

**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, a change to the narrative reason to "Secretarial Authority", and a change to the Reentry (RE) code.

The applicant seeks relief contending, in effect, being commissioned in the Army and discharged because of "Unacceptable Conduct." The Board of Inquiry (BOI) was improperly constituted and biased, which rendered the board's findings and recommendations null and void, as well as the adverse actions, which were the result of reprisal. The applicant denies engaging in the alleged misconduct and the government failed to prove the allegations. The applicant suffered from behavioral health conditions, which qualifies the applicant for consideration and relief pursuant to the Hagel Memorandum. The command provided the applicant with notice of initiation of elimination on 18 March 2019, and of additional bases on 29 March 2019. The applicant submitted a conditional resignation in lieu of elimination (RILE) on 24 June 2019, which was disapproved. The BOI convened on 28 May 2019. Although the BOI transcript does not indicate the applicant challenged any board member, following voir dire, the applicant challenged the board's composition in post-board matters. The applicant contends the members were biased because of previous relationships and interactions with the applicant's senior leadership. The board should have included at least one member from the Adjutant General (AG) branch. Army Regulation 600-8-24, paragraph 4-7, does not expressly provide the AG board member as an entitlement; nevertheless, it was in error for the command to not grant the applicant's request. The BOI's findings and recommendations should be set aside.

A Whistleblower Reprisal Investigation was initiated to investigate the applicant's claims of reprisal, and the claims were substantiated. The command had a history of toxic leadership, as evidenced by reports contained in the media, which adds credibility to the applicant's case. The applicant was diagnosed with attention deficit disorder (ADD); obsessive-compulsive disorder (OCD); depression; anxiety; post-traumatic stress disorder (PTSD); and traumatic brain injury (TBI), among other medical diagnoses. The applicant was granted 70 percent service-connected disability. The applicant was diagnosed with and/or experienced symptoms of various conditions while in the Army showing the conditions excused or mitigated the alleged misconduct. The medical evidence, including opinions from qualified practitioners, demonstrates the applicant's conditions were "substantially aggravated" by the severe stress caused by the command's actions surrounding the whistleblower case, and outweigh the discharge. What the command interpreted as misconduct was behavioral manifestations of the applicant's medical conditions. The applicant demonstrated years of solid performance, had no other misconduct, and was well regarded by peers. The applicant persevered through this ordeal, which has caused hardship for the applicant and the family. The overwhelming weight of the evidence demonstrates the characterization was unwarranted. The principles of justice, fairness, and

equity require the applicant's discharge be upgraded to honorable and the narrative reason, separation code, and reentry eligibility code be changed to reflect "Secretarial Authority."

**b. Board Type and Decision:** In a records review conducted on 25 January 2024, and by a 5-0 vote, the Board denied the request upon finding the separation was both proper and equitable.

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

*Board member names available upon request.*

### 3. DISCHARGE DETAILS:

**a. Reason / Authority / Codes / Characterization:** Unacceptable Conduct / AR 600-8-24, Paragraph 4-2b / JNC / NA / General (Under Honorable Conditions)

**b. Date of Discharge:** 9 August 2019

**c. Separation Facts:** The applicant's Army Military Human Resource Record (AMHRR) is void of the Notification of Initiation of Elimination. However, the applicant provided documents which are described below in 3c (1) and (2).

**(1) Date of Notification of Intent to Separate:** 18 March 2019 / On 29 March 2019, the applicant was notified of additional reasons for elimination. In the Acknowledgment, the applicant indicated the applicant believed the applicant suffered from PTSD or TBI because of deployment.

**(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 and c, for misconduct, moral, or professional dereliction, conduct unbecoming an officer, and for derogatory information filed in the Army Military Human Resource Record in accordance with AR 600-37, because of the following reasons:

Acts of personal misconduct, pursuant to para. 4-2b (5), in that:

Between 1 November 2018 and 18 March 2019 and 8 and 29 March 2019, the applicant violated Articles 90 and 92, Uniform Code of Military Justice (UCMJ), on numerous occasions by willfully disobeying lawful orders given to the applicant by the Battalion Commander, Lieutenant Colonel (LTC) B. H., the Brigade Commander, Colonel (COL) B. R., and the Division Chief of Staff, COL D. W. Specifically, to use the Battalion Commander, LTC H., as the point of contact for the chain of command and to not contact the 25th, Infantry Division (ID) leadership to include the 25th ID Commanding General, Deputy Commanding Generals, Chief of Staff, or G1 and the staff directly by sending numerous and disruptive communications directly to senior leadership;

Between 14 November 2018 and 18 March 2019, the applicant violated Article 89, UCMJ, on numerous occasions by unlawfully making disrespectful and contemptuous comments through written and verbal communication to and about senior leadership within the 25th ID, including Brigadier General (BG) J. V., COL B. R., COL K. W., LTC R. L., LTC B. H., and LTC C.

On or about 23 December 2018, the applicant violated Article 107, UCMJ, by knowingly and falsely denying to the battalion and brigade commanders that the applicant intentionally sent six e-mails to the division leadership in violation of a lawful order and attributing all six communications to "perhaps, the wrong auto distro on OWA";

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**AR20210003300**

Between on or about 1 February 2018 and 2 February 2018, the applicant violated Articles 90 and 92, UCMJ, on multiple occasions by willfully disobeying a lawful order from the Battalion Commander, LTC H., to cease communication with LTC H. by text message unless the matter related to a health or safety emergency, by sending LTC H. eight disrespectful text messages over the course of two days;

Between 4 June 2018 and 4 October 2018, during the time the applicant was the Brigade S1 at 2nd Infantry Brigade Combat Team (2IBCT), as substantiated in an administrative investigation, the applicant violated Article 92, UCMJ, by engaging in conduct that constituted gender discrimination in violation of the Army's Equal Opportunity Policy outline AR 600-20, paragraph 6-2;

Between 4 June 2018 and 4 October 2018, during the time the applicant was the Brigade S1 at 2IBCT, as substantiated in an administrative investigation, the applicant violated Article 92, UCMJ, by engaging in conduct that constituted bullying in violation of AR 600-20, paragraph 4-19;

Between 18 and 29 March 2019, the applicant violated Article 89, UCMJ, on numerous occasions by unlawfully making disrespectful and contemptuous comments through written and verbal communication to and about the Battalion and Brigade Commanders, COL B. R. and LTC B. H.;

On 26 March 2019, the applicant violated Article 89, UCMJ, by assaulting a superior commissioned officer by striking the Battalion Commander, LTC B. H., who was then in the execution of the office, in the chest with a rolled-up stack of paperwork; and

On 26 March 2019, the applicant violated Articles 89, 116 and 117, UCMJ, by causing a breach of the peace and by using disrespectful and provoking words and gestures in the battalion headquarters by assaulting the Battalion Commander, LTC B. H., saying LTC H. was "the worst fucking commander," yelling in a loud voice "you are a motherfucker," or words to that effect, rapidly approaching LTC H. in a threatening manner, and standing close to LTC H. until the applicant was removed by a noncommissioned officer.

Conduct unbecoming an officer, pursuant to paragraph 4-2b(8):

By engaging in the conduct indicated in paragraph 2a above;

By responding to lawful orders and direction from COL R., the Brigade Commander, on multiple occasions between 21 February and 18 March 2019, by threatening to go to the Military Police and the Honolulu Police to report COL R. for harassing the applicant and the applicant's family; saying the applicant was requesting Military Police support against COL R., and stating, "why do you insist on being a bully?";

From 13 November 2018 through 18 March 2019, by repeatedly engaging in unprofessional and provoking behavior and communications which disrupted the good order and discipline of the 25th ID;

Between 4 June and 4 October 2018, during the time the applicant was the Brigade S1 at 2IBCT, as substantiated in an administrative investigation, the applicant demonstrated counterproductive and toxic leadership in violation of AR 600-100, paragraph 1-11; and

From 18 March through 29 March 2019, by repeatedly engaging in unprofessional and provoking behavior and communications which disrupted the good order and discipline of the 25<sup>th</sup> ID.

Substantiated derogatory information pursuant to paragraph 4-2c (5):

Letter of Reprimand, 6 February 2019, for conduct described in paragraphs 2a (1) and 2a (4) above, as well as for sending disrespectful and contemptuous emails to the Battalion Commander, LTC H., in response to communication sent to the applicant in LTC H's role as the battalion commander, requesting information about the applicant's chargeable leave by telling LTC H. that LTC H. must "stand down" and "recall that message" which was filed permanently in the applicant's AMHRR; and

General Officer Memorandum of Reprimand, 26 February 2019, for disrespecting superior officers, disobeying lawful orders, and engaging in conduct unbecoming an officer on multiple occasions from 1 November 2018 through 25 February 2019, which was filed permanently in the applicant's AMHRR.

**(3) Legal Consultation Date:** 9 May 2019

**(4) Board of Inquiry (BOI):** On 9 May 2019, the applicant submitted a resignation in lieu of elimination (RILE), waiving the board of inquiry contingent upon receiving a characterization of service no less favorable than general (under honorable conditions).

On 29 through 30 May 2019, a board of inquiry convened, and the applicant appeared with civilian counsel. The board recommended the applicant's elimination for both Army Regulation paragraph 4-2b, misconduct and moral or professional dereliction, and paragraph 4-2c, derogatory information, with a characterization of service of under other than honorable conditions.

On 12 June 2019, the board recorder served the applicant with a copy of the BOI proceedings and informed of the rights.

On 24 June 2019, the applicant submitted a conditional resignation requesting an honorable discharge.

On 29 July 2019, the separation authority disapproved the RILE, conditioned upon receiving no worse than a general (under honorable conditions) discharge and returned the case to the GOSCA to conduct a Board of Inquiry.

**(5) GOSCA Recommendation Date / Characterization:** NIF

**(6) DA Board of Review for Eliminations:** On 29 July 2019, the Ad Hoc Review Board reviewed the applicant's Resignation in Lieu of Elimination.

**(7) Separation Decision Date / Characterization:** 30 July 2019 / Under Other Than Honorable Conditions

#### 4. SERVICE DETAILS:

a. **Date / Period of Appointment:** 1 June 2007 / 3 years

b. **Age at Appointment: / Education:** 25 / Doctorate Degree

c. **Highest Grade Achieved / MOS / Total Service:** O-4 / 42H, Senior Human Resource Officer / 14 years, 3 months, 28 days

d. **Prior Service / Characterizations:** ARNG, 12 April 2005 – 10 May 2007 / HD

USAR, 11 May 2007 – 31 May 2007 / NA

**e. Overseas Service / Combat Service:** Germany, Hawaii, SWA / Afghanistan (6 August 2013 – 14 January 2014); Iraq (1 August 2009 – 7 August 2010)

**f. Awards and Decorations:** BSM, MSM-2, ARCOM-2, AAM-2, MUC, NDSM, GWOTSM, ACM-2CS, ASR, OSR-2

**g. Performance Ratings:** 25 October 2007 – 15 February 2010 / Best Qualified  
15 February 2010 – 22 January 2013 / Best Qualified  
22 January 2013 – 31 March 2014 / Best Qualified  
1 April 2014 – 31 March 2015 / NIF  
1 April 2015 – 3 June 2016 / Highly Qualified  
4 June 2016 – 3 June 2017 / Most Qualified  
4 June 2017 – 17 October 2018 / Not Qualified  
18 October 2018 – 9 August 2019 / Not Qualified

**h. Disciplinary Action(s) / Evidentiary Record:** The applicant provided Cease and Desist, Harassment, LTC J. M., letter for Provost Marshall, 25th ID, 6 November 2018, reflecting the applicant served a notice to LTC J. M., Commander, Brigade Support Battalion (BSB) to immediately cease and desist all harassing activities against and towards the applicant. The applicant listed several acts of harassment directed towards the applicant in reprisal.

Letter for Whom it May Concern, regarding, [Applicant] v. U.S. Army – Intent to sue; Hostile Work Environment Harassment; Retaliatory Harassment, 7 November 2018, reflecting the applicant retained an attorney in connection with harassing conduct directed towards the applicant and retaliation against the applicant for reporting such harassment.

Memorandum for LTC S. M., subject: Formal complaint against LTC B. H., 7 December 2018, reflecting in the applicant's professional opinion, the applicant had not been treated with dignity and respect by the Battalion Commander, LTC B. H.; therefore, filed a formal complaint with Commanding General, MG R. C.

The applicant provided memorandum, subject: No Contact Order [Applicant], undated, reflecting the order was effective until 16 November 2019. The applicant acknowledged receipt on 16 November [year omitted].

Memorandum for Commanding General, MG R. C., subject: Appeal Equal Opportunity Complaint, COL K. W., MAJ E. E., (hold) LTC J. M., Rebuttal, 11 December 2018, reflecting the applicant requested full EO complaint appeal and Senate intervention on all the sworn statements. The applicant described the issues with the chain of command in the 5-page memorandum.

Memorandum for Commanding General, MG R. C., subject: Department of the Army Inspector General Reprisal Complaint, COL D. W., Division Chief of Staff, COL K. W., 2nd Brigade Commander, "Warrriorgate," 14 December 2018, reflecting in the applicant's professional opinion, the applicant had been retaliated against by two senior officers in the command to include actions of bullying, hazing, and failing to respond to allegations of fraud, waste, and abuse. The applicant recommended the commanding general return the applicant to 1IBCT as the S-1 Officer in Charge and COL D. W. and COL K. W. apologize to the applicant for putting the applicant's family through the ordeal.

Numerous additional memorandums or letters addressed to MG R. C. and/or superior commanders/officers, including:

Memorandum for COL B. R. Commander, Division Artillery, 25 ID, subject: Rebuttal to Counseling from LTC B. H., (11 December 2018), 15 December 2018;

Memorandum for COL B. R., subject: Rebuttal to Counseling from LTC B. H. (11 December 2008), 16 December 2018;

Memorandum for MG R. C., subject: Formal Complaint Notification (MG R. C., COL D. W., COL K. W.), 18 December 2018;

Memorandum for COL K. W., subject: Rebuttal to Officer Evaluation (Applicant), 18 December 2018;

Memorandum for COL K. W., subject: Rebuttal to Officer Evaluation (Applicant) [Follow Up: 18 December 2018], OER Support Form, 18 December 2018;

Memorandum for MG R. C., subject: Litigation Notice (COL K. W.) [Warriorgate], 21 December 2018;

Memorandum for MG R. C. subject: Apology and Happy Holidays, 23 December 2018; and

Memorandum for MG R. C., subject: Executive Summary (Applicant) Retaliation and Reprisal Case [Linebacker DAIG], 2 January 2019.

Letter of Reprimand, 6 February 2019, reflects the applicant was condescending and disrespectful when communicating with the battalion commander and repeatedly disobeyed LTC H's orders to communicate with LTC H. by e-mail and not to text LTC H., unless it was a health or safety emergency. The applicant provided rebuttal documents.

General Officer Memorandum of Reprimand, 26 February 2019, reflects the applicant repeatedly violated orders and sent disrespectful, threatening communications to and about superior officers. The applicant was given multiple orders by superiors not to contact the Division Command Group directly, but to use the chain of command. The applicant was repeatedly encouraged to make complaints to the appropriate agencies but disregarded the orders. The applicant provided rebuttal documents.

Memorandum, subject: Request for Redress Under Article 138, UCMJ, Complaint of Wrong (References AR 27-10; AR 15-6) [MG R. C.], 1 March 2019, reflecting the applicant addressed the memorandum to MG R. C., and the complaint was against MG R. C., for allowing a pattern of reprisal, retaliation, hazing, inappropriate mental health examination, undue command influence during official investigations, and for habitual procedural and legal errors by the Office of the Staff Judge Advocate.

General Officer Memorandum of Reprimand, 3 April 2019, reflects the applicant was disrespectful towards a superior commissioned officer and assaulted a superior commissioned officer, by approaching LTC H. in an aggressive and threatening manner, and forcefully striking the shoulder with rolled up documents while calling LTC H., "a motherfucker." The applicant provided rebuttal documents.

The applicant provided formal AR 15-6 Investigation Findings and Recommendations, 30 May 2019, reflects the Board of Inquiry found there was sufficient evidence to prove the actions which formed the basis for elimination and the actions warrant separation. The BOI added the GOMOR issued on 3 April 2019, as one of bases for separation and determined the action warranted separation.

The applicant provided memorandum, subject: Comprehensive Response to the GOSCA, describing the applicant's dedicated service, mental health and other medical issues, problems with the command, and an improperly conducted BOI.

Whistleblower Reprisal Investigation [Applicant], 25th Infantry Division, Schofield Barracks, Hawaii, 22 October 2019, reflects the 25th ID, Inspector General concluded, by a preponderance of credible evidence the actions taken by COL W.; the command-referral of the applicant to behavioral health, removing the applicant from the key developmental position, and rendering a referred OER would not have occurred, had the 4 October 2018 protected communication (PC) not been made and was in violation of 10, U.S. Code, Section 1034. The Command Inspector General concurred with the conclusion and recommended the applicant be made whole and appropriate action be taken against the responsible management official. The commanding general non-concurred with the findings and conclusion of the investigation but concurred with the legal review.

Memorandum for LTC B. H., subject: FLAG and Equal Opportunity, 7 December 2019, reflecting in the applicant's professional opinion, the additional Equal Opportunity complaint and/or administrative action against the applicant was hazing, bullying, and retaliation.

The Department of the Army Inspector General's (DAIG) Amendment to the Report of Investigation, undated, reflects the DAIG determined by a preponderance of the evidence COL W.'s actions were not in reprisal, but taken indirect response to the applicant's actions, conduct, and the totality of the circumstances, and independent from the applicant's PC. The DAIG recommended to not substantiate the reprisal allegations and to approve case for closure. The amendment indicated the 25th ID Inspector General submitted a Report of Investigation which was determined to be legally insufficient by the Chief of Administrative Law, USARAC SJA. The directing authority non-concurred with the findings of the investigation.

The applicant provided MilitaryCorruption.com article, "History Continues to Repeat Itself – Army Major Reports Massive Fraud, Then is Ordered to Undergo Two Psych Exams – Corrupt Army Generals Scramble to Cover It All Up, 4 January 2021, reflecting an article appeared on the website, describing the applicant's whistleblower case as corruption in the military. The article includes an Army photo of LTG C. C., LTC G. V., and MG R. C., contending the officers conspired to discredit the applicant for reporting fraud, and LTC J. M. contending LTC J. M. received favoritism because of gender. The website includes several articles reflecting different issues regarding the military environment in Hawaii.

Numerous Developmental Counseling Forms, including continuation sheets, for but not limited to:

- Sending multiple emails to leadership causing disruption
- Given an order not to contact leadership, established a point of contact, and encouraged to contact the appropriate agency;
- Violating the order not to contact members of the leadership on multiple occasions;
- Addressing reprisal allegations;
- Being notified of suspension of favorable personnel actions because of pending elimination.

i. **Lost Time / Mode of Return:** None

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

**(1) Applicant provided:** The applicant provided numerous medical documents which may not be listed but are available for review.

Clinical and Forensic Consulting PLC letter, dated 9 May 2019, reflecting the applicant was diagnosed with attention-deficit hyperactivity disorder, predominantly hyperactive impulsive presentation, in partial remission and prescribed medication; and other specified personality disorder, with features of narcissistic, paranoid, and obsessive-compulsive personality disorders. The psychologist indicated reviewing sufficient file information to establish the opposing perspectives in the case, including three Reports of Mental Status Evaluation, issued between 9 October and 7 December 2018.

Report of Medical History (RMH), 14 May 2019, the examining medical physician noted in the comments section: Experienced depression; reports head injury in Germany; overwhelmed by anxiety; undergoing evaluation by Embedded Behavioral Health; behavioral health issues began in 2010 and has been on anxiety medication.

Report of Mental Status Evaluation (MSE), 17 May 2019, reflects the applicant was cleared for administrative separation. 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 PTSD and mild traumatic brain injury (mTBI) and endorsed screening instrument items, but the conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The applicant was diagnosed with: Occupational problem; Problems related to employment, undergoing board of inquiry; obsessive compulsive personality disorder; attention deficit hyperactivity disorder, by history; and anxiety disorder, by history.

Department of Veterans Affairs (VA) medical records 24 December 2020, reflecting the applicant was diagnosed with PTSD; adjustment disorder with mixed anxiety and depressed mood; major depressive disorder; generalized anxiety disorder; insomnia; attention deficit hyperactivity disorder; and other specified personality disorder; and sleep apnea.

Department of Veterans Affairs eBenefits webpage, 6 July 2020, reflecting the applicant was granted 70 percent service-connected disability for PTSD with adjustment disorder with mixed anxiety and depressed mood.

Three Bonanno Mental Healthcare Superior PTSD Screening & Treatment letters, 20 June and 3 December 2019, and 7 March 2020, reflecting the applicant was diagnosed with PTSD.

Department of Veterans Affairs Decision Review Request: Higher-Level Review, 22 November 2019, reflecting the applicant requested a review of the rating to increase the rating from 70 percent to 100 percent, citing honorable service; combat service; and reprisal from military leadership.

Doctor M. L., Internal Medicine, Hematology, Oncology, Independent Medical Examiner letter, 10 July 2020, reflecting the doctor opined the applicant diagnoses ADD, OCD, ADHD, depression, anxiety, PTSD, and TBI, among other conditions, were not going to improve.

Doctor V. K., licensed psychologist, letter, 6 August 2020, reflecting the psychiatrist opined the applicant's psychiatric conditions were substantially aggravated by the severe stress the



applicant experienced because of the command personnel reaction to the applicant's "whistleblowing" activity. The psychiatrist supported an upgrade to honorable.

Department of Veterans Affairs letter, 20 September 2020, reflecting the VA granted the applicant 70 percent service-connected disability and the applicant was not service-connected for traumatic brain injury.

Department of Veterans Affairs Decision Review Request: Higher-Level Review, 22 November 2019, reflecting the applicant requested a review of the rating to increase the rating from 70 percent to 100 percent, citing honorable service; combat service; and reprisal from military leadership.

Department of Veterans Affairs letter, 22 February 2021, reflecting the VA rated the applicant 90 percent service combined service-connected disability.

**(2) AMHRR Listed:** MSE and RMH as described in previous paragraph 4j(1).

**5. APPLICANT-PROVIDED EVIDENCE:** DD Form 293; Legal Brief / Supplemental Statement, with all listed enclosures A through KK; and two VA letters, 9 March 2020 and 22 February 2021.

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

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

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

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

**(1)** Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans

Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

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

c. Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers), in effect at the time, established procedures for investigations and boards not specifically authorized by any other regulation or directive.

(1) Paragraph 3-20 provided substantial errors that had a material adverse effect on an individual's substantial rights. No error is substantial within the meaning to this paragraph if there was a failure to object or otherwise bring the error to the attention of the board president, prior to the board adjourning. The errors in the board proceedings may be treated as harmless if the respondent or respondent's counsel fails to object. A legal advisor will be appointed as a nonvoting member and rule finally on challenges for cause made during the proceedings, except for a challenge against the legal advisor and on all evidentiary and procedural matters. Persons with special technical knowledge, to include members of other services and allied or coalition partners, may be appointed as voting members or, unless there is a respondent, as advisory members without a vote.

(2) Paragraph 7-2b provided if another regulation or directive prescribed specific qualifications for any voting member, for example, component, branch, or technical or professional qualifications, the member is essential to the quorum and must be present at all board sessions.

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

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

(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 4-7d, prescribes when the respondent is a minority, female, or special branch, in accordance with 10 USC 3064 [each corps of the Army Medical Department; Judge Advocate General's Corps; Chaplains; and other special branches as may be established by the Secretary of the Army (other than officers of the Regular Army)], the board will upon the officer's written request include a minority, female, or special branch as voting member, if reasonably available, as this provision is not an entitlement.

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

f. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies the SPD code of "JNC" as the appropriate code to assign commissioned officers who are discharged under the provisions of Army Regulation 600-8-24, Chapter 4-2b, unacceptable conduct.

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

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

The applicant's Army Military Human Resources Record (AMHRR) is void of the specific facts and circumstances concerning the events which led to the discharge from the Army. The applicant provided several documents from the elimination proceedings, including the Notification of Elimination and the Board of Inquiry Summary of Proceedings, which provided the specific circumstances surrounding the applicant's discharge.

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 the SPD code should be changed. The SPD codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 (Separation Program Designator (SPD) Codes) to track types of separations. The SPD code specified by Army Regulations for a discharge under Chapter 4, paragraph 4-2b, is "JNC."

The applicant contends the reentry eligibility (RE) code should be changed. Army Regulation 635-8, as described previously, dictates the entry of the RE code for separation, entered in block 27 of the DD Form 214. The regulation states these codes are not applicable to officers.

The applicant contends having been diagnosed with ADD; OCD; depression; anxiety, PTSD, and TBI, among other mental health conditions, which may excuse or mitigate the alleged misconduct, and the applicant was granted 70 percent disability. The applicant provided several medical documents reflecting the applicant was diagnosed with PTSD; TBI; adjustment disorder with mixed anxiety and depressed mood; major depressive disorder; generalized anxiety disorder; insomnia; ADHD; and other specified personality disorder, with features of narcissistic, paranoid, and obsessive compulsive personality disorders; and sleep apnea, and the VA rated the applicant 90 percent service-connected disability. The applicant's AMHRR reflects the applicant underwent a mental status evaluation (MSE) on 17 May 2019, which indicates the applicant was mentally responsible and was able to recognize right from wrong. The applicant had been screened for PTSD and mTBI and endorsed screening instrument items, but the conditions were either not present or did not meet AR 40-501 criteria for a medical evaluation board. The applicant was diagnosed with Occupational problem, undergoing board of inquiry; OCPD; ADHD, by history; and anxiety disorder, by history. The MSE was considered by the separation authority.

The applicant contends the event which led to the elimination from the Army was an isolated incident. Army Regulation 600-8-24, paragraph 1-23, in pertinent part, stipulates 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 the applicant's claims of Whistle Blower reprisal were substantiated. The 25th Infantry Division Inspector General did investigate the applicant's claims of Whistleblower reprisal and the investigation did substantiate the applicant's claims of reprisal. The investigation was submitted for a legal review and the USARPAC Office of the Staff Judge Advocate found the investigation legally insufficient; the commanding general non-concurred with the investigation; the Department of the Army Inspector General provided an amendment to the investigation, determining the command did not reprise against the applicant. The DD293 provides a box check for reprisal/whistleblower consideration by a Board.

The applicant contends the Board of Inquiry was improperly constituted and biased, did not have an AG member, was challenged in post-board matters, and should be set aside. The applicant did submit post-board matters, which included a Comprehensive Response, contending various BOI violations, among other issues. The applicant provided the BOI Summary of Proceedings reflecting the applicant nor counsel challenged the BOI board members for cause. Appropriate statutes or regulations provided the board will upon the officer's written request include a minority, female, or special branch, if reasonably available, as this provision is not an entitlement. Special branch is defined as each corps of the Army Medical Department, Judge Advocate General's Corps, Chaplains, and other special branches as may be established by the Secretary of the Army corps. The applicant's AMHRR is void of a written request for an AG officer, and the applicant did not provide any evidence (other than the applicant's statement) indicating a written request for an AG officer, or that the BOI was improperly constituted and biased.

The applicant contends that the applicant's overall service record at the time of separation and the applicant's conduct post-discharge warrant an upgrade to honorable characterization of service. The third-party statements, including from the applicant's spouse, provided with the application reflects the applicant provided honorable and professional service as an Executive Officer at Fort Benning and an officer in the Army.

The applicant contends that the applicant engaged in the alleged misconduct and the government failed to prove that the applicant engaged in the alleged misconduct. The applicant provided a statement asserting the process through which the allegations were initially brought was flawed, that the command's motivations were improper, and that there was little that was true about the factual assertions made against the applicant by the command.

The applicant contends the command initiated adverse actions that were the result of reprisal, which renders the adverse action null and void.

## 9. BOARD DISCUSSION AND DETERMINATION:

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

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? **Yes.** The Board reviewed the Board Medical Advisor's opine, the applicant's DOD and VA health records, the applicant's statement, and/or civilian provider documentation and found that the applicant has the following potentially mitigating diagnoses/experiences: Adjustment Disorder, Anxiety Disorder NOS, and PTSD. Additionally, the applicant provided medical documentation supporting Major Depressive Disorder and TBI, 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 that the applicant's Adjustment Disorder, Anxiety NOS, PTSD, Major Depressive Disorder, and TBI existed during service.

(3) Does the condition or experience excuse or mitigate the discharge? **Partially.** The Board applied liberal consideration and determined, based on the Board Medical Advisor's opine and the evidentiary record, that the applicant's PTSD mitigates the disrespect and disobeying orders offenses based on the nexus between PTSD and difficulty with authority. However, none of the applicant's BH conditions (Adjustment Disorder, Anxiety NOS, PTSD,

Major Depressive Disorder, and TBI) have a nexus with falsely denying information, gender discrimination, bullying, assault, or making threats. And while stress may aggravate these conditions, none of the conditions interfere with the basic 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 NOS, PTSD, Major Depressive Disorder, or TBI outweighed the medically unmitigated offenses of falsely denying information, gender discrimination, bullying, assault, and making threats.

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

(1) The applicant contends having been diagnosed with: ADD, OCD, depression, anxiety, PTSD, and TBI, among other mental health conditions, which may excuse or mitigate the alleged misconduct, and that the applicant was granted 70 percent disability. 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 offenses of falsely denying information, gender discrimination, bullying, assault, and making threats. Therefore, a discharge upgrade is not warranted.

(2) The applicant contends the command violated the Whistleblower Act. The Board considered this contention but found that amended IG investigation D-CATS #20181031-054596-CASE-01 determined that the command did not violate the Whistleblower Act. Therefore, a discharge upgrade is not warranted.

(3) The applicant contends the narrative reason for the discharge needs to be changed to "Secretarial Authority." The Board considered this contention but determined that the applicant's Unacceptable Conduct narrative reason for separation, with associated SPD code JNC, is proper and equitable given the applicant's medically unmitigated offenses of falsely denying information, gender discrimination, bullying, assault, and making threats.

(4) The applicant contends the event which led to the elimination from the Army was an isolated incident. The Board considered this contention but determined that the applicant's medically unmitigated misconduct (falsely denying information, gender discrimination, bullying, assault, and making threats) was not isolated and was not outweighed by the totality of the service record.

(5) The applicant contends the applicant's claims of Whistle Blower reprisal were substantiated. The Board considered this contention and found that the amended IG investigation D-CATS #20181031-054596-CASE-01 determined that the applicant's reprisal claims were not substantiated. Therefore, a discharge upgrade is not warranted.

(6) The applicant contends the BOI was improperly constituted and biased, did not have an AG member, was challenged in post-board matters, and should be set aside. The Board considered this contention and determined that the evidentiary record did reflect post-board challenges by the applicant. However, the applicant provided BOI Summary of Proceedings reflects the applicant nor counsel challenged the BOI board members for cause. And while appropriate statutes indicate that a BOI will (upon the officer's written request) include a minority, female, or special branch, if reasonably available, this provision is not an entitlement. The evidentiary record is void of any pre-board written requests for an AG officer. Therefore, a discharge upgrade is not warranted.

(7) The applicant contends good service, including a two combat tours. The Board considered the totality of the applicant's 14 years of service, including overseas/combat tours and awards, but determined that the applicant's service record does not outweigh the medically unmitigated offenses (falsely denying information, gender discrimination, bullying, assault, and making threats).

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 issues before a Board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support 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 Adjustment Disorder, Anxiety NOS, PTSD, Major Depressive Disorder, and TBI did not outweigh the medically unmitigated offenses of falsely denying information, gender discrimination, bullying, assault, and making threats. The Board considered the applicant's contentions regarding good service and the misconduct being an isolated incident and found that the totality of the service record does not warrant a discharge upgrade. The Board found that the applicant's contentions of improper reprisal and deficiencies in the BOI composition were not supported by the available evidence. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the applicant's General discharge was proper and equitable as the applicant's misconduct fell below that level of meritorious service warranted for an upgrade to Honorable.

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

**10. BOARD ACTION DIRECTED:**

- a. **Issue a New DD-214 / Separation Order:** No
- b. **Change Characterization to:** No Change
- c. **Change Reason / SPD Code to:** No Change
- d. **Change Authority to:** No Change

**Authenticating Official:**

4/29/2024

X

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

Legend:  
AWOL – Absent Without Leave

# ARMY DISCHARGE REVIEW BOARD CASE REPORT AND DIRECTIVE

AR20210003300

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