

1. Applicant's Name:

- a. **Application Date:** 7 December 2020
- b. **Date Received:** 2 February 2021
- c. **Counsel:** Yes

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 general (under honorable conditions). The applicant requests an upgrade to honorable.

(2) The applicant, through counsel, seeks relief stating their discharge was improper, inequitable, and should be upgraded to Honorable. While on active duty they were promoted in rank/grade to sergeant/E-5, served in Afghanistan, received numerous medals, and achieved satisfactory ratings on their evaluation reports.

(3) They committed infractions in 2013 for which they were reprimanded, these infractions were infrequent based on overall years of service. Their later infractions in 2017 were administratively dismissed in civilian court. The Army was informed of their civilian charges and did not wait until the charges were adjudicated before taking punitive measures and initiated separation actions.

(4) Their discharge was improper because their command abused its authority and did not follow the discharge regulation under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations). Their command was required to formally counsel them in writing at least once prior to initiation of the action and once the counseling is given, the applicant must be given a reasonable time to correct the perceived deficiencies. This did not occur. Additionally, for a discharge under paragraph 14-12b (Pattern of Misconduct), the applicant must be transferred once with at least 2 months of duty in each unit. Their command had the authority to waive this transfer requirement if further duty by them would cause disciplinary problems or if the member resisted rehabilitative efforts. Their unit did not request a rehabilitative transfer.

(5) The reason provided on the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) was "Pattern of Misconduct." The applicant's infractions were 4 years apart and based on completely different circumstances. The only discernable pattern from their service record is their service with distinction, above average to excellent conduct, and positive review from their superior officers. Their record is so meritorious that any other characterization than honorable is clearly inappropriate. If the board disagrees with this application, the applicant requests a detailed explanation as to why.

b. Board Type and Decision: In a records review conducted on 13 March 2024, and by a 3-2 vote, the board denied the request upon finding the separation was both proper and equitable.

3. DISCHARGE DETAILS:

a. Reason / Authority / Codes / Characterization: Pattern of Misconduct / Army Regulation 635-200, Paragraph 14-12b / JKA / RE-3 / General (Under Honorable Conditions)

b. Date of Discharge: 20 July 2017

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 21 April 2017

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

- on 4 August 2013, arrested in Tampa, FL for driving under the influence.
- on 17 January 2017, arrested in Tampa, FL for reckless driving, running from law enforcement, and carrying a concealed weapon.
- on 1 February 2017, received a Field Grade Article 15 for disobeying a superior commissioned officer.

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

(4) Legal Consultation Date: 25 April 2017

(5) Administrative Separation Board: NA [Note: at the time of Notification of Separation applicant had 5 years, 10 months, and 7 days of total active service and 8 months, 15 days of reserve military service; thereby exceeding the 6 or more years requirement.]

(6) Separation Decision Date / Characterization: 4 May 2017 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 15 June 2011 / 6 years

b. Age at Enlistment / Education / GT Score: 17 / HS Graduate / 114

c. Highest Grade Achieved / MOS / Total Service: E-5 / 15H2O, Aircraft Hydraulics Repairer / 6 years, 1 month, 20 days.

d. Prior Service / Characterizations: None

e. Overseas Service / Combat Service: SWA / Afghanistan (2 August 2016 – 16 October 2016)

f. Awards and Decorations: ACM-CS, AAM-2, AGCM-2, NDSM, GWTSM, NCOPDR, ASR

g. Performance Ratings: 1 June 2015 – 30 September 2016 / Fully Capable
11 September 2016 – 1 February 2017 / Qualified

h. Disciplinary Action(s) / Evidentiary Record:

(1) A memorandum, Headquarters, 3rd Infantry Division and Fort Stewart, subject: General Officer Memorandum of Reprimand [GOMOR], dated 12 September 2013, reflects the commanding general reprimanded the applicant in writing for driving under the influence. On 4 August 2013, a civilian police officer observed the applicant operating a vehicle while intoxicated. The applicant refused to submit to a breathalyzer test, as a result, they were cited with driving under the influence. On 10 February 2014, the commanding general directed the GOMOR be placed permanently in the applicant's Army Military Human Resource Record (AMHRR).

(2) Headquarters, 3rd Combat Aviation Brigade, Order 148-011, 28 May 2015, reflects the applicant's promotion to the rank/grade of sergeant/E-5, effective 1 June 2015.

(3) A DA Form 4856 (Developmental Counseling Form), dated 18 January 2017, reflects the applicant received event orientated counseling for riding their motorcycle without a complete motorcycle accident avoidance program packet on or about 17 January 2017.

(a) Part III (Summary of Counseling) reflects the key points of discussion. The applicant is being recommended for nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), in that they were riding a motorcycle on or about 1200 hours 17 January 2017, without having a complete motorcycle accident avoidance program packet. Major C ____ has previously put out that all Soldiers will be in compliance with the Regiment Motorcycle Policy Letter. The applicant's action disobeyed a superior commissioned officer. Additionally, the applicant is being counseled for the above indicated misconduct and/or unsatisfactory duty performance. Continued behavior of this kind may result in initiation of separation action to eliminate them from the Army or nonjudicial or judicial punishment. Any further acts of misconduct or unsatisfactory performance may cause them to be eliminated without further counseling.

(b) On 19 January 2017, the applicant agreed with the counseling and signed the form.

(4) A DA Form 4856, dated 18 January 2017, reflects the applicant received event oriented counseling for being arrested on 17 January 2017.

(a) Part III (Summary of Counseling) reflects the key points of discussion. On 17 January 2017, at approximately 1200 hours, the applicant was arrested on two counts of resisting arrest, running from Law Enforcement, and having a concealed weapon. This all happened when the applicant split traffic to get to the front of a red light intersection. At that time a cop pulled up alongside with lights on. When the light turned green and the cop made on move, the applicant continued to drive on. Further down the road, at another red light intersection, a police officer tackled the applicant off their motorcycle and began the arrest. The charge for concealed weapon is going to be dropped as soon as the applicant shows the police proof that they do have a current permit to conceal carry a weapon. Additionally, the applicant is being counseled for the above indicated misconduct and/or unsatisfactory duty performance. Continued behavior of this kind may result in initiation of separation action to eliminate them from the Army or nonjudicial or judicial punishment. Any further acts of misconduct or unsatisfactory performance may cause them to be eliminated without further counseling.

(b) On 19 January 2017, the applicant agreed with the counseling and signed the form.

(5) A DA Form 2627 (Record of Proceedings under Article 15, UCMJ, dated 24 January 2017, reflects the applicant received nonjudicial punishment for on or about 17 January 2017,

having received a lawful command from a superior commissioned officer, to wit, not to ride a motorcycle until updating the commander's agreement, willfully disobeyed the same. Their punishment consisted of reduction in rank/grade to specialist/E-4, forfeiture \$1,216.00 for 2 months, 45 days of extra duty and an oral reprimand.

(6) A DA Form 2166-9-1 (NCO Evaluation Report), covering the period 11 September 2016 through 1 February 2017, reflects in –

(a) Part I (Administrative Data) – the applicant's rank as specialist, with a date of rank of 1 February 2017.

(b) Part IVc (Character) – the applicant's rater marked "Did Not Meet Standard" and commented, "SM [Service Member] received punishment under UCMJ Article 92; received a Field Grade Article 15.

(c) Part IVf (Leads) – the applicant's rater marked "Did Not Meet Standard" and commented, "breached his trust and loyalty among members of [applicant's] chain of command, Soldier directly disobeyed a lawful order from [applicant's] commander."

(d) Rater Overall Performance – the applicant's rater commented "performance was impacted due to [applicant's] lapse in judgment and actions during this rating period" and "ranked [number] 4 of 4 Sergeants that I currently rate."

(e) Part V (Senior Rater Overall Potential) – the applicant's senior rater rated their potential as "Qualified" and commented "[Applicant] has the potential to be an NCO. Continue to challenge and groom this, Soldier. Promote to SGT [sergeant] when eligible and send to ALC [Advance Leader Course] when slots are available."

(7) The Commander's Request for Behavioral Health Evaluation, dated 17 March 2017, reflects the applicant's command referred for a behavioral health evaluation. The company commander states the applicant had a driving under the influence in the unit around 2013. They were sent away for 2 years and then returned. The applicant also has stated that they make bad decisions when they drink and sometimes drinks too much. They were arrested on 17 January 2017 for speeding on their motorcycle, evading arrest, and carrying a concealed firearm. Item 5 (The following concerns have been observed) shows the company commander marked "Excessive alcohol use." Item 9 reflects the applicant has been personally counseled, the reasons for referral to behavioral health has been discussed with the applicant, the applicant does not desire to be separated from the service and in the opinion of the company commander the applicant is suitable for retention in the service. (Note: the Behavior Health Evaluation Report is not in evidence for review.)

(8) A memorandum, Delta Company, 3rd Battalion, 160th Special Operations Aviation Regiment (Airborne) subject: Separation under Army Regulation 635-200, Chapter 14-12b, A Pattern Misconduct, [Applicant], 21 April 2017, notified the applicant of initiating actions to separate them for a Pattern of Misconduct, as described in previous paragraph 3c (2). On the same date the applicant acknowledged the basis for the separation and of the rights available to them.

(9) On 25 April 2017, the applicant completed their election of rights signing they had been advised by counsel of the basis for their separation and its effects and of the rights available to them. They acknowledged that they were not entitled to consideration of their case by an administrative separation board [Note: At the time of Notification of Separation the applicant had 5 years, 10 months, and 7 days of total active service and 8 months, 15 days of

reserve military service; thereby exceeding the 6 or more years requirement and eligible for an Administrative Separation Board]. They elected to submit statements in their behalf [Note, statements in their behalf are not in evidence for review].

(10) On 28 April 2017, the applicant's company commander recommended the applicant be separated from the Army prior to their expiration of current term of service. The company commander states the applicant's Report of Mental Status Evaluation and Report of Medical Examination are attached [Note, the Report of Mental Status Evaluation and Report of Medical Examination are not in evidence for review]. Additionally, the commander states it is not feasible or appropriate to accomplish other disposition as to retain the applicant would be detrimental to unit morale and effectiveness.

(11) A memorandum, Headquarters, 160th Special Operation Aviation Regiment (Airborne), subject: Separation under Army Regulation 635-200, Paragraph 14-12b, A Pattern of Misconduct, [Applicant], dated 4 May 2017, the separation authority directed that the applicant be separated from the Army prior to the expiration of current term of service and their service be characterized as general (under honorable conditions). The separation authority states after reviewing the rehabilitative transfer requirement, they have determined the requirements are waived, as the transfer will serve no useful purpose or produce a quality, Soldier.

(12) A DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the applicant was discharged on 20 July 2017. The DD Form 214 shows in –

- item 4a (Grade, Rate or Rank) – Specialist
- item 4b (Pay Grade) – E-4
- item 12c (Net Active Service This Period) – 6 months, 1 month, 20 days
- item 12e (Total Prior Inactive Service) – 8 months, 15 days
- item 12i (Effective Date of Pay Grade) – 1 February 2017
- item 18 (Remarks) – in part
 - Period of Delayed Entry Program – 20100930 - 20110614
 - Member has Completed First Full Term of Service
- item 24 (Character of Service) – General (Under Honorable Conditions)
- item 26 (Separation Code) – JKA [Pattern of Misconduct]
- item 27 (Reentry Code) – 3
- item 28 (Narrative Reason for Separation) – Pattern of Misconduct

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s): None

5. APPLICANT-PROVIDED EVIDENCE:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Memorandum in Support of Discharge Upgrade, with 9 exhibits, consisting of –
 - excerpts of their service record reflecting their promotions, awards, and evaluations
 - General Officer Memorandum of Reprimand
 - Civil Case Information reflecting the disposition of charges against them.
 - two DA Forms 4856, reflecting their event-oriented counseling for misconduct.

- DA Form 2627, reflecting their nonjudicial punishment for failure to obey a lawful order from a superior commissioned officer.
- a memorandum, reflecting their statement in rebuttal to the nonjudicial punishment.
- Headquarters, 3rd Infantry Division and Fort Stewart Order 198-0004, reflecting their discharge from the U.S. Army
- Commander's Request for Behavioral Health Evaluation

6. POST SERVICE ACCOMPLISHMENTS: None submitted with the 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 Instruction 1332.28.

d. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), dated 19 December 2016, 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 1 (General Provisions) sets policies, standards, and procedures to ensure readiness and competency of the force while providing for the orderly administrative separation of Soldiers, it provides in pertinent part:

(a) When a separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in the permanent part of the Soldiers official personnel record.

(b) Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Except as

otherwise indicated, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and ensure it occurs prior to initiating separation proceedings for reason to include Minor Disciplinary Infractions (14-12a) or a Pattern of Misconduct (14-12b).

(5) Paragraph 2-2 (Notice) stated when the reason for separation requires the notification procedure, the commander will notify the Soldier in writing that his/her separation has been recommended per this regulation. The Soldier will be further advised of the following rights, to include, to a hearing before an administrative separation board if he/she had 6 or more years of total service and reserve service on the date of initiation of recommendation for separation. This includes creditable service in any U.S. military component, for example, Regular Army, Army National Guard of the United States, U.S. Army Reserve (including, Individual Ready Reserve and Delayed Entry Program), U.S. Navy, U.S. Air Force, and so forth.

(6) 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 14-12b (Pattern of Misconduct), stated, a pattern of misconduct consisting of one of the following – discreditable involvement with civil or military authorities, or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

(7) Paragraph 14-12b (A Pattern of Misconduct), address a pattern of misconduct consisting of either discreditable involvement with civilian or military authorities or discreditable conduct and conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civilian law and time-honored customs and traditions of the Army.

(8) Paragraph 14-3 (Characterization of Service or Description of Separation) prescribed 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.

(9) 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 "JKA" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 14, paragraph 12b, (Pattern of Misconduct).

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.

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 applicant's AMHRR reflects the received developmental counseling on acts of misconduct, recommended to receive punishment under the UCMJ and separation from the service on or about 19 January 2017, prior to their Notification of Separation on 21 April 2017. At the time of Notification of Separation, the applicant had 5 years, 10 months, and 7 days of total active service and 8 months, 15 days of reserve military service: thereby exceeding the 6 or more years requirement and eligible for an Administrative Separation Board. The applicant's DD Form 214 indicates their discharge under the provisions of Army Regulation 635-200, paragraph 14-12b, by reason of a pattern of misconduct, with a characterization of service of general (under honorable conditions).

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. 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 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 diagnoses: The applicant held an in-service diagnosis of Adjustment Disorder and service connected for PTSD.

(2) Did the condition exist, or experience occur during military service? **Yes.** The applicant held an in-service diagnosis of Adjustment Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Partial.** The Board's Medical Advisor applied liberal consideration and opined that given the nexus between trauma and difficulty with authority, disobeying an order is mitigated. However, the 2013 charge occurred prior to deployment and thus not mitigated by a deployment-based service connection. Additionally, although the January 2017 incident occurred after deployment, the applicant consistently denies it was related to substance use and documentation is void of indicators the events involved trauma reactions.

(4) Does the condition or experience outweigh the discharge? **No.** After applying liberal consideration to the evidence, including the Board Medical Advisor opine, the board determined that, while the applicant's PTSD partially mitigated the applicant misconduct of disobeying a superior commissioned officer, the applicant's PTSD does not outweigh the applicant's medically unmitigated misconduct of driving under the influence, reckless driving and carrying a concealed weapon considered by the Separation Authority in accordance with AR 635-200, paragraph 14-12b.

b. Response to Contention(s):

(1) The applicant contends their discharge was improper, inequitable, and should be upgraded to honorable. The board liberally considered this contention and determined that, while the applicant's PTSD mitigated the applicant misconduct of disobeying a superior commissioned officer, the applicant's PTSD does not outweigh the applicant's medically unmitigated misconduct of driving under the influence, reckless driving and carrying a concealed weapon. Therefore, a discharge upgrade is not warranted at this time.

(2) The applicant contends while on active duty they were promoted in rank/grade to sergeant/E-5, served in Afghanistan, received numerous medals, and achieved satisfactory ratings on their evaluation reports. The board considered and recognized the applicant's achievement, awards, and combat tour to Afghanistan but determined that these factors did not outweigh the applicant's medically unmitigated misconduct of driving under the influence, reckless driving and carrying a concealed weapon. Therefore, a discharge upgrade is not warranted at this time.

(3) The applicant contends they committed infractions in 2013 for which they were reprimanded, these infractions were infrequent based on overall years of service. Their later infractions in 2017 were administratively dismissed in civilian court. The Army was informed of their civilian charges and did not wait until the charges were adjudicated before taking punitive measures and initiated separation actions. The board considered this contention and

determined the applicant was discharged under the provisions of Army Regulation 635-200, paragraph 14-12b due to misconduct outlined in paragraph 9a (4) and 9b (1).

(4) The applicant contends their discharge was improper because their command abused its authority and did not follow the discharge regulation under the provisions of Army Regulation 635-200. The board considered this contention along with the totality of the applicant's military records and found no evidence of the command acting in an arbitrary or capricious manner. The applicant's discharge was proper and equitable because the separation authority acted properly in accordance with Army Regulation 635-200, paragraph 19-2, in effect at the time, which requires commanders to initiate separation under other provisions when required or appropriate.

(5) The applicant contends their reason for discharge was for a pattern of misconduct; however, their infractions were 4 years apart and based on completely different circumstances. The only discernable pattern from their service record is their service with distinction, above average to excellent conduct, and positive review from their superior officers. The board considered this contention and determined that a change to the applicant's current characterization of service is not warranted at this time as outlined above in paragraph 9a (4) and 9b (1).

(6) The applicant contents their record is so meritorious that any other characterization than honorable is clearly inappropriate. If the board disagrees with this application, they request a detailed explanation as to why. The board considered this contention, and the applicant is to be commended for his accomplishments but determined that the applicant was discharged under the provisions of Army Regulation 635-200, Paragraph 14-12b due to misconduct outlined above in paragraph 9a (4) and 9b (1).

c. The Board determined that the discharge is, at this time, proper and equitable, in light of the current evidence of record. However, the applicant may request a personal appearance hearing to address the issues before the board. The applicant is responsible for satisfying the burden of proof and providing documents or other evidence sufficient to support the applicant's contention(s) that the discharge was improper or inequitable.

d. Rationale for Decision:

(1) The Board voted not to change the applicant's characterization of service because, despite applying liberal consideration of all the evidence before the board, the applicant's PTSD partially mitigated the applicant's misconduct of disobeying a superior commissioned officer, however the applicant's PTSD did not excuse or mitigate the remaining offenses of driving under the influence, reckless driving and carrying a concealed weapon in accordance with AR 635-200, paragraph 14-12b. The discharge was consistent with the procedural and substantive requirements of the regulation, was within the discretion of the separation authority, and the applicant was provided full administrative due process.

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

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

10. BOARD ACTION DIRECTED:

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

Authenticating Official:

3/19/2024

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