

1. Applicant's Name:

- a. **Application Date:** 19 October 2020
- b. **Date Received:** 26 October 2020
- 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 requests an upgrade to Honorable.

b. **Counsel states.** The applicant seeks relief contending, their commander lied in their chapter package because they were not convicted of a crime and they have supporting documentation. The case was dismissed 5 June 2020; they presented this to legal, however, it was already too late and they were separated. Their unit was aware of their case having been dismissed since 13 December 2019; however, the courts were closed by the next court date.

(1) In a letter to their Representative in Congress, provides the applicant reached out for help (6 January 2020) due to having been recommended for separation from the Army. They were threatened on video by their 1SG and nothing was done about it. The 1SG referred to a close friend of theirs who committed suicide, as a nuisance, which they have on video. They have been belittled and publicly humiliated by the 1SG, unfairly punished, and prevented from progressing in their career. They were flagged and barred from reenlistment.

(a) On 9 August 2019, the applicant went to the hookah lounge with two friends and was confronted by an unknown person. The applicant and the unknown person came into a verbal altercation, no punches were thrown. They saw the person starting to inch forward in their direction, so the applicant removed themselves and stepped outside. They went to their vehicle and the unknown person followed them to the vehicle. The applicant had a concealed carry license and had their weapon on them, on their side at the time. The applicant threw their weapon inside the vehicle and shut the door to refrain from any serious escalation or harm. The unknown male continued to yell and continued to argue. The applicant admits being wrong at this part of the altercation because they are held to a higher standard and should have entered the vehicle and left sooner. However, when the applicant did leave, the applicant was pulled over down the road and placed in handcuffs. When the applicant asked the officer why they were being detained, the officer stated they did not know why.

(b) The applicant was taken to jail and charged with "**Firearm in an Unauthorized Area**" and held overnight. While in jail the applicant reached out to friends pick them up. The 1SG and 2LT ordered the friends not to make contact or pick the applicant up and took their phones away. After numerous contact attempts, their squad leader finally arrived to pick them up. The applicant was taken back to base and left at their barracks. The following day the applicant was counseled by 1SG, where they were informed that until further notice, they could not drive their vehicle (their squad leader searched their vehicle and room), they could not wear civilian attire, leave

post, and had to give four classes in front of the battalion. These punishments may have seemed unrealistic at the time, however, were now understandable due to the circumstances. The applicant's 1SG called a formation and humiliated them in front of everyone. 1SG asked the applicant's friends, while still in the manner of addressing the company formation, why they did not "punch [the applicant] in the face." After formation, 1SG called them to their office and stood inches from the applicant's face and said "stare at me like that in formation again, I wish you would. You don't have a single bone in your body," with more degrading comments to follow. The applicant made an attempt to report this threat and comments to the installation Inspector General office. Nothing was done.

(c) They made their first court appearance (31 October 2019) where they were informed, they were now being charged with "**Unlawful Display of a Firearm.**" The owner of the hookah lounge wrote a statement saying the applicant "approached the male in the club and pointed their weapon." However, the establishment has cameras and they have witness statements from their friend that was with them and the person, with the unknown male, saying otherwise. On 13 December 2019, they appeared in court again for their final appearance, where it was agreed upon that they would have a Stipulated Order of Continuance (SOC), agreeing to do complete an eight hour anger management course and pay a \$350.00 court fee. A court date would be set for 12 December 2020 and if all terms were met and they kept their "nose clean" the case would be dismissed.

(d) They took this disposition to SSG and CPT and they were unflagged and unbarred. Upon returning from leave, they went to see if they could start their transition from Military Police to Infantry for a fresh start. While doing this, they learned they were still barred from reenlistment. They reached out to their battalion retention office who stated they would speak to the applicant's 1SG and commander. The next day, they were called in the office and informed they were being flagged, barred from reenlistment, and recommended for separation from the Army. They do not understand how they are being recommended for separation, when they have not been convicted of anything. They have also never been in trouble with the law before.

(e) The applicant felt this was handled wrong and it was double jeopardy because they were being punished twice for the same thing. Article 44 of the Uniformed Code of Military Justice prohibits a service member from being tried twice for the same offense. They were already wrongfully accused on the civilian side and handled that in court while being punished by the Army, the first time, and now they are attempting to punish the applicant again over the same "offense." This felt like a personal grudge being held against them and others can attest to that. During their 25 months in the Army, they have gotten an Army Achievement Medal for serving at the border during Operation Faithful Patriot. They have never received a negative counseling before this date, never failed a PT test, and have always done their part to help and motivate others. They are not asking for sympathy, just asking things to be done the right way.

(2) Moreover, their Senator's Staff provided a letter to their Representative in Congress, providing "this issue pertains to a predicament involving [the applicant] that has compromised the proper legal procedures and regulations of the U.S. Armed Forces, and indicates they were protected under the Whistleblower Protection Act, Title 10 U.S.C. § 1034."

(3) A previous letter outlined the inappropriate and concerning actions of 1SG, which includes instances of unlawful intimidation and imminent threat of force,

obstruction of justice, multiple violations of the safeguards included in the Article 15, UCMJ, and most concerning, a gross deviation of the allowed powers contained by a Commanding Officer. It is vital to note that [the applicant] has been cleared of civilian charges and has yet to be given a proper standing by a military court, requesting their Representative in Congress submit a complaint to the Whistleblower Protection Ombudsman for the Department of Defense.

c. Board Type and Decision: In a records review conducted on 24 April 2024, and by a 3-2 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 / General (Under Honorable Conditions)

b. Date of Discharge: 26 June 2020

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 26 March 2020

(2) Basis for Separation: for assaulting an unidentified person by pointing an unloaded firearm at them

(3) Recommended Characterization: General (Under Honorable Conditions)

(4) Legal Consultation Date: 1 April 2020

(5) Administrative Separation Board: NA

(6) Separation Decision Date / Characterization: 17 June 2020 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 6 November 2017 / 5 years

b. Age at Enlistment / Education / GT Score: 20 / High School Equivalency / 102 [Commander's Report indicates 112]

c. Highest Grade Achieved / MOS / Total Service: E-3 / 31B10 Military Police / 2 years, 7 months, 21 days

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: None

f. Awards and Decorations: AAM, NDSM, AFMS, ASR

g. Performance Ratings: NA**h. Disciplinary Action(s) / Evidentiary Record:**

(1) On 6 November 2017, the applicant enlisted in the Regular Army for 5 years as a PVT. The Enlisted Record Brief provides the applicant promoted up to PFC on 1 August 2018 and was awarded an Army Achievement Medal. On 6 January 2020, they were flagged, Suspend Favorable Personnel Actions (FLAG), for adverse action (AA) and field-initiated involuntary separation (BA).

(2) In August 2019 the applicant was arrested for assaulting an unidentified person by pointing a firearm at them; they were released the same day. At their hearing, the applicant entered an agreement with the court, Stipulated Order of Continuance (SOC), for a period of 12 months and upon compliance with the terms of the SOC, the City will make a motion to have the charge dismissed. This was not an admission of guilt, however, in the event the SOC is violated and revoked by the court, the applicant agreed to submit the above case on the record. Maximum penalties that may have been imposed if convicted were confinement for 364 days; a \$5,000.00 fine; maximum jurisdiction 24 months.

(3) On 8 January 2020, the applicant completed their medical assessment and history at Madigan Army Medical Center (MAMC), which provides the following:

(a) Their assessment indicated the applicant intended to seek Veterans Affairs (VA) disability and noted to see their DD Form 2807-1 (Report of Medical History).

(b) On their history, Block 29 lists the following explanations of “yes” answers:

- 10c: Chest pains March 2017, went to ER
- 11a: Tonsil and [adenoid] surgery
- 12a, c: Recurring issue
- 12i, j, k: Ruptured ACL and torn meniscus, surgery 23 October 2018
- 15a, f: Concussion February 2018
- 16a: Treated in ER for it (flank chest pains)
- 20: Chest and knee pains
- 21: Madigan Hospital, JBLM, WA
- 22: Knee surgery (left) 2(?)

(c) On their history, block 30a provides the examiner’s notes:

- 10c: Coughed blood March 2019
- 11d: Tonsils and adenoids removal
- 12a: Right shoulder
- 12c: Back pain – recurrent
- 12i: Knee pain left ACL tear/torn meniscus
- 12j: Left knee surgery October 2018
- 12k: Knee brace
- 15c: Head injury February 2018
- 15g: Concussion February 2018
- 16c: Chest pains March 2019 – to ER – flank pain also
- 17d: Insomnia

- 20: Chest/flank pain; knee pain
- 21/22: Left knee repair

(d) The applicant's physical examination provides they were qualified for service and summarized their diagnoses as right shoulder, back, and knee pain; head trauma and concussion; the provider's recommendation was to follow up with their primary care manager (PCM) as needed.

(4) The same day, the applicant completed a mental status evaluation at MAMC, indicating "Occupational Problem" as their diagnosis; and no follow-up needed; their cognition and perceptions were not impaired; their behavior and impulsivity was normal; assessed at no elevated risk for harm to themselves or others. The provider noted, "The SM does NOT currently have a [behavioral health] condition that causes [them] to fail medical retention standards in accordance with AR 40-501. The medical record does NOT contain substantial evidence that the SM currently meets criteria for a condition requiring referral to IDES but has not yet received a diagnosis. SM is therefore psychiatrically cleared for any administrative actions Command deems necessary."

(5) On 26 March 2020, the company commander notified the applicant of their intent to initiate separation proceedings under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense) and recommended a General (Under Honorable Conditions) characterization of service. The applicant acknowledged receipt of the separation notice.

(a) The commander's report indicates the applicant completed their 8-hour Anger Management Program (1 February 2020) as per the Stipulated Order of Continuance agreement prescribed by the City Municipal Court. The commander's note states "SM has continued to show discipline issues w/two arrests over 6-month period. SM does not display the Army values necessary to continue serving this country.

(b) On 1 April 2020 [although dated 20 April], defense counsel counseled the applicant on the basis for their contemplated separation and its effects, as well as the rights available to them.

(c) In a self-authored sworn statement, the applicant provides they have grown tremendously since arriving at their unit two years ago, being resilient and loyal, giving all, they had to the mission, to their peers, and to their country. The event that transpired on the evening in August 2019 does not reflect who they are as a person. They know their choices that night were not of the best judgement, but pointing their legally owned weapon when they did not deem their life in danger, was absolutely not one of them. They have kept their head up and kept pushing forward regardless of the incident. They believe they are one of the smartest Soldiers in their company and would like to have the opportunity to demonstrate that. Without a doubt, they can win any board, excel at a physical fitness test, and lead others. They know that their past actions do not portray their true character. They would like to be given a second chance to show their leadership and how they really are, without the stigma that has possibly altered their opinions. The transgressions of the alleged crime should not be the only factor that decide their fate in this case, but the documents and statements that they have provided on their behalf. They have never received an event-oriented counseling prior to that evening, as a result, they are requesting an effort of rehabilitation. Options of rehabilitation would include being retained at their current position, being moved to a different company, reclassifying, or a permanent change of station. If these options are overlooked, they are requesting an Honorable Discharge of service due to the fact that

this case will be dismissed in June 2020. They ask that great consideration in the decision making be taken, with the willingness to give them another chance to show their potential and who they really are.

(d) Nine character statements were submitted in support of the applicant's separation proceedings. The witness with the victim the evening of the incident, provides the victim and the applicant argued in the hookah lounge, continued outside where the applicant put their gun in the vehicle. The victim approached the applicant at their vehicle, where they continued to argue for a few minutes before the applicant got in their vehicle and drove off. The weapon was only out while it was being put in the vehicle. It was never pointed in the direction of the victim. There were no shots fired, no punches thrown, only an argument which lasted five to ten minutes.

(e) The remaining character letters speaks to the applicant's intelligence, professionalism, and resiliency in overcoming all they have overcome, requesting the applicant be retained, with former leaders and mentors stating the following:

- A squad leader (SSG) assures the applicant "is a very respectful Soldier."
- A squad leader (SSG) who mentored the applicant provides this was "out of character...always looking to better [themselves], as a person and Soldier...deployed...to the Southwest border...freshly recovering from a knee surgery."
- SSG provides they "helped mentor when others discarded their attempt and left [the applicant] to fend for [themselves]...given...an actual chance, could still presume a great military career in whatever MOS [they] falls under."
- SSG provides the applicant was "...outstanding Soldier...worth fighting for...should be able to continue [their] service"
- SGT provides "professional in dealing with [their] leaders, colleagues, and legal advisors...taken the initiative in finding a solution where it seems that many are working against [them]...extremely smart...incredible asset...altruistic nature."
- SGT provides the applicant was "immediately remorseful about the situation... [they] should be given a second chance...has immense potential."
- SGT provides the applicant was "extremely kind, dependable, strong willed and well regarded among [their] peers. "They hope [the applicant's] efforts in the commitment and service to [their] job, the willingness to help others, and the motivation that [they] bring to work every day...deserves a second chance."
- SGT provides the applicant "is a person, who is willingly [helps] out anyone in a time of need, from being an ear to listen to someone, too coming to the aid of a friend."

(f) On 23 April 2020, the battalion commander concurred with the recommendation to separate the applicant with a General (Under Honorable Conditions)

characterization of service.

(6) On 17 June 2020, the separation approval authority approved the discharge, with a General (Under Honorable Conditions) characterization of service. On 18 June 2020, their separation orders were issued.

(7) The applicant provided evidence indicating on 23 June 2020, their SOC and case with the City Municipal Court, was ordered, adjudged, and decreed by the Court, to be dismissed.

(8) A DD Form 214 (Certificate of Release from Active Duty) reflects the applicant was discharged accordingly on 26 June 2020, 2 years, 8 months, and 22 days of total service. The applicant has not completed their first full term of service.

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

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

(1) **Applicant provided:** None

(2) **AMHRR Listed:** None

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293 (Application for the Review of Discharge); Case Dismissal from City Municipal Court

6. POST SERVICE ACCOMPLISHMENTS: None submitted with this 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), dated 25 September 2019, 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) 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.

(2) 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.

(3) An 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.

(4) 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. 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. 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 14-12c 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:

(1) 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.

(2) 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.

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

g. Manual for Courts-Martial (2019 Edition), United States, states military law consists of the statutes governing the military establishment and regulations issued thereunder, the constitutional powers of the President and regulations issued thereunder, and the inherent authority of military commanders. Military law includes jurisdiction exercised by courts-martial and the jurisdiction exercised by commanders with respect to nonjudicial punishment. The purpose of military law is to promote justice, to assist in maintaining good orders and discipline in the Armed Forces. Article 128 (simple assault, when committed with an unloaded firearm), the maximum punishment consists of a dishonorable discharge, forfeiture of all pay and allowances, and confinement for three years.

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

a. 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.

b. A review of the available evidence provides the applicant enlisted in the Regular Army for 5 years as a PVT, promoted to PFC and was awarded an Army Achievement Medal, having served 1 year, 9 months, and 5 days prior to their indiscipline.

(1) In August 2019 the applicant was arrested for assaulting an unidentified person by pointing a firearm at them. At their hearing, the applicant entered an agreement with the court, Stipulated Order of Continuance (SOC), for a period of 12 months and upon compliance with the terms of SOC, the City will make a motion to have the charge dismissed. This was not an admission of guilt, however, in the event the Stipulated Order of Continuance is violated and revoked by the court, the applicant agreed to submit the above case on the record; the applicant provided evidence indicating the SOC and case was dismissed in June 2020. Their commander initiated separation proceedings under the provisions of AR 635-200, Chapter 14-12c, Misconduct (Serious Offense). They elected to consult with defense counsel and to submit a statement on their behalf.

(2) Defense counsel documented their having advised the applicant of the basis for their separation and its effects, the rights available to them; the applicant elected to submit a statement on their behalf. Moreover, their civilian attorney for the civil case, provided a sworn statement indicating there are numerous mitigating facts about this case which should motivate the Armed Forces to NOT discharge the applicant, which provides the facts of this case were highly contested, to say the least, the complaining witness was an instigator of this entire incident; no one was hurt; this was, at best, aberrant conduct, since the applicant has no other criminal history; the resolution reached resulted in NO FINDING OF GUILT. Quite the contrary, it merely amounts to a set over of the case for a given period of time, and, at the end of that time period, assuming no other violations of the law, the case is AUTOMATICALLY DISMISSED, without a guilty finding ever having been entered; the applicant has no obligation to ever appear in court again. Their case was dismissed three days prior to their discharge.

(3) The applicant completed both mental status and mental health examinations for their separation and was qualified for service. On the medical examination, the provider summarized their diagnoses as right shoulder, back, and knee pain; head trauma and concussion; their recommendation was to follow up with their PCM as needed. They completed 2 years, 7 months, and 20 days of their 5 year contractual

obligation.

c. AR 635-200, Chapter 14 establishes policy and prescribes procedures for separating members for misconduct. Specific categories include minor disciplinary infractions, a pattern of misconduct, commission of a serious offense and convictions by civil authorities. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impracticable or is unlikely to succeed. A discharge under other than honorable conditions is normally appropriate for a Soldier discharge under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

d. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impeded on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

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'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 diagnosis: Adjustment Disorder.

(2) Did the condition exist or experience occur during military service? **No.** There is no in-service diagnosis and the applicant does not assert such.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that an Adjustment Disorder is difficulty adjusting and coping with change. However, does not impair an individual's ability to make conscious choices understanding right from wrong and consequences.

(4) Does the condition or experience outweigh the discharge? **N/A**

b. Response to Contention(s):

(1) Through counsel, the applicant contends their commander lied in their chapter package because they were not convicted of a crime and they have supporting documentation. The case was dismissed 5 June 2020; they presented this to legal, however, it was already too late and they were separated. Their unit was aware of their case having been dismissed since 13 December 2019; however, the courts were closed by the next court date. The Board liberally considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention. Therefore, a discharge upgrade is not warranted.

(2) Through counsel, the applicant contends the event that transpired on the evening in August 2019 does not reflect who they are as a person. They know their choices that night were not of the best judgement, but pointing their legally owned weapon when they did not deem their life in danger, was absolutely not one of them. The Board liberally considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention. Therefore, a discharge upgrade is not warranted.

(3) The applicant, through counsel contends, the transgressions of the alleged crime should not be the only factor that decides their fate in this case but should include the documents and statements provided on their behalf. The Board considered this contention and the applicant's two years and seven months of service and the awards received by the applicant but determined that these factors did not outweigh the applicant's basis for separation - assaulting an unidentified person by pointing an unloaded firearm at them.

(4) The applicant, through counsel contends, they have never received an event-oriented counseling prior to that evening and while still in, requested an opportunity for rehabilitation, such as being retained at their current position, being moved to a different company, reclassifying, or a permanent change of station. If those options were overlooked, they requested an Honorable Discharge characterization of service due to the dismissal of the case. The Board liberally considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention. Therefore, a discharge upgrade is not warranted.

(5) The witness [with the victim of the incident] contends the victim and the applicant argued in the hookah lounge, continued outside where the applicant put their gun in the vehicle. The victim approached the applicant at their vehicle, where they continued to argue for a few minutes before the applicant got in their vehicle and drove off. The weapon was only out while it was being put in the vehicle. It was never pointed in the direction of the victim. There were no shots fired, no punches thrown, only an argument which lasted five to ten minutes. The Board liberally considered this contention but found insufficient evidence in the applicant's AMHRR or applicant-provided evidence to show that the command acted in an arbitrary or capricious manner, other than the applicant's contention. Therefore, a discharge upgrade is not warranted.

(6) The nine character statements from former leaders, mentors, and colleagues contend the applicant's professionalism and resiliency, requesting they be retained for their commitment to service and willingness to help others. The Board considered this contention and the applicant's two years and seven months of service and the numerous awards received by the applicant but determined that these factors did not outweigh the applicant's basis for separation - assaulting an unidentified person by pointing an unloaded firearm at them.

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. Despite applying liberal consideration of all the evidence before the Board, the applicant's Adjustment Disorder did not excuse or mitigate the offenses of assaulting an unidentified person by pointing an unloaded firearm at them. The Board also considered the applicant's contention that their commander lied in the applicant's chapter package, as the applicant was not convicted of a crime. The Board found the totality of the applicant's record does not warrant a discharge upgrade. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process. Therefore, the 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 discharge.

(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:

7/13/2024

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