or mitigate the discharge? No. The Board's Medical Advisor applied liberal consideration and opined that the applicant's behavioral health conditions do not mitigate the civilian conviction. There is no natural sequela between any of the applicant's behavioral health conditions and the act of kidnapping. None of the conditions interfere with the ability to distinguish between right and wrong and act in accordance with the right.

(4) Does the condition or experience outweigh the discharge? No. After applying liberal consideration to the evidence, including the Board Medical Advisor's opine, the Board determined that the available evidence did not support a conclusion that the applicant's Adjustment Disorder, Anxiety/Generalized Anxiety Disorder, Depression/Unspecified Depressive Disorder, and PTSD/Unspecified trauma- and stressor related disorder outweighed the applicant's medically unmitigated civilian conviction for kidnapping.

b. Response to Contention(s):

(1) The applicant contends being diagnosed with PTSD, adjustment disorder, and spousal relationship problems. The Board liberally considered this contention but determined that the available evidence did not support a conclusion that the applicant's BH conditions outweighed the medically unmitigated kidnapping offense. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends the event which led to the discharge from the Army was an isolated incident. The Board considered this contention but determined that the severity of the kidnapping offense properly and equitably served as the basis for separation. The current characterization of service is in accordance with Army Regulation 635-200, paragraph 3-5.

(3) The applicant contends being unfairly discharged because the applicant was not guilty and pled guilty because the civilian defense attorney deceived the applicant. The Board considered this contention but found no evidence in the applicant's AMHRR or applicant provided evidence (other than the applicant's assertion) to support this contention. Therefore, a discharge upgrade is not warranted.

(4) The applicant contends good service, including a combat tour. The Board considered the totality of the applicant's service record (length/quality/combat/post-service accomplishments) but found that the record does not outweigh the offense of kidnapping.

(5) The applicant desires to rejoin the Military Service. The Board considered this contention and voted to maintain the RE-code at RE-3, which is a waivable code. An RE Code of "3" indicates the applicant requires a waiver before being allowed to reenlist. Recruiters can best advise a former service member as to the Army's needs at the time and are required to process waivers of RE codes, if appropriate.

(6) The applicant contends an upgrade would allow educational benefits through the GI Bill and medical benefits. The Board considered this contention and determined that eligibility for Veteran's benefits do not fall within the purview of the Army Discharge Review Board. Accordingly, the applicant should contact a local Department of Veterans Affairs office for further assistance.

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

(8) The applicant contends being an outstanding citizen and coworker and fighting for custody of the applicant's children. The Board considered the applicant's post-service accomplishments but determined that they do not outweigh the applicant's kidnapping offense.

(9) The applicant contends a past ADRB Case did not consider the applicant's 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, Generalized Anxiety Disorder, Depression, or PTSD outweighed the applicant's medically unmitigated kidnapping offense. Therefore, a discharge upgrade is not warranted.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before a 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 to the evidentiary record, the applicant's behavioral health conditions did not outweigh the applicant's medically unmitigated civilian conviction for kidnapping. The Board also considered the applicant's contention regarding good service, post-service accomplishments, and the offense being an isolated incident but found that the 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 Under Other Than Honorable Conditions discharge was proper and equitable as the applicant's conduct fell below both the satisfactory and meritorious service warranted for General or Honorable characterizations.

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

3/8/2024



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 Director 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