

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 under review is under other than honorable conditions. The applicant requests an upgrade to honorable.

The applicant seeks relief contending, in effect, the reentry code is inequitable because of an act of reprisal against the applicant. The applicant spoke out after witnessing several accounts of conduct unbecoming by senior leadership within the command, and their violations of both their oaths and the rights of the Soldiers entrusted to them. As seen in the plethora of attached documents, the command violated both federal law and Army regulations several times in the way the applicant was treated and how the applicant was discharged. After nearly 18 months of persecution and mistreatment, the applicant was emotionally taxed and ready to leave the Army. This does not justify the continued inequity applied to the discharge. The board members were selected by the command, which was found guilty by the Inspector General (IG) in the applicant's complaints. The applicant's military attorney did not attend the board, and the board spent less than 20 minutes determining the characterization of the applicant's service. After the findings, the applicant was given three-days' notice the applicant's service was over and the applicant was denied federally mandated transition assistance. The doctor-recommended medical retirement, prioritized by regulation. The applicant further details the contentions in a self-authored statement submitted with the application.

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.

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

(Board member names available upon request)

3. DISCHARGE DETAILS:

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

b. Date of Discharge: 15 July 2015**c. Separation Facts:**

(1) Date of Notification of Intent to Separate: 17 February 2015

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

The applicant did between 1 December 2012 and 1 May 2013, violate a lawful general regulation, USAREC Regulation 600-25, dated 4 February 2009, by wrongfully engaging in

romantic, social activities of a personal and unofficial nature with [redacted], a subject of recruiting efforts. This is in violation of Article 92, UCMJ.

The applicant did between 1 December 2012 and 1 May 2013, violate a lawful general regulation, USAREC Regulation 600-25, dated 4 February 2009, by wrongfully transporting [redacted], a subject of recruiting efforts, in the applicant's privately-owned vehicle and sharing lodging with the individual. This is in violation Article 92, UCMJ.

The applicant did between 1 December 2012 and 1 May 2013, violate a lawful general regulation, USAREC Regulation 600-25, dated 4 February 2009, by wrongfully allowing [redacted], a subject of recruiting efforts, into the applicant's private dwelling. This is in violation of Article 92, UCMJ.

The applicant did between 1 December 2012 and 1 May 2013, violate a lawful general regulation, USAREC Regulation 600-25, dated 4 February 2009, by wrongfully meeting with a subject of recruiting efforts, [redacted], a member of the opposite gender, without at least one other qualifying person present. This is in violation of Article 92, UCMJ.

The applicant, a married person, did between 15 January and 24 May 2013, wrongfully have sexual intercourse with [redacted] a person not the spouse. This is in violation of Article 134, UCMJ.

The applicant did between 1 May and 30 September 2013, violate a lawful general regulation, Army Regulation 600-20, by wrongfully engaging in a romantic relationship with SPC [redacted], an initial entry training trainee, which was not required by the training mission. This is in violation of Article 92, UCMJ.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 23 February 2015 / The Army Military Human Resource Record (AMHRR) is void of the second page of the applicant's Election of Rights.

(5) Administrative Separation Board: On 23 February 2015, the applicant requested consideration of the case before an administrative separation board.

On 29 April 2015, the applicant was notified to appear before an administrative separation board and advised of rights.

On 21 May 2015, the administrative separation board convened and the applicant appeared with civilian counsel. The board recommended the applicant's discharge with characterization of service of under other than honorable conditions. The applicant's military co-counsel was absent.

On 26 June 2015, the separation authority approved the findings and recommendations of the administrative separation board.

(6) Separation Decision Date / Characterization: 26 June 2015 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. **Date / Period of Enlistment:** 30 April 2012 / Indefinite

b. Age at Enlistment / Education / GT Score: 30 / Associate's Degree / 111

c. Highest Grade Achieved / MOS / Total Service: E-7 / 35P4L, Cryptologic Linguist / 14 years, 10 months, 3 days

d. Prior Service / Characterizations: RA, 13 September 2000 – 8 January 2006 / HD
RA, 9 January 2006 – 14 October 2009 / HD
RA, 15 October 2009 – 29 April 2012 / HD

e. Overseas Service / Combat Service: Germany, SWA / Afghanistan (3 April 2005 – 31 March 2006); Iraq (30 November 2008 – 30 March 2009)

f. Awards and Decorations: ACM-2CS, ARCOM-3, AAM, MUC-2, ASUA, AGCM-4, NDSM, GWOTSM, ICM-CS, NCOPDR-3, ASR, OSR-3, MOVSM-2, CAB

g. Performance Ratings: 5 May 2011 – 7 May 2012 / Among the Best
8 May 2012 – 7 May 2013 / Among the Best
8 May 2013 – 22 July 2014 / Marginal

h. Disciplinary Action(s) / Evidentiary Record: Superior Court of Washington Petition for Dissolution of Marriage (PTDSS), dated 2 February 2013, reflects the applicant petitioned for dissolution of marriage.

Superior Court of Washington Decree of Dissolution (DCD), dated 24 May 2013, reflects the marriage between the applicant and the spouse was dissolved.

Sworn Statement, dated 26 February 2014, from Captain B. H. reflects Specialist (SPC) [redacted] claimed harassment and an inappropriate relationship with the individual's recruiter, the applicant. The individual requested the chain of command assistance in carrying out an informal harassment complaint. The person indicated the relationship between the individual and the applicant began in early January 2013. The individual's command team agreed the claim needed further investigation.

Informal AR 15-6 Investigation Findings and Recommendations, dated 18 March 2014, reflects the investigating officer found the applicant knowingly and through gross negligence did violate USAREC Regulation 600-25 (Prohibited and Regulated Activities), paragraphs 2-2a and 2-2c, deeming the allegations substantiated. The investigating officer commented the applicant immediately elected to speak to legal counsel and shirked a moral responsibility to debunk the allegation.

General Officer Memorandum Of Reprimand, dated 6 May 2014, reflects the applicant a married person, had an inappropriate, adulterous relationship with Specialist (SPC) N. M., a subject of recruiting efforts, in violation of USAREC Regulation 600-25, paragraph 2-1a and Articles 92 and 134, UCMJ. The applicant submitted a self-authored memorandum and third party statements, including memorandum from the legal assistance attorney, in rebuttal.

The applicant provided memorandum, dated 19 June 2014, subject: Request for Redress of Wrongdoings (IAW) Article 138 of UCMJ). The applicant requested redress for wrongdoings, which resulted from an Army Regulation 15-6 Investigation into allegations the applicant had an inappropriate relationship with a subject of recruiting activity.

Field Grade Article 15, dated 13 August 2014, for, on two occasions: violating a lawful general regulation, to wit: USAREC Regulation 600-25, paragraph 2-1a(1), dated 4 February 2009, by

wrongfully engaging in an unofficial social activity with a subject of recruiting efforts, to wit: attending a birthday party together with N. M. and by wrongfully meeting with a subject of recruiting efforts, N. M, a member of the opposite gender, without at least one other qualifying person present (22 February 2013). The punishment consisted of a forfeiture of \$1,957 pay.

The applicant provided, Headquarters, U.S. Army Recruiting Command, Personnel Directorate letter, dated 1 October 2014, reflecting the letter was in response to a letter from Honorable J. B., regarding allegations of irregularities in the adverse administrative process within the U.S. Army Recruiting Command. The applicant was the only Soldier who provided a written Privacy Act Release authority and the command only provided general information regarding the applicant's situation. The applicant provided a statement in rebuttal to the letter.

The formal AR 15-6 Investigation Findings and Recommendations, dated 21 May 2015, reflects the administrative separation board found the applicant:

Did between 1 December 2012 and 1 May 2013, violate a lawful general regulation by wrongfully engaging in romantic, social activities of a personal and unofficial nature with [redacted], a subject of recruiting efforts.

Did between 1 December 2012 and on 1 May 2013, violate a lawful general regulation, by wrongfully transporting [redacted], a subject of recruiting efforts, in the applicant's privately-owned vehicle and sharing lodging with the individual. This is in violation Article 92, UCMJ.

Did between 1 December 2012 and 1 May 2013, violate a lawful general regulation, by wrongfully allowing [redacted], a subject of recruiting efforts, into the applicant's private dwelling. This is in violation of Article 92, UCMJ.

Did between 1 December 2012 and 1 May 2013, violate a lawful general regulation, by wrongfully meeting with a subject of recruiting efforts, [redacted], a member of the opposite gender, without at least one other qualifying person present. This is in violation of Article 92, UCMJ.

Did between 15 January and 24 May 2013, wrongfully have sexual intercourse with [redacted] a person not the spouse. This is in violation of Article 134, UCMJ.

Did between 1 May and 30 September 2013, violate a lawful general regulation, by wrongfully engaging in a romantic relationship with SPC [redacted], an initial entry training trainee, which was not required by the training mission. This is in violation of Article 92, UCMJ.

The applicant provided a copy of a Department of Veterans Affairs (VA) letter, dated 19 April 2016, reflecting the applicant's service as honorable from 13 September 2000 to 15 July 2015 for VA purposes. The evidence shows the circumstances leading to the applicant's discharge by itself, did not constitute an offense involving moral turpitude.

Three Developmental Counseling Forms, for various acts of misconduct and pending separation.

The applicant provided Whistleblower Reprisal Questionnaire, undated and unsigned, reflecting the applicant alleging acts of reprisal by members of the chain of command.

i. Lost Time / Mode of Return: None

j. Diagnosed PTSD / TBI / Behavioral Health: Report of Mental Status Evaluation, dated 4 November 2014, reflects the applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant had been screened for post-traumatic stress disorder (PTSD) and mild traumatic brain injury (mTBI) with positive results. The conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The command was advised to consider the influence of these conditions. The applicant was diagnosed with post-traumatic stress disorder, chronic. The provider recommended the applicant perform military duties in less densely populated environments until the PTSD symptoms improved. While Servicemember meets criteria for chronic PTSD, the condition had not required hospitalizations, duty limitations, or interfered significantly with the military performance.

Physical Profile, dated 3 December 2014, reflects the applicant was on temporary profile for the following medical conditions: TBI; low back pain; PTSD; depression; and anxiety. By the Servicemember's history, these conditions may meet requirements for a permanent profile after supporting evaluation documentation was received from the Servicemember.

Report of Medical Examination, dated 2 February 2015, the examining medical physician noted in the comments section: PTSD, cognition disorder; and TBI. The applicant was qualified for service, chapter in accordance with Army Regulation 40-501, chapter 3.

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; military service records; separation documents; numerous third party character references; congressional documents; Whistleblower Reprisal Questionnaire; and Article 138, UCMJ complaint.

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

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

f. Army Regulation 601-210, Regular Army and Reserve Components Enlistment Program, governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waiverable and nonwaiverable separations. Table 3-1, defines reentry eligibility (RE) codes:

RE-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.

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 record of service, the issues and documents submitted with the application were carefully reviewed.

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8, Separation Processing and Documents, governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in

tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant 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 601-201, 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 PTSD affected behavior which led to the discharge. The applicant's AMHRR contains documentation which supports a diagnosis of in-service PTSD, mild TBI, depression, and anxiety. The record shows the applicant underwent a mental status evaluation (MSE) on 4 November 2014, which indicates the applicant could understand and participate in administrative proceedings; could appreciate the difference between right and wrong; and met medical retention requirements. The applicant was diagnosed with: Post-traumatic stress disorder, chronic. The MSE was considered by the separation authority.

The applicant contends being rated 80 percent disability with 50 percent service-connected disability for PTSD, with TBI and depression and the VA determined the applicant's service was honorable for VA purposes. The applicant provided a VA letter, dated 19 April 2016, reflecting the applicant's service from 13 September 2000 to 15 July 2015, as honorable. The document did not indicate a disability rating. The criteria used by the VA in determining whether a former servicemember is eligible for benefits are different than used by the Army when determining a member's discharge.

The applicant contends acts of reprisal under the Whistleblower Protection Act by members of the chain of command and the board members were selected by the command which was found guilty by the Inspector General (IG) in the applicant's complaint. The applicant provided documents reflecting the applicant requested redress regarding the AR 15-6 investigation and made allegations of irregularities in the adverse administrative process within the U.S. Army Recruiting Command. The applicant did not provide any evidence reflecting the outcome of the complaints. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends a medical evaluation board was under process at the time of the separation proceedings. The applicant's AMHRR is void of any evidence of a pending MEB. The Department of Defense disability regulations do not preclude a disciplinary separation while undergoing a medical board. Appropriate regulations stipulate separations for misconduct take precedence over potential separations for other reasons. Whenever a member is being processed through the Physical Evaluation Board and is subsequently processed for an involuntary administrative separation for misconduct, the administrative separation proceedings will continue, but final action by the separation authority will not be taken, pending the results of the MEB. If the MEB findings indicate referral of the case to a physical evaluation board (PEB) is warranted, a copy of the approved MEB proceedings will be forwarded to the Soldier's GCMCA and unit commander. The GCMCA may direct the Soldier be processed through the physical disability system, when court-martial proceedings have not been initiated, or to continue with the administrative separation action.

The applicant contends the discharge should have been for medical reasons. Army Regulation 635-200, in pertinent part, stipulates commanders will not separate Soldiers for a medical condition solely to spare a Soldier who may have committed serious acts of misconduct.

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

The third party statements provided with the application speak highly of the applicant. They all recognize the applicant's good military service.

The applicant contends the applicant's grade to E-7 should be reinstated; the money the applicant had to repay for reenlistment bonus returned to the applicant; and the applicant should be returned to service. The applicant's requested changes 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 the previous ADRB decision recognized the regulatory and federal law violations committed by the command in reprisal for the applicant's whistleblowing and, as a result, changed the reentry code. The AMHRR reflects the board made an administrative correction to the DD Form 214, block 27, changing the applicant's reentry code from 4 to 3 based on an erroneous entry. There is no evidence showing the Board determined the command violated regulatory guidance and federal law or there was reprisal involved.

9. BOARD DISCUSSION AND DETERMINATION:

a. As directed by the 2017 memo signed by [REDACTED] 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: PTSD, TBI, Cognitive Disorder, Amnesia, and Anxiety Disorder.

(2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found the conditions occurred in service and were related to deployment.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that although records showed the applicant with multiple BH diagnoses during service, and applicant has a SC diagnosis of PTSD, the applicant's misconduct characterized by multiple violations of regulation, wrongful engagement in a romantic relationship with a recruit, and wrongful committing adultery, are not mitigated by applicant's diagnoses. Applicant's misconduct is not nature sequelae of PTSD, and although applicant was diagnosed with potentially mitigating conditions of TBI, Amnesia, and Cognitive Disorder, neuropsychological testing that occurred subsequent the diagnoses and prior to the misconduct found the applicant did not have a neurocognitive disorder, and MRI and EEG results were also normal. The applicant's misconduct was also not natural sequela of Anxiety Disorder NOS. Given the above, the applicant did not have a disorder that rendered applicant unable to differentiate between right and wrong and adhere to the right and there is insufficient medical evidence to support an upgrade of applicant's discharge characterization.

(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 PTSD, TBI, Cognitive Disorder, Amnesia, and Anxiety Disorder outweighed the basis for applicant's separation –fraternization with a recruit (romantic), transport in POV and sharing lodging, allowing recruit into home, meeting female recruit without additional person, sex with recruit (adultery), romantic relationship with trainee offenses– for the aforementioned reason(s).

b. Prior Decisions Cited: AR20170001506

c. Response to Contention(s):

(1) The applicant contends the narrative reason for the discharge needs changed.

(2) The applicant requests a reentry eligibility (RE) code change. The Board considered this contention and voted to maintain the RE-code to a 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 reentry eligibility (RE) codes, if appropriate.

(3) The applicant contends PTSD affected behavior which led to the discharge. The Board considered this contention and determined the applicant's PTSD and other behavioral health diagnoses did not render the applicant unable to differentiate between right and wrong and adhere to the right and there is insufficient medical evidence to support an upgrade of applicant's discharge characterization.

(4) The applicant contends being rated 80 percent disability with 50 percent service-connected disability for PTSD, with TBI and depression and the VA determined the applicant's service was honorable for VA purposes. The Board liberally considered this contention and determined that the applicant's PTSD, TBI, Cognitive Disorder, Amnesia, and Anxiety Disorder outweighed the basis for applicant's separation –fraternization with a recruit (romantic), transport in POV and sharing lodging, allowing recruit into home, meeting female recruit without additional person, sex with recruit (adultery), romantic relationship with trainee offenses. The Board also considered the totality of the applicant's record, including the applicant's BH condition and determined that a discharge upgrade is not warranted based on the seriousness of the applicant's misconduct.

(5) The applicant contends acts of reprisal under the Whistleblower Protection Act by members of the chain of command and the board members were selected by the command which was found guilty by the Inspector General (IG) in the applicant's complaint. The Board considered this contention and legally reviewed the applicant's assertions and objections and found the grounds for the applicant's objection to the use of adverse findings from an AR 15-6 investigation ultimately amount to harmless error, and do not raise substantial doubt as to whether the discharge would have remained the same if the error did not occur, as laid out in DoDI 1332.28, E.4.2.1.1.

(6) The applicant contends a medical evaluation board was under process at the time of the separation proceedings and the discharge should have been for medical reasons. 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.

(7) The applicant contends good service, including two combat tours. The Board considered the applicant's 14 years of service, including 2 combat tours in Iraq and Afghanistan and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's fraternization with a recruit (romantic), transport in POV and sharing lodging, allowing recruit into home, meeting female recruit without additional person, sex with recruit (adultery), romantic relationship with trainee offenses

(8) The applicant contends the applicant's grade to E-7 should be reinstated; the money the applicant had to repay for reenlistment bonus returned to the applicant; and the applicant should be returned to service. 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.

(9) The applicant contends the previous ADRB decision recognized the regulatory and federal law violations committed by the command in reprisal for the applicant's whistleblowing and, as a result, changed the reentry code. The Board considered this contention and legally reviewed the applicant's assertions and objections and found the grounds for the applicant's objection to the use of adverse findings from an AR 15-6 investigation ultimately amount to harmless error, and do not raise substantial doubt as to whether the discharge would have remained the same if the error did not occur, as laid out in DoDI 1332.28, E.4.2.1.1.

d. 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.

e. 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, TBI, Cognitive Disorder, Amnesia, and Anxiety Disorder did not excuse or mitigate the misconduct of fraternization with a recruit (romantic), transport in POV and sharing lodging, allowing recruit into home, meeting female recruit without additional person, sex with recruit (adultery), romantic relationship with trainee offenses. 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.

(2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretenses, as the reason the applicant was discharged was both proper and equitable.

(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. BOARD ACTION DIRECTED:

a. **Issue a New DD-214 / Separation Order:** No

ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210002304

- 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:

1/16/2024

X

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

Legend:

AWOL – Absent Without Leave
AMHRR – Army Military Human
Resource Record
BCD – Bad Conduct Discharge
BH – Behavioral Health
CG – Company Grade Article 15
CID – Criminal Investigation
Division
ELS – Entry Level Status
FG – Field Grade Article 15

GD – General Discharge
HS – High School
HD – Honorable Discharge
IADT – Initial Active Duty Training
MP – Military Police
MST – Military Sexual Trauma
N/A – Not applicable
NCO – Noncommissioned Officer
NIF – Not in File
NOS – Not Otherwise Specified

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