

**1. Former Servicemember's Name:** [REDACTED]**a. Application Date:** 8 February 2021**b. Date Received:** 16 February 2021**c. Counsel:** [REDACTED]**2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:****a. Applicant's Requests and Issues:**

(1) The current characterization of service for the period under review is Under Other Than Honorable Conditions. The applicant (mother of former servicemember (FSM) Note FSM is deceased since application) requests an upgrade to Honorable (previously denied in Army Discharge Review Board Docket Number AR20180009019, dated 14 June 2019); a change of the narrative reason for separation to "Secretarial Authority," and requests a personal appearance before the Board.

(2) The applicant, through counsel, seeks relief contending the FSM suffered from a significant mental impairment related to their service at the time the basis for their separation occurred. The FSM had a clinical diagnosis of Post Traumatic Stress Disorder (PTSD) that was clearly and unequivocally linked to their time in service and for which they continued to receive treatment from a private provider. The FSM's misconduct was a product of their mental state as a direct result of their exposure to combat related stressors.

(3) There was no disciplinary history prior to 15 December 2008, the fact that all incidents in question took place in a short 10-day window from 15 December 2008 to 25 December 2008, and the unusual, high-risk nature of the disciplinary infractions provide significant support the FSM was suffering from PTSD at the time of the incidents. They were separated from the Army receiving no mental health treatment for their PTSD condition. The command's failure to consider the misconduct in question in light of clear evidence demonstrating they were suffering from PTSD constitutes violations of both equity and propriety.

**b. Board Type and Decision:** In a records review conducted on 13 January 2025, and by a 5-0 vote, the Board determined the discharge is inequitable based on the Former Service Member's medical diagnoses mitigated possession of drugs and drug paraphernalia and failure to perform kitchen patrol duty. Additionally, the Former Service Member's combat service mitigated the remaining misconduct of theft. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to Honorable and changed the reason for separation to Secretarial Authority, with a corresponding separation code of JFF. The Board voted and determined the reentry eligibility (RE) code was proper and equitable due to the Former Service Member's medical diagnoses.

*Please see Section 10 of this document for more detail regarding the Board's decision.*

**3. DISCHARGE DETAILS:**

**a. Reason / Authority / Codes / Characterization:** Misconduct (Drug Abuse) / Army Regulations 635-200, Paragraph 14-12c(2) / JKK / RE-4 / Under Other Than Honorable Conditions

**b. Date of Discharge:** 18 June 2009

**c. Separation Facts:**

**(1) Date of Notification of Intent to Separate:** 21 March 2009

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

- on 15 December 2008, wrongful stole a watch of a value of less than \$500.00
- on 16 December 2008, wrongfully possessed Xylocaine, Meclizine, Epinephrine, Polocaine, Glycopyrrolate, Haldol, Vasopressin, and Monoject size 27 short sterile needles, and drug paraphernalia
- on 25 December 2008, willfully failed to perform their duties while on kitchen patrol duty

**(3) Recommended Characterization:** Under Other Than Honorable Conditions

**(4) Legal Consultation Date:** 1 May 2009

**(5) Administrative Separation Board:** On 13 March 2009, the FSM voluntarily and unconditionally waived consideration of their case by an administrative separation board and understood it was likely they would receive an Under Other Than Honorable Conditions characterization of service.

**(6) Separation Decision Date / Characterization:** 22 April 2009 / Under Other Than Honorable Conditions

**4. SERVICE DETAILS:**

**a. Date / Period of Enlistment:** 27 August 2007 / 3 years, 18 weeks

**b. Age at Enlistment / Education / GT Score:** 17 / Adult Education / 101

**c. Highest Grade Achieved / MOS / Total Service:** E-2 / 19D10 Cavalry Scout / 1 year, 8 months, 23 days

**d. Prior Service / Characterizations:** None

**e. Overseas Service / Combat Service:** SWA / Iraq (10 June 2008 – 13 May 2009)

**f. Awards and Decorations:** NDSM, GWTSM, ICM-CS, ASR, OSR

**g. Performance Ratings:** NA

**h. Disciplinary Action(s) / Evidentiary Record:**

**(1)** Two DA Forms 4187 (Personnel Action) reflect the FSM's status was changed from Present for Duty to Confinement on 27 March 2008 and changed from Confinement to Present for Duty on 26 April 2008. [Note: the FSM's summary court martial proceedings nor their charges are not in evidence for review.]

(2) A DA Form 3975 (Military Police Report) dated 27 August 2008, reflects the FSM as the named subject with the offense description of shoplifting, in violation of Article 121 (Wrongful Appropriation), Uniform Code of Military Justice (UCMJ).

(3) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ) dated 23 September 2008, reflects the FSM received nonjudicial punishment, in that, at Contingency Operating Base Adder, Iraq, on or about 27 August 2008, stole a bottle of Tight Supplements, of a value of \$37.00, the property of Army and Air Force Exchange Service in violation of Article 121, UCMJ. The FSM's punishment consisted of a reduction in rank/grade from private/E-2 to private/E-1, forfeiture of \$673.00 pay for 2 months and extra duty for 45 days. The FSM elected not to appeal.

(4) A DA Form 3975 (Military Police Report) dated 15 December 2008, reflects the FSM as the named subject with the offense description Larceny of Private Property, in violation of Article 121, UCMJ. Section VII (Narrative) reflects, on 15 December 2008, the FSM was charged with stealing a watch from the market electronics/watch shop.

(5) A DA Form 3975 (Military Police Report) dated 17 December 2008, reflects the FSM as the named subject with the offenses description of Larceny of Government Property, in violation of Article 129 (Burglary), UCMJ and Wrongful use of Controlled Substance in violation of Article 112a, UCMJ. Section VII (Narrative) reflects, on 16 December 2008, the FSM appeared to be under the influence of drugs or alcohol. The FSM failed a field sobriety test and a search of their personal property resulted in found medicinal supplies. The medicinal supplies matched, by lot number of the stolen medicinal supplies stolen from the base pharmacy on 15 December 2008.

(6) A DA Form 4856 (Developmental Counseling Form) dated 25 December 2008, reflects the FSM received event oriented counseling from their section sergeant for being belligerent with a cook assigned to delegate the duties to kitchen patrol. The section sergeant stated the FSM's severe lack of discipline, and attitude will not be tolerated and they would be recommended for UCMJ action.

(7) The FSM's memorandum, subject: Unconditional Waiver of Rights to an Administrative Separation Board in Accordance with Army Regulation 635-200, [FSM], dated 13 March 2009, the FSM acknowledge of being advised by their consulting counsel of the basis for the contemplated action to separate them under Army Regulation 635-200, paragraph 14-12c, and its effects; of the rights available to them, and the effect of any action taken by them in waiving their rights.

(a) They understood they are entitled to have their case considered by an administrative separation board because they have been recommended for a discharge Under Other Than Honorable Conditions. The FSM voluntarily and unconditionally waived consideration of their case by an administrative separation board. They further understood that it is likely that they will receive an Under Other Than Honorable Conditions characterization of service.

(b) They understood they may expect to encounter substantial prejudice in civilian life and that as a result of issuance of a discharge Under Other Than Honorable Conditions, they may be ineligible for many or all benefits as a veteran under both Federal and State laws.

(8) A memorandum, Troop Bravo, 1st Squadron, 9th Cavalry Regiment, 4th Brigade Combat Team, subject: Notification of Separation under the Provisions of Army Regulation 635-200, Chapter 14, Paragraph 14-12c (Commission of Serious Offense) for [FSM], dated

21 March 2009, the FSM's company commander notified the FSM of their intent to separate them for Commission of a Serious Offense, for misconduct as described above in paragraph 3c(2). The company commander recommended the FSM's characterization of service be Under Other Than Honorable Conditions. On the same day, the FSM acknowledged the notification of separation.

(9) The FSM's memorandum, subject: Waiver of Rights to Consult Trial Defense Services for [FSM], dated 21 March 2009, reflects the FSM voluntarily waived their right to speak with a Trial Defense Services attorney and understood they are pending separation action will be submitted to the separation authority for final action. They were not coerced or forced to make this decision and are making this decision under their own free will.

(10) A memorandum, Troop Bravo, 1st Squadron, 9th Cavalry Regiment, 4th Brigade Combat Team, subject: Recommendation for Separation under Army Regulation 635-200, Chapter 14, Paragraph 14-12c, Commission of Serious Offense, dated 21 March 2009, the FSM's company commander recommended the FSM be separated from the U.S. Army and that their service be characterized as Under Other Than Honorable Conditions. The company commander states on 21 March 2009 summary court martial proceedings were held for the FSM and they were found guilty and sentenced to forfeiture of \$863.00 pay for one month and confinement for 30 days. The FSM received a Field Grade Article 15, as described above in paragraph 4h(2). A Report of Mental Evaluation was completed on 20 March 2009. [Note: the Report of Metal Evaluation is not in evidence for review.] The company commander does not consider it feasible or appropriate to accomplish other disposition as the FSM has committed serious offenses that will not be tolerated within the command or the United States Military. They have shown a pattern of committing such offenses.

(11) A memorandum, Headquarters, Multi-National Division – South, 10th Mountain Division (Light Infantry), subject: Separation under Army Regulation 635-200, Paragraph 14-12c, [FSM], dated 22 April 2009, reflects the commanding general carefully considered the separation packet of the FSM and the chain of command recommendations. The commanding general directed the FSM be separated prior to the expiration of their current term of service and they be discharged with an Under Other Than Honorable Conditions discharge. The FSM clearly has no potential for useful service under the conditions of full mobilization.

(12) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the FSM was discharged on 18 June 2009, with 1 year, 8 months, and 23 days of net active service this period. They have not completed the first full term of service of their contractual obligation of 3 years and 18 weeks. The DD Form 214 show in –

- item 4a (Grade, Rate or Rank) – Private
- item 4b (Pay Grade) – E-1
- item 12h (Effective Date of Pay Grade) – 23 September 2008
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – Army Regulation 635-200, Paragraph 14-12c(2)
- item 26 (Separation Code) – JKK
- item 27 (Reentry Code) – 4
- item 28 (Narrative Reason for Separation) – Misconduct (Drug Abuse)

(13) On 14 June 2019, the Army Discharge Review Board denied the FSM's request for an upgrade to honorable, finding their separation was both proper and equitable. The Army Discharge Review Board determined –

(a) The record confirms the FSM's discharge was appropriate because the quality of their service was not consistent with the Army's standards for acceptable personal conduct and performance of duty by military personnel. It brought discredit on the Army and was prejudicial to good order and discipline.

(b) By violating the Army's policy not to possess or use illegal drugs, the FSM compromised the trust and confidence placed in a Soldier. They knowingly risked a military career and diminished the quality of their service below that meriting an honorable discharge.

(c) The FSM provided no independent corroborating evidence demonstrating that either the command's action was erroneous or that their service mitigated the misconduct or poor duty performance, such that they should have been retained on Active Duty. The record does not contain any indication or evidence of arbitrary or capricious actions by the command and all requirements of law and regulation were met and their rights were fully protected throughout the separation process. The character of their discharge is commensurate with their overall service record.

(d) The FSM's service record does not support their contentions, and no evidence to support it has been submitted to corroborate the discharge was the result of any medical condition. Their record does not contain any medical evidence to indicate a problem which would have rendered them disqualified for further military service at the time of discharge. Their available medical record at the time in the service indicated diagnoses of Anxiety Disorder, Dysthymic Disorder, and Unspecified Psychoactive Substance Abuse. The FSM does not have a diagnosis of PTSD or a behavioral health diagnosis that is mitigating for the misconduct which led to separation from the Army. Their discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and they were provided full administrative due process.

(e) However, notwithstanding the propriety of the FSM's discharge, the Board found their DD Form 214, item 25, 26, 27, and 28, contain erroneous entries. The Board directed the following administrative corrections and reissue of their DD Form 214, as approved by the separation authority.

- item 25 – Army Regulation 635-200, paragraph 14-12c
- item 26 – JKQ
- item 27 – RE-3
- item 28 – Misconduct (Serious Offense)
- [Note: there is no evidence of these administrative corrections or the reissuance of a DD Form 214 in the FSM's Army Military Human Resource Record (AMHRR)]

i. **Lost Time / Mode of Return:** 30 days (27 March 2008 – 25 April 2008) / Released from Military Confinement

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

(1) **FSM provided:** A 3rd Party medical statement reflecting, from 1 June 2020 to 4 September 2020, the FSM was under medical care at a residential facility. The medical physician states based on the psychiatric history, on their examination, and work with the FSM, the FSM does, to a reasonable degree of medical certainty, suffer from PTSD. They further believe, this diagnosis directly led to the behavior that resulted in the FSM's separation from the Army.

**(2) AMHRR Listed:** None

**5. FSM AND APPLICANT-PROVIDED EVIDENCE:**

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Counsel's Brief in Support of Application for Upgrade of Discharge, with exhibits –
  - Notification of Separation
  - DD Form 214
  - Secretary of Defense Memorandum, subject: Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD
  - United States Government Accountability Office, Report to Congressional Committees, "DOD Health – Actions Needed to Ensure PTSD and Traumatic Brain Injury are Considered in Misconduct Separations"
  - 3rd Party Medical Statement
  - Telephonic Hearing Notification Response Form, with Certification of Birth and Certification of Death

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

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

a. Title 10, U.S. Code, Section 1553, (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, Title 10, U.S. Code, Section 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 (DoD) 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; Title 10, U.S. Code, Section 1553; and DoD Directive 1332.41 and DoD Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), 6 July 2005, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

(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) A Under Other Than Honorable Conditions Discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial.

(4) Chapter 14 (Separation for Misconduct) established policy and prescribed procedures for separating members for misconduct. Action will be taken to separate a member for misconduct when it is clearly established that rehabilitation is impractical or unlikely to succeed. Paragraph 14-12c(2) (Abuse of Illegal Drugs is Serious Misconduct), stated, abuse of

illegal drugs is serious misconduct; however, relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation. 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.

(5) Chapter 15 (Secretarial Plenary Authority), currently in effect, provides explicitly for separation under the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the Army's best interest. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memoranda. Secretarial separation authority is normally exercised on a case-by-case basis.

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 "JKK" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12c(2), misconduct (drug abuse).

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 DoD Instructions 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. Army Regulation 600-85 (Army Substance Abuse Program (ASAP)) governs the program and identifies Army policy on alcohol and other drug abuse, and responsibilities. The ASAP is a command program that emphasizes readiness and personal responsibility. The ultimate decision regarding separation or retention of abusers is the responsibility of the Soldier's chain of command. Abuse of alcohol or the use of illicit drugs by military personnel is inconsistent with Army values and the standards of performance, discipline, and readiness necessary to accomplish the Army's mission. Unit commanders must intervene early and refer all Soldiers suspected or identified as alcohol and/or drug abusers to the ASAP. The unit commander should recommend enrollment based on the Soldier's potential for continued military service in terms of professional skills, behavior, and potential for advancement.



h. Manual for Courts-Martial, United States (2008 Edition) stated, 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 order and discipline in the Armed Forces. Appendix 12 (Maximum Punishment Chart) Manual for Courts-Martial shows the maximum punishments include punitive discharge for violating the following Article 112a (Wrongful Use, Possession, etc., of Controlled Substances), Article 121 (Wrongful Appropriation), and Article 129 (Burglary).

## **8. SUMMARY OF FACT(S):**

a. The Army Discharge Review Board considers applications for upgrade as instructed by Department of Defense Instruction 1332.28.

b. The FSM's AMHRR reflects the FSM was placed in confinement following their Court-Martial proceedings, was the named subject in Military Police Report with the offense described as shoplifting, in violation of Article 121, received nonjudicial punishment under the UCMJ for shoplifting; was the named subject in two Military Police Reports for larceny of private property, in violation of Article 121, UCMJ; larceny of government property, in violation of Article 129, UCMJ; and wrongful use of a controlled substance, in violation of Article 112a, UCMJ; which led to their voluntarily Unconditional Waiver of their Right to an Administrative Separation Board and separation from the service The FSM's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, Chapter 14, paragraph 14-12c(2), by reason of Misconduct (Drug Abuse), with a characterization of service of Under Other Than Honorable Conditions. The FSM completed 1 year, 8 months, and 23 days of their 3-year, 18-week service obligation and did not complete their first full term of service.

c. Chapter 14 establishes policy and prescribes procedures for separation 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 discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record.

d. The FSM's AMHRR does not reflect documentation of a diagnosis of PTSD, nor did the FSM provide evidence of a diagnosis of PTSD, during their military service. The FSM provided a 3rd Party medical physician's statement reflecting the FSM's treatment at a residential facility from 1 June 2020 to 4 April 2020 and their opinion that the FSM suffers from PTSD.

e. Published Department of Defense guidance indicates that the guidance is not intended to interfere or impede 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 FSM's petition, available records and/or submitted documents in support of the petition.

**9. DOCUMENTS / TESTIMONY PRESENTED DURING PERSONAL APPEARANCE:** In addition to the evidence in the record, the Board carefully considered the additional document(s) and testimony presented at the personal appearance hearing.

a. The applicant / representative submitted the following additional document(s): Medical Records.

b. The applicant / representative presented the following additional contention(s): None.

c. Counsel / Witness(es) / Observer(s): [REDACTED]

#### 10. 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 FSM 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 had the following potentially-mitigating diagnoses: Dysthymic Disorder, Anxiety Disorder with trauma symptoms, PTSD, and substance related disorders.

(2) Did the condition exist, or experience occur during military service? **Yes.** Dysthymic Disorder, Anxiety Disorder with trauma symptoms, and substance related disorders.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that it is more likely than not the applicant's misuse of drugs was secondary to ongoing trauma symptoms and pre-deployment discontinuation of a controlled substance he had been dependent on psychologically and physiologically. Although the initial trauma event was not in-service, having active symptoms of trauma while serving is still applicable as the condition is the factor rather than trauma. Moreover, it is as likely as not exposure to combat including losses, threats to life, or needing to respond with force exacerbated the symptoms. All of which occurred without the medication he'd grown dependent on leading him to seek out alternatives. Accordingly, the applicant's possession of drugs and drug paraphernalia is mitigated. Additionally, failing to perform kitchen duties is also mitigated as the misconduct could be rooted in avoidance, withdrawal related symptoms, and or unknown return to substances. However, theft is not mitigated at this time as there is no indication the theft was to fund a substance habit or otherwise connected.

(4) Does the condition or experience outweigh the discharge? **Partial.** Based on liberally considering all the evidence before the Board, the ADRB determined the Former Service Member's medical condition partially mitigates the Basis for Separation. The Former Service Member's combat service mitigates the remaining misconduct of theft.

b. Prior Decisions Cited: Previously denied in Army Discharge Review Board Docket Number AR20180009019, dated 14 June 2019.

c. Response to Contention(s):

(1) The applicant contends the FSM suffered from a significant mental impairment related to their service at the time the basis for their separation occurred. They have a clinical diagnosis of PTSD that is clearly and unequivocally linked to their time in service and for which they continue to receive treatment from a private provider. The Board considered this contention and found it valid.

(2) The applicant contends the FSM's misconduct was a product of their mental state as a direct result of their exposure to combat related stressors. The Board considered this contention and found it valid.

(3) The applicant contends there was no disciplinary history prior to 15 December 2008, the fact that all incidents in question took place in a short 10-day window from 15 December 2008 to 25 December 2008. The Board considered this contention during deliberations.

(4) The applicant contends the unusual, high-risk nature of the disciplinary infractions provide significant support the FSM was suffering from PTSD at the time the incidents. The Board considered this contention during deliberations.

(5) The applicant contends the FSM was separated from the Army receiving no mental health treatment for their PTSD condition. The Board noted this contention during its deliberations.

(6) The applicant contends the FSM command's failure to consider the misconduct in question in light of clear evidence demonstrating they were suffering from PTSD constitutes violations of both equity and propriety. The Board considered this contention during deliberations and determined the discharge was inequitable.

d. The Board determined the discharge is inequitable based on the FSM's medical diagnoses and combat service outweighed the FSM's misconduct and basis of separation (possession of drugs and drug paraphernalia, failure to perform kitchen duties, and theft).

**e. Rationale for Decision:**

(1) The Board voted to change the FSM's characterization of service to Honorable because the FSM's medical diagnoses and combat service mitigated the misconduct and basis of separation (possession of drugs and drug paraphernalia, failure to perform kitchen duties, and theft). Thus, the prior characterization is no longer appropriate.

(2) The Board voted to change the FSM's reason for discharge to Secretarial Authority under the same rationale, thus the reason for discharge is no longer appropriate. The SPD code associated with the new reason for discharge is JFF.

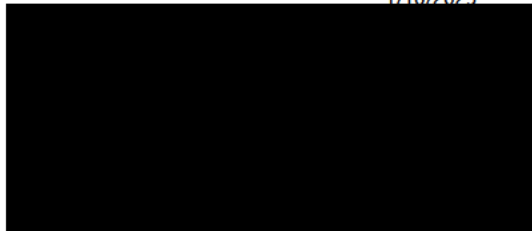
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

**11. BOARD ACTION DIRECTED:**

- a. Issue a New DD-214 / Separation Order: Yes
- b. Change Characterization to: Honorable
- c. Change Reason / SPD code to: Secretarial Authority / JFF
- d. Change RE Code to: No Change
- e. Change Authority to: AR 635-200, Chapter 15

**Authenticating Official:**

1/16/2025



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