### 1. Applicant's Name:

a. Application Date: 26 April 2021

b. Date Received: 26 April 2021

c. Counsel: Yes

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

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

The applicant seeks relief contending, in effect, the command and the board of inquiry did not fully explore the applicant's traumatic brain injury (TBI) or post-traumatic stress disorder (PTSD) at the time of discharge. The applicant's pain management and medical history were profound and helped to explain the applicant's increasingly bizarre behavior. The applicant's TBI and the psychological effects of the applicant's injuries and pain management altered the applicant's ability to think and behave clearly and appropriately. Considering the applicant's physical and psychological condition, a less than honorable discharge unfairly stigmatizes the applicant. Any alleged misconduct is aberrational and inconsistent with the applicant's significant service record and accomplishments. It was a sign of something medically wrong with the applicant, not a sign the applicant was unwilling to adhere to Army Values.

**b. Board Type and Decision:** In a records review conducted on 30 May 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: Unacceptable Conduct / AR 600-8-24, Paragraph 4-2b / JNC / General (Under Honorable Conditions)
  - b. Date of Discharge: 27 February 2011
  - c. Separation Facts:
    - (1) Date of Notification of Intent to Separate: 17 November 2009
- **(2) Basis for Separation:** The applicant was informed to show cause for retention on active duty under the provisions of AR 600-8-24, paragraphs 4-2b(5) and (8) for misconduct, moral, or professional dereliction, conduct unbecoming of an officer and for receiving adverse information filed in the Official Military Personnel File (OMPF) in accordance with AR 600-37, due to the following reasons:

Series of substantiated derogatory activity resulting in:

A Referred Service School Academic Evaluation Report for the period 17 October 2006 through 23 March 2007;

Two General Officer Memorandums of Reprimand, dated 13 February 2007 and 21 April 2008; and

A Referred Officer Evaluation Report for the period 28 December 2007 through 14 April 2008 which was filed in the Official Military Personnel File (OMPF).

Conduct unbecoming an officer as indicated by the above-referenced item.

- (3) Legal Consultation Date: NIF
- **(4) Board of Inquiry (BOI):** On 25 February 2010, the GOSCA referred the applicant's case to a Board of Inquiry.

On 8 March 2010, the applicant was notified to appear before a board of inquiry and advised of rights.

On 1 April 2010, the board of inquiry convened and the applicant appeared with counsel. The board recommended the applicant's discharge with characterization of service of general (under honorable conditions). The BOI reconvened on 10 June 2010, because of a procedural error, and recommended a general (under honorable conditions).

- **(5) GOSCA Recommendation Date / Characterization:** On 8 July 2010, the GOSCA supported the BOI's findings; however, recommended the medical disability processing precedes the BOI's recommendation the applicant be separated from the Army with a general (under honorable conditions) discharge.
- **(6) DA Board of Review for Eliminations:** On14 October 2010, the Army Board of Review for Eliminations considered the GOSCA's request to involuntarily separate the applicant for unacceptable conduct in accordance with AR 600-8-24, Chapter 4-2b.
- (7) Separation Decision Date / Characterization: 3 February 2011 / General (Under Honorable Conditions)

#### 4. SERVICE DETAILS:

- **a. Date / Period of Appointment:** 12 September 2006 / 3 years / The AMHRR is void of any orders retaining the applicant on active duty after the most recent active duty orders.
  - b. Age at Appointment: / Education: 38 / Bachelor's Degree
- **c. Highest Grade Achieved / MOS / Total Service:** O-3 / 25A, 6B Signal, General / 22 years, 1 month, 1 day / The applicant's AMHRR reflects the applicant's total service is 23 years, 5 months, 23 days.
  - d. Prior Service / Characterizations: USMCR, 14 February 1986 21 July 1986 / NA
    USMC, 22 July 1986 –21 July 1992 / HD
    USMCR, 22 July 1992 12 April 1993 / NIF
    AFNG, 13 April 1993 20 December 1994 / NIF
    ADT, 3 November 1993 18 March 1994 / NIF
    (Concurrent Service)
    (Break in Service)
    AFNG, 13 July 1996 2 August 2002 / NIF

AD, 12 July 1998 – 18 January 1999 / HD (Concurrent Service) USAF, 3 August 2002 – 11 September 2006 / HD

- e. Overseas Service / Combat Service: Korea, SWA / Kuwait (1 July 1987 1 January 1989); Saudi Arabia (1 August 1990 30 April 1991)
- **f. Awards and Decorations:** MCMM, JSCM, AAM, AFAM, N/MCAR, JMUA, NUCM, AFOUA, NMUC, ASUA-2, MCGCM, AFRMSM, NDSM-BSS, SWASM-3BSS, GWOTSM, KDSM, ASR, AFLSAR-5, AFTR-2, NSSDR-2, AFOSR (ST), AFNCOPR-2, KLM (SA), KLM (KU)
  - g. Performance Ratings: 31 May 2007 27 December 2007 / Best Qualified 28 December 2007 – 14 April 2008 / Do Not Promote (Referred) 15 April 2008 – 13 October 2008 / Fully Qualified 14 October 2008 – 30 September 2009 / Best Qualified 1 October 2009 – 15 July 2010 / Best Qualified
- h. Disciplinary Action(s) / Evidentiary Record: Military Police Report, dated 31 January 2007, reflects the applicant was apprehended for: driving under the influence (off post) on 27 January 2007. Investigation revealed a deputy observed the applicant's vehicle failing to maintain lane of travel. A traffic stop was initiated and the applicant failed a series of field sobriety tests. The applicant was transported to the Richmond County Jail and administered an intoxilyzer test which resulted in a reading of .099 grams. The applicant was charged with a DUI and cited for failure to maintain lane of travel.

General Officer Memorandum Of Reprimand, dated 13 February 2007, reflects the applicant was driving under the influence. After being stopped for reckless driving on 27 January 2007, the applicant was administered a breathalyzer test which resulted in a reading of .099 percent blood alcohol content. The applicant submitted a rebuttal to the GOMOR.

Service School Academic Evaluation Report, dated 23 March 2007, reflects the applicant attended the Signal Captain's Career Course 01-07 and achieved course standards, but received an unsatisfactory in "Leadership Skills," for displaying questionable judgement in leadership skills and professionalism. The report was a referred report.

General Officer Memorandum Of Reprimand, dated 9 April 2008, reflects the applicant violated Article 133, UCMJ, Conduct Unbecoming an Officer. The applicant engaged in inappropriate behavior with spouses of the 3rd Squadron, 89th Cavalry Regiment Family Readiness Group (FRG) while serving as the Rear Detachment Officer in Charge for 3rd Squadron, 89th Cavalry Regiment. The applicant's actions with the FRG spouses created an atmosphere of distrust and disharmony which percolated to the deployed spouses. The applicant submitted a four-page rebuttal and supporting third-party statements.

Physical Evaluation Board (PEB) Proceedings, dated 30 April 2008, reflects the applicant was found fit for duty for back and neck pain. The applicant concurred with the findings. The PEB findings were approved.

Memorandum, subject: Show Cause Recommendation – FY09 Major Army, (Operation Support) Promotion Selection Board, [Applicant], dated 14 July 2009, reflects the board recommended the applicant be required to show cause for retention on active duty.

Medical Evaluation Board (MEB) Proceedings, dated 17 February 2010, reflect the following diagnosis: chronic neck pain status post (S/P) surgical fusion and chronic low back pain w/p

discectomy, which did not meet retention standards. The applicant was diagnosed with the following medical conditions, which met retention standards:

Dysphagia;

Left sensory peroneal neuropathy;

Benign skin neoplasm;

Migraine headaches;

Right subclavian vein thrombosis – resolved;

Mild right hearing loss;

Sinus bradycardia:

Hyperlipidemia;

Adjustment disorder with anxiety - resolved; and

Obstructive sleep apnea-well controlled with continuous positive airway pressure (CPAP).

The MEB recommended the case be referred to a Physical Evaluation Board (PEB).

The applicant did not agree with the MEB's findings and recommendation. The applicant appealed the decision.

Physical Profile (permanent), dated 23 February 2010, reflects the applicant had the following medical conditions:

Chronic neck pain S/P surgical fusion;

Chronic low back pain S/P surgical discectomy; and

Obstructive Sleep Apnea.

Formal AR 15-6 Investigation Findings and Recommendations, dated 1 April 2010, reflects the board of inquiry found by a preponderance of the evidence the applicant committed a series of substantiated derogatory activity in referenced in the Initiation of Elimination.

Memorandum, subject: Resolution of Unfavorable Information [Applicant], dated 5 October 2009, reflects the applicant petitioned the Department of the Army Suitability Evaluation Board (DASEB) to transfer two GOMORs, dated 13 February 2007, to transfer the GOMORs from the performance portion to the restricted portion of the OMPF. The petition was denied.

A series of memorandums dated between 23 April and 10 June 2010, reflect:

The BOI President received legal advice improperly from the Staff Judge Advocate (SJA). The applicant's counsel argued the applicant's rights were violated and the error could only be corrected by the general officer show cause authority (GOSCA) retaining the applicant or ordering a rehearing by a new board.

The SJA provided a memorandum reflecting the circumstances surrounding the incident with the BOI President, resulting in a procedural error.

The Civil and Administrative Law Attorney determined the advice provided by the SJA was a procedural error because the advice was not obtained in open session and was harmless. The attorney recommended the case be returned to the same board for corrective action by incorporating the advice provided by the SJA into the record.

The applicant's counsel disagreed with the legal review and indicated the only way the error could be corrected was for the GOSCA to direct the applicant be retained or by ordering a rehearing. The defect could not be fixed simply by amending the record.

The Board of Inquiry reconvened on 10 June 2010, to address a procedural error or omission in the record of proceedings. The BOI found the *ex parte* communication did not affect the BOI's decision. The BOI recommended the applicant be discharged with a general (under honorable conditions).

Physical Evaluation Board (PEB) Proceedings, dated 23 November 2010, reflecting the PEB found the applicant was physically unfit for diagnosis: Intervertebral disc syndrome, listed as low back pain; and spinal fusion, listed as chronic neck pain traced to November 2007, without discrete injury. The PEB recommended a combined rating of 30 percent disability and the applicant receive permanent disability retirement. On 1 December 2010, the applicant concurred with the findings.

The applicant provided Orders 347-0022, dated 13 December 2010, reflecting the applicant was scheduled to be released from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions which permit retirement for permanent physical disability, effective 27 February 2011 and placed on the retirement list on 28 February 2011, with 30 percent disability.

- i. Lost Time / Mode of Return: None
- j. Behavioral Health Condition(s):
- (1) Applicant provided: Chronological Record of Medical Care, dated between 11 June 2009 and 7 April 2010, reflects the applicant's problems listed: Adjustment disorder with anxious mood; euthymic mood with congruent affect; and headache syndromes. The adjustment disorder with anxiety was resolved.

Memorandum, subject: Fit for Duty, dated 23 December 2009, reflects the applicant was found fit for duty for mental health disorders.

Department of Veterans Affairs (VA) Progress Notes, dated 14 March 2018, reflecting the applicant was rated service-connected disabled for degenerative arthritis of the spine, 20 percent; paralysis of sciatic nerve, 10 percent; sleep apnea syndrome, 50 percent; traumatic brain syndrome, 40 percent; and migraine headaches, 30 percent. Chronic low back pain and adjustment disorder with anxious mood is listed as the applicant's active problems.

**(2) AMHRR Listed:** Chronological Record of Medical Care and Fit for Duty memorandum as described in previous paragraph 4i(1).

The MEB as described in the previous paragraph 4h, reflecting the applicant was diagnosed with adjustment disorder with anxiety – resolved.

- **5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; Legal Brief; 12 third party character references; résumé; military timeline; medications and conditions at the time of discharge; military disability retirement documents; and service medical records.
- **6. Post Service Accomplishments:** The applicant maintained employment at the Department of Homeland Security/U.S. Citizenship and Immigration Service as the Immigration Officer Refugee Officer, as well as other establishments of the Federal Government; and attained a Master of Arts Degree and several certifications.
- 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 600-8-24, Officer Transfers and Discharges, sets forth the basic authority for the separation of commissioned and warrant officers.
- (1) Paragraph 1-23, provides the authorized types of characterization of service or description of separation.
- (2) Paragraph 1-23a, states an officer will normally receive an honorable characterization of service when the quality of the officer's service has met the standards of acceptable conduct and performance of duty, or the final revocation of a security clearance under DODI 5200.02 and AR 380-67 for reasons that do not involve acts of misconduct for an officer.
- (3) Paragraph 1-23b, states an officer will normally receive a general (under honorable conditions) characterization of service when the officer's military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge. A separation under general (under honorable conditions) normally appropriate when an officer: Submits an unqualified resignation; Separated based on misconduct; discharged for physical disability resulting from intentional misconduct or neglect; and, for final revocation of a security clearance.
- **(4)** Chapter 4 outlines the policy and procedure for the elimination of officers from the active Army for substandard performance of duty.
- **(5)** Paragraph 4-2b, prescribes for the elimination of an officer for misconduct, moral or professional dereliction, or in the interests of national security.
- (6) Paragraph 4-20a (previously 4-24a), states an officer identified for elimination may, at any time during or prior to the final action in the elimination case elect one of the following options: (1) Submit a resignation in lieu of elimination; (2) request a discharge in lieu of elimination; and (3) Apply for retirement in lieu of elimination if otherwise eligible.
- **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 "JNC" as the appropriate code to assign commissioned officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 4-2b, unacceptable conduct.
- **8. SUMMARY OF FACT(S):** The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

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

The applicant contends the narrative reason for the discharge needs changed. The applicant was separated under the provisions of Chapter 4, paragraph 4-2b, AR 600-8-24 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for

a discharge under this paragraph is "Unacceptable Conduct," and the separation code is "JNC." Army Regulation 635-8, Separation Processing and Documents, governs 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 exactly as listed in tables 2-2 or 2-3 of AR 635-5-1, Separation Program Designator (SPD) Codes. The regulation further stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

The applicant contends TBI, PTSD, and the psychological effects of the applicant's injuries and pain management affected behavior which ultimately led to the discharge. The applicant provided several medical documents indicating a diagnosis of in-service adjustment disorder with anxious mood and other medical conditions, to include back and neck pain. The PEB recommended the applicant be discharged with a permanent disability retirement intervertebral disc syndrome, listed as low back pain; and spinal fusion, listed as chronic neck pain, with a rating of 30 percent. The VA diagnosed the applicant with adjustment disorder, insomnia, traumatic brain injury, and other medical conditions. The applicant did not provide any evidence, other than the applicant's statement, the applicant was diagnosed with PTSD. The applicant's AMHRR is void of a mental status evaluation. The record reflects the applicant was diagnosed with adjustment disorder with anxious mood, but the condition had been resolved. The record contains the PEB information, which was considered by the separation authority.

The applicant contends the command and the board of inquiry did not fully explore the applicant's PTSD and TBI conditions. The applicant's AMHRR reflects the conditions reflected in the applicant's physical evaluation board proceedings were considered by the board, the command, and the separation authority. The PEB did not include diagnoses TBI or PTSD. The applicant's AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

The applicant contends good service, including combat tours and the applicant's alleged misconduct is inconsistent with the applicant's significant service record and accomplishments. The Board will consider the applicant's service accomplishments and the quality of service according to the DODI 1332.28.

The applicant contends being employed by the Department of Homeland Security/U.S. Citizenship and Immigration Service as the Immigration Officer – Refugee Officer and other establishments of the Federal Government; and attaining a Master of Arts Degree and several certifications. The Army Discharge Review Board is authorized to consider post-service factors in the recharacterization of a discharge. No law or regulation provides for the upgrade of an unfavorable discharge based solely on the passage of time or good conduct in civilian life after leaving the service. The Board reviews each discharge on a case-by-case basis to determine if post-service accomplishments help demonstrate previous in-service misconduct was an aberration and not indicative of the member's overall character.

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

#### 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: TBI. Additionally, the applicant asserts PTSD and impact of injuries on psychological functioning, which may be sufficient evidence to establish the existence of a condition that could mitigate or excuse the discharge.

- (2) Did the condition exist or experience occur during military service? **Yes.** The Board's Medical Advisor found applicant is service connected for TBI and has asserted both PTSD and psychological impact of physical issues.
- (3) Does the condition or experience actually excuse or mitigate the discharge? **Partially.** The Board's Medical Advisor applied liberal consideration and opined that applicant is 40% SC for TBI and has also asserted the presence of PTSD and impact of physical injuries on psychological functioning. The Medical Advisor finds no compelling medical evidence supporting PTSD, to include via a VA C&P exam or in active-duty medical records, nor is there compelling evidence in the record of significant psychiatric impairment associated with applicant's injuries and pain management. Based on the available medical evidence, the psychology advisor can only reasonably opine on mitigation due to service-connected TBI. Under liberal consideration guidelines, TBI results in partial mitigation, specifically of the DUI offense of January 2007, as there is a nexus between substance misuse and self-medication of TBI-related residuals. Even with psychiatric mitigation of this offense, however, the advisor appreciates that the associated Memorandum of Reprimand and negative information contained in the referred AER of March 2007, which per records is associated with DUI, are necessary due to such an offense's impact on an officer's judgment in leadership and professionalism. Further, it does not appear that the TBI was of such severity as to impair applicant's ability to differentiate right from wrong and adhere to the right, therefore there is no evidence supporting mitigation of behavior and related consequences (Memorandum of Reprimand and referred OER) associated with conduct unbecoming and inappropriate interactions within the Family Readiness Group. There is no compelling evidence in applicant's record that psychological effects of applicant's injuries and pain management were of such severity as to create a nexus with any of the concerns leading to applicant's eventual discharge.
- **(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 TBI, PTSD and psychological impact of physical issues outweighed the basis for applicant's separation referred AER for unprofessional behavior and Conduct unbecoming (inappropriate behavior) for the aforementioned reason(s).

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

- (1) The applicant contends the narrative reason for the discharge needs changed. The Board considered this contention and determined the applicant's narrative reason for discharge is appropriate as there is not a nexus between applicant's TBI, PTSD and psychological impact of physical issues and applicant's referred AER for unprofessional behavior and conduct unbecoming (inappropriate behavior) basis for separation. The applicant was properly and equitably discharged.
- (2) The applicant contends TBI, PTSD, and the psychological effects of the applicant's injuries and pain management affected behavior which ultimately led to the discharge. The Board considered this contention and determined that the available evidence did not support a conclusion that the applicant's TBI, PTSD and psychological impact of physical issues

outweighed the basis for applicant's separation – referred AER for unprofessional behavior and Conduct unbecoming (inappropriate behavior).

- (3) The applicant contends the command, and the board of inquiry did not fully explore the applicant's PTSD and TBI conditions. The Board liberally considered this contention and determined applicant's TBI diagnosis and asserted PTSD does not have a nexus with applicant's referred AER for unprofessional behavior and conduct unbecoming (inappropriate behavior) basis for separation. The applicant was properly and equitably discharged.
- (4) The applicant contends good service, including combat tours and the applicant's alleged misconduct is inconsistent with the applicant's significant service record and accomplishments. The Board considered the applicant's 23 years of service, including overseas assignments and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's referred AER for unprofessional behavior, DUI and Conduct unbecoming (inappropriate behavior).
- (5) The applicant contends being employed by the Department of Homeland Security/U.S. Citizenship and Immigration Service as the Immigration Officer Refugee Officer and other establishments of the Federal Government; and attaining a Master of Arts Degree and several certifications. The Board considered this contention and determined applicant's post-service accomplishments of employment as a Refugee Officer, employment with other establishments of the Federal Government, and attaining a Master of Arts Degree and several certifications does not outweigh the applicant's discharge. The applicant was properly and equitably discharged.
- **c.** The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

#### **d.** Rationale for Decision:

- (1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the Board, the applicant's TBI, PTSD and psychological impact of physical issues did not excuse or mitigate the offenses of referred AER for unprofessional behavior and conduct unbecoming (inappropriate behavior). The Board also considered the applicant's contention regarding board of inquiry, and the applicant's behavioral health conditions and found that totality of the applicant's record does not warrant a discharge upgrade. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.
- (2) The Board voted not to change the applicant's reason for discharge or accompanying SPD code under the same pretexts, as the reason the applicant was discharged was both proper and equitable.
- (3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

#### 10. BOARD ACTION DIRECTED:

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

b. Change Characterization to: No Change

c. Change Reason / SPD code to: No Change

d. Change RE Code to: No Change

e. Change Authority to: No Change

#### **Authenticating Official:**

11/1/2023



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