

1. Applicant's Name: [REDACTED]**a. Application Date:** 14 September 2020**b. Date Received:** 22 September 2020**c. Counsel:** [REDACTED]**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 through counsel, an upgrade to honorable, and changes to the narrative reason and the SPD to "Secretarial Authority - JFF."

b. The applicant through counsel seeks relief contending, in effect, the applicant is entitled to the requested relief for the following reasons:

(1) The applicant was subjected to trauma during the applicant's deployments that is comparable to any other combat veterans, but due to factors out of the applicant's control, the applicant was predisposed to substance abuse. Alcohol became a coping mechanism for the applicant and the source of the applicant's poor choices leading to the applicant's discharge from the Army.

(2) On 20 July 2010, the applicant was advised of the right to obtain counsel; however, the applicant was not advised of the applicant's right to obtain copies of documents from the chain of command or the right to submit statements on the applicant's own behalf (see exhibit 9) per AR 635-200, paragraph 2-2. Leading to the applicant not being prepared to present any meaningful defense to the separation board as a result of the omissions by the applicant's chain of command.

(3) The applicant was never advised of the applicant's right against self-incrimination when the applicant was subjected to a blood alcohol content (BAC) test by the chain of command on 12 February 2007 (see exhibit 11) and that this omission directly impacted the applicant's liberty interests. Counsel asserts that courts have held that a Soldier's failure to invoke their right against self-incrimination does not foreclose the application of Article 31 to the Soldier. *Giles v. Secretary of Army*, 627 F.2d 554 (Cir. 1980). In *Giles*, it was also held that Article 31 applies to administrative proceedings as well as to court martial proceedings. The applicant was escorted to the military police station after being suspected of consuming alcohol and given a BAC test. At no point was the applicant made aware that the applicant had the right to refuse the BAC test. The applicant was denied one of the most basic liberties guaranteed by the Fifth Amendment of the United States Constitution, the right to be free against self-incrimination.

(4) There is evidence that the applicant could have been rehabilitated if given the appropriate counseling and circumstance. The applicant had great potential for rehabilitation but once deployed again, all progress the applicant had made had been lost, including coping skills and positive influences that were gained. Army trainings prevented regular attendance to therapy and the chain of command ignored the applicant's need for treatment. The applicant enrolled into the Army Substance Abuse Program (ASAP) from May to July 2009 and received treatment from July 2009 until the unit's deployment in August 2009 (see exhibit 12). The

applicant had been participating in Alcoholics Anonymous while deployed in Operation Iraqi Freedom in 2009 and resumed treatment in the ASAP in May of 2010.

(5) The applicant took responsibility for the applicant's actions which was stated in the applicant's personal statement to the administrative separation board: ". [I] just want to say that I am truly sorry for the incidents that I have committed. I realized that I have lost trust in my unit, family members, and society in general." (See Exhibit 13)

(6) Counsel further details the contentions in a ten page allied legal brief provided with the application.

c. Board Type and Decision: In a records review conducted on 17 January 2024, and by a 5-0 vote, the board determined the discharge is inequitable based on the applicant's diagnosis of PTSD and TBI outweighing the applicant's basis of separation – multiple DUIs, drunk on duty, and making false official statements. The Board recommended SA because the misconduct that occurred was totally due to the applicant's BH conditions. VA medical records indicate the applicant is 100% service connected for TBI. Therefore, the Board voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF.

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: 22 September 2010

c. Separation Facts:

(1) Date of Notification of Intent to Separate: 22 June 2010

(2) Basis for Separation: The applicant was informed of the following reasons: On or about 22 April 2010, the applicant was arrested for driving while impaired. A breathalyzer test administered to the applicant determined the applicant's BAC to be .11 %, which was over the legal limit authorized to operate a motor vehicle in the State of NC, and the applicant received a Field Grade Article 15 on 15 February 2007 for drunkenness-incapacitation for performance of duties through prior overindulgence in intoxicating liquor and making false official statements.

(3) Recommended Characterization: Under Other Than Honorable Conditions

(4) Legal Consultation Date: 22 June 2010

(5) Administrative Separation Board:

(a) On 22 June 2010, the applicant conditionally waived consideration of the case before an administrative separation board, contingent upon receiving a characterization of service no less favorable than honorable (provided by counsel, see exhibit 7).

(b) On 1 July 2010, the applicant's conditional waiver was denied (provided by counsel, see exhibit 8).

(c) On 20 July 2010, the applicant was notified to appear before an administrative separation board and advised of rights. The applicant understood that they had 7 duty days from the date of receipt to submit any statements in the applicant's own behalf. Additionally, the applicant had the right to consult with consulting counsel and/or civilian counsel at no expense to the government within reasonable time (no less than 3 duty days) (provided by counsel, see exhibit 9).

(d) Also on 20 July 2010, the applicant acknowledged notification to appear before an administrative separation board. The applicant understood that they had 7 duty days from the date of receipt to submit any statements in the applicant's own behalf. Additionally, the applicant had the right to consult with consulting counsel and/or civilian counsel at no expense to the government within reasonable time (no less than 3 duty days).

(e) On 6 August 2010, the administrative separation board convened, and the applicant appeared with counsel. The Board found that on or about 22 April 2010, the applicant was arrested for driving while impaired. A breathalyzer test was administered and determined the applicant's BAC to be .11 %, which was over the legal limit authorized to operate a motor vehicle in the State of NC, and the applicant received an FG Article 15 in February 2007 for drunkenness-incapacitation for performance of duties through prior overindulgence in intoxicating liquor and making false official statements. The board recommended the applicant's discharge with characterization of service of general (under honorable conditions). On this same date, the separation authority approved the findings and recommendations of the administrative separation board.

(f) On 26 August 2010, the staff judge advocate recommended approval of the findings and recommendations of the administrative separation board and to direct the soldier's separation with a general, under honorable conditions characterization of service (provided by counsel, see exhibit 10).

(6) Separation Decision Date / Characterization: 26 August 2010 / General (Under Honorable Conditions)

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 8 February 2008 / 6 years

b. Age at Enlistment / Education / GT Score: 23 / High School Graduate / 87

c. Highest Grade Achieved / MOS / Total Service: E-5 / 13B20, Cannon Crewmember / 8 years, 10 months, and 14 days.

d. Prior Service / Characterizations: RA, 7 November 2001 - 8 February 2008 / HD

e. Overseas Service / Combat Service: SWA / Afghanistan (3 January - 3 September 2003; 7 May 2005 - 1 May 2006); Iraq (8 June 2007 - 15 July 2008; 25 August 2009 - 24 April 2010)

f. Awards and Decorations: ACM-CS, ARCOM-2, AAM-2, AGCM-2, NDSM, GWOTEM, GWOTSM, ICM-2CS, NCOPDR, ASR, OSR-2, CAB

- g. Performance Ratings:** January 2005 - 31 October 2006 / Fully Capable
1 November 2006 - 15 February 2007 / Marginal
1 December 2007 - 30 November 2008 / Among the Best
1 December 2008 - 19 August 2010 / Fully Capable

h. Disciplinary Action(s) / Evidentiary Record:

- (1) On 1 January 2005, the applicant was promoted to the grade of E-5.
- (2) On 12 February 2007:
- (a) The applicant was counseled for making two false official statements.
- (b) The applicant received two counseling for being drunk while on duty, from the platoon sergeant (contained in AMHRR) and the small group leader (provided by counsel, see exhibit 11). The applicant was drunk on duty while attending the basic noncommissioned officer course (BNCOC) on 12 February 2007. After reporting to the commandant stumbling, with slurred voice, and smelling of alcohol, the commandant ordered Sergeant First Class (SFC) T__ E__ to escort the applicant to the military police station to receive a BAC. The initial test result was .10 and the 2nd result was .09, both results was over the legal limit and drunk on duty.
- (c) Specialist T__ N__, Military Police, states in a sworn statement, SFC E__ requested a portable breath test be given to the applicant.
- (d) The commandant notified the applicant and the applicant's command that the applicant was being dismissed from the NCO Academy for lying to a small group leader and being drunk on duty. The applicant was informed of the right to appeal.
- (e) The applicant received a service school academic evaluation report (AER) showing the applicant failed to achieve course standards for receiving an unsatisfactory in leadership and for disciplinary reasons while attending BNCOC.
- (3) The applicant received an FG Article 15 on 15 February 2007, for being drunk while on duty and two false official statements. The punishment consisted of reduction to E-4; forfeiture of \$989 pay per month for 2 months (suspended); and extra duty and restriction for 45 days (suspended).
- (4) On 1 December 2007, the applicant was promoted to the grade of E-5.
- (5) Commander's Critical Information Requirements shows while on leave from Iraq, on or about 22 April 2010, the applicant was arrested by civilian police in NC for allegedly driving while intoxicated (DWI).
- (6) On 24 April 2010:
- (a) The applicant was counseled for being arrested for driving while impaired with a BAC level of .11 on 22 April 2010 (provided by counsel).
- (b) Through counseling the applicant was informed of a chapter under AR 635-200, chapter 14-12c, commission of a serious offense for DWI/DUI on 22 April 2010, command referral to the ASAP, and marriage counseling (provided by counsel, see exhibit 5).

(7) On 26 April 2010:

- The applicant was counseled for being restricted to post because of the applicant's DWI.
- The applicant was flagged for adverse action (AA)
- The company commander requested physical and mental evaluations for the applicant.

(8) On 6 May 2010, the applicant was counseled to encourage the applicant to seek marital counseling because the commander could not command refer marriage counseling.

(9) On 20 May 2010, the company commander in a memorandum to the brigade commander expressed that for 4 years the company commander was the applicant's platoon leader. During that time the applicant was a remarkable NCO who embodied the teach, coach, and mentor that an NCO should be. The applicant had an alcohol illness and needed help and support.

(10) Three of the applicant's superior officers provided character letters to the separation board vouching for the applicant's positive impact on the Army mission (provided by counsel, see exhibits 13-15).

(11) On 7 August 2010:

(a) Page two (page one is missing) of a developmental counseling form shows the applicant disagreed with the counseling, stating the applicant requested to be relieved as the staff duty NCO and be able to attend a meeting with N__ and an alcohol anonymous meeting, however, the applicant was denied and was told to be present for staff duty NCO.

(b) A Military Police Report shows the applicant reported damage to government property to the Provost Marshall office. An unknown person damaged a government door by kicking it, there were no signs of forced entry, no items missing, and a search of the area resulted in no subjects or witnesses.

(c) The company commander requested a command directed BAC be administered to the applicant because the applicant smelled of alcohol and was suspected of being under the influence of alcohol.

(12) The applicant received an FG Article 15 on 19 August 2010, for wrongfully drinking during duty hours or have an alcohol concentration in the applicant's blood or breath which is equal to or greater than either 0.05 grams of alcohol per 100 milliliters of blood or 0.05 grams of alcohol, per 210 liters of breath while on duty on or about 7 August 2010. The punishment consisted of a reduction to E-4; forfeiture of \$1,146.00 pay per month for 2 months (suspended); and extra duty for 45 days.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) Applicant provided:

(a) Report of Behavioral Health Evaluation (BHE), 4 May 2010, shows the applicant had the mental capacity to understand and participate in proceedings. The applicant was mentally responsible; and met medical retention requirements of chapter 3, AR 40-501. The applicant was psychiatrically cleared for any administrative actions deemed appropriate by command.

The provider recommended against use of weapons/live ammunition and command's securing of all off-post weapons and order against the use of alcohol. The applicant has a documented history of alcohol abuse back to 2007. The command was requested to inform the provider within 2 weeks if they did not concur with the recommendations. The applicant was diagnosed with alcohol abuse (provided by counsel, see exhibit 6).

(b) Square One Counseling PLLC letter, 15 February 2019, states the applicant was a patient from May 2009 to July 2009 in the ASAP. The applicant was being treated for symptoms of PTSD and alcohol dependence. The applicant was making progress with recovery and was compliant with attendance. The applicant also sought outside help through Alcoholics Anonymous. The applicant was removed from the ASAP in July 2009, against the medical social worker's (MSW) recommendation, by the company commander, to prepare for deployment. The applicant resumed treatment, with the MSW in May 2010 at the MSW's private practice once the applicant returned from deployment. The applicant's symptoms of PTSD had worsened, and all progress that was made in the ASAP had been lost. The applicant attempted to abstain from drinking but had lost healthy coping skills and the positive influences and support network the applicant had developed while in the ASAP. The applicant and the MSW focused on the applicant's PTSD symptoms, attempting a cognitive processing therapy protocol, but Army trainings and field exercises prevented regular attendance. The applicant was compliant with attendance and homework when the applicant was able to. The MSW's recommendations to Tricare and the applicant's chain of command that the applicant enter a higher level of care, given the severity of the applicant's symptoms were ignored. It is the MSW's professional opinion that the Army did a great disservice to the applicant by not allowing the applicant to get the treatment needed the first time the applicant was enrolled in the ASAP, and then again when it was recommended in 2010.

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

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; Legal Brief with all listed exhibits 1 through 17 (includes DD Form 214, Enlisted Record Brief).

6. POST SERVICE ACCOMPLISHMENTS: Through the past decade of self-discipline and commitment, the applicant ultimately attained sobriety, overcame addiction to alcohol and has since made great strides in both the applicant's personal and professional life.

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

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

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

(1) Individually and collectively, these documents provide further clarification to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records when considering requests by Veterans for modification of their discharge due to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Liberal consideration will be given to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD; TBI; sexual assault; or sexual harassment. Special consideration will be given to Department of Veterans Affairs (VA) determinations that document a mental health condition, including PTSD; TBI; or sexual assault/harassment potentially contributed to the circumstances resulting in a less than honorable discharge characterization. Special consideration will also be given in cases where a civilian provider confers diagnoses of a mental health condition, including PTSD; TBI; or sexual assault/harassment if the case records contain narratives supporting symptomatology at the time of service or when any other evidence which may reasonably indicate that a mental health condition, including PTSD; TBI; or sexual assault/harassment existed at the time of discharge might have mitigated the misconduct that caused a discharge of lesser characterization.

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

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

d. Army Regulation 635-200 provides the basic authority for the separation of enlisted personnel.

(1) Paragraph 2-2 (Notice), stated commanders were to notify the soldier in writing of the following:

(a) Provide the basis of the proposed separation, including the circumstances upon which the action was based, and a reference to the applicable regulatory separation provision.

(b) The Soldier will be advised of the following rights:

- whether the proposed separation could result in discharge, release from active duty to a Reserve Component, or release from custody and control of the Army.
- the least favorable characterization of service or description of separation he/she could receive.
- the type of discharge and character of service recommended by the initiating commander and that the intermediate commander(s) may recommend a less favorable type of discharge and characterization of service than that recommended by the initiating commander.

(c) Further advise the Soldier of the following rights:

- consult with military or civilian counsel at their own expense.
- submit statements in their own behalf.
- obtain copies of documents that will be sent to the separation authority supporting the proposed separation.
- to a hearing before an administrative separation board under section III of this chapter if they had 6 or more years of total active and Reserve service on the date of initiation of recommendation for separation
- waive their rights.

(2) 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.

(3) 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.

(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.

(5) Paragraph 14-3 prescribes 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.

(6) Paragraph 14-12c prescribes 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.

(7) Chapter 15 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 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. It provides 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 missions. Individuals who do not self-refer for treatment and are subsequently identified as positive for controlled substances for which they do not have a valid prescription may be considered in violation of the UCMJ for drug misuse/abuse.

f. Army Regulation 635-5-1, Separation Program Designator (SPD) Codes, provides the specific authorities (regulatory or directive), reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214. It identifies:

(1) the SPD code of "JKQ" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of AR 635-200, Chapter 14, paragraph 12c, misconduct (serious offense); and

(2) the SPD code of "JFF" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of AR 635-200, Chapter 5, paragraph 5-3, Secretarial Authority.

g. 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.

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 through counsel, requests an upgrade to honorable, and changes to the narrative reason and the SPD to "Secretarial Authority - JFF." The applicant's AMHRR, the issues, and documents submitted with the application were carefully reviewed.

b. The applicant's DD Form 214 shows the applicant served 8 years, 10 months, and 14 days during which the applicant served 3 years, 5 months, and 4 days of foreign service between Afghanistan (2003 and 2005) and Iraq (2008 and 2009). The applicant was a patient at the ASAP from May 2009 to July 2009. The applicant resumed treatment with the MSW in May 2010 at the MSW's private practice after being command referred to the ASAP which was after deployment. The applicant received counseling and NJP for various acts of misconduct to include driving while impaired, drunk on duty, and false official statements. The applicant was discharged with a general (under honorable conditions) characterization of service on 20 September 2010.

c. The applicant through counsel contends, in effect, the narrative reason for the discharge should be changed to "Secretarial Authority - JFF." The applicant was separated under the provisions of Chapter 14, paragraph 14-12c, AR 635-200 with a general (under honorable conditions) discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "Misconduct (Serious Offense)," and the separation code is "JKQ." Army Regulation 635-8, Separation Processing and Documents, governs the preparation of the DD Form 214, and dictates the entry of the narrative reason for separation, entered in block 28 and separation code, entered in block 26 of the form, will be as listed in tables 2-2 or 2-3 of AR 635-5-1, SPD Codes. The regulation stipulates no deviation is authorized. There is no provision for any other reason to be entered under this regulation.

d. The applicant through counsel contends, in effect, the SPD code should be changed to "Secretarial Authority - JFF." Separation codes are three-character alphabetic combinations that identify reasons for, and types of, separation from active duty. The primary purpose of SPD codes is to provide statistical accounting of reasons for separation. They are intended exclusively for the internal use of DoD and the Military Services to assist in the collection and analysis of separation data. The SPD Codes are controlled by OSD and then implemented in Army policy AR 635-5-1 to track types of separations the SPD code specified by Army Regulations for a discharge under Chapter 14, paragraph 14-12c, is "JKQ."

e. The applicant through counsel contends, in effect, the applicant was subjected to trauma during the applicant's deployments that is comparable to any other combat veterans, but due to factors out of the applicant's control, the applicant was predisposed to substance abuse. Alcohol became a coping mechanism for the applicant and the source of the applicant's poor choices leading to the applicant's discharge from the Army. The applicant's DD Form 214 shows the applicant deployed four times, twice to Afghanistan and twice to Iraq.

f. The applicant through counsel contends, in effect, on 20 July 2010, the applicant was advised of the right to obtain counsel; however, the applicant was not advised of the applicant's right to obtain copies of documents from the chain of command or the right to submit statements on the applicant's own behalf (see exhibit 9) per AR 635-200, paragraph 2-2. Leading to the applicant not being prepared to present any meaningful defense to the separation board due as a result of the omissions by the applicant's chain of command. The applicant's AMHRR contains, Memorandum, Separation of (Applicant), 22 June 2010, that shows the company commander notified the applicant that the applicant had a right to submit written statements on their behalf and may obtain copies of documents that support the proposed separation. On this same date, the applicant acknowledged receipt of this notification. Memorandum, Acknowledgement of Administrative Board for (Applicant), 20 July 2010, shows that the applicant understood that they had 7 duty days from the date of receipt to submit any statements in the applicant's own behalf.

g. The applicant through counsel contends, in effect, the applicant was never advised of the applicant's right against self-incrimination when the applicant was subjected to a BAC test

by the chain of command on 12 February 2007 and that this omission directly impacted the applicant's liberty interests. Counsel asserts that courts have held that a Soldier's failure to invoke their right against self-incrimination does not foreclose the application of Article 31 to the Soldier. *Giles v. Secretary of Army*, 627 F.2d 554 (Cir. 1980). In *Giles*, it was also held that Article 31 applies to administrative proceedings as well as to court martial proceedings. The applicant was escorted to the military police station after being suspected of consuming alcohol and given a BAC test. At no point was the applicant made aware that the applicant had the right to refuse the BAC test. The applicant was denied one of the most basic liberties guaranteed by the Fifth Amendment of the United States Constitution, the right to be free against self-incrimination. Counsel provided exhibit 11, counseling showing the applicant was drunk on duty on 12 February 2007 while attending the BNCOC. The applicant's AMHRR contains, two counseling, one for making false official statements and the other for being drunk while on duty. And three memorandums and a service school AER reference being dismissed from the BNCOC course for these reasons. One of these counseling shows the commandant ordered an NCO to escort the applicant to the military police station to receive a BAC.

h. The applicant through counsel contends, in effect, there is evidence that the applicant could have been rehabilitated if given the appropriate counseling and circumstance.

(1) Counsel provided:

(a) Report of BHE, 4 May 2010, showing the applicant was diagnosed with alcohol abuse (see exhibit 6).

(b) Square One Counseling PLLC letter, 15 February 2019, showing the applicant was a patient from May 2009 to July 2009 in the ASAP. The applicant was being treated for symptoms of PTSD and alcohol dependence. The applicant also sought outside help through Alcoholics Anonymous. The applicant was removed from the ASAP in July 2009, against the MSW's recommendation, by the company commander, to prepare for deployment. The applicant resumed treatment with the MSW in May 2010 at the MSW's private practice once the applicant returned from deployment. The applicant's symptoms of PTSD had worsened, and all progress that was made in the ASAP had been lost. The applicant and the MSW focused on the applicant's PTSD symptoms, attempting a cognitive processing therapy protocol, but Army trainings and field exercises prevented regular attendance. The MSW's recommendations to Tricare and the applicant's chain of command that the applicant enter a higher level of care, given the severity of the applicant's symptoms were ignored. It is the MSW's professional opinion that the Army did a great disservice to the applicant by not allowing the applicant to get the treatment needed the first time the applicant was enrolled in the ASAP, and then again when it was recommended in 2010 (see exhibit 12).

(2) The evidence of record shows the command attempted to assist the applicant in performing and conducting to Army standards by providing counseling and the imposition of non-judicial punishment.

i. 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/experiences: TBI (100% SC); PTSD (70% SC).

(2) Did the condition exist, or experience occur during military service? **Yes.** The Board's Medical Advisor found VA service connection for TBI and PTSD establishes the conditions began and/or occurred while on active duty.

(3) Does the condition or experience actually excuse or mitigate the discharge? **Yes.** The Board's Medical Advisor applied liberal consideration and opined that the applicant has two conditions, PTSD and TBI, which mitigate his misconduct. As there is an association between PTSD/TBI and self-medication with alcohol, there is a nexus between these conditions and the applicant's offenses of DUI and being drunk on duty. Given the association between TBI and impaired executive function, there is a nexus between the applicant's diagnosis of TBI and his offense of making false official statements.

(4) Does the condition or experience outweigh the discharge? **Yes.** The Board concurred with the opinion of the Board's Medical Advisor, a voting member. As a result, the ADRB applied liberal consideration and found that the applicant's basis for separation – multiple DUIs, drunk on duty, and making false official statements, was totally due to the applicant's BH conditions and the applicant's 100% disability for TBI.

b. Response to Contention(s):

(1) The applicant through counsel contends, in effect, the narrative reason for the discharge and SPD code should be changed to "Secretarial Authority – JFF". The board considered this contention during proceedings and voted to grant relief in the form of an upgrade of the characterization of service to honorable and changed the separation authority to AR 635-200, Chapter 15, and the narrative reason for separation to Secretarial Authority, with a corresponding separation code to JFF because the applicant's TBI and PTSD outweigh the basis for separation - multiple DUIs, drunk on duty, and making false official statements. The applicant also has in-service mitigating factors (Length, Quality, and Combat service).

(2) The applicant through counsel contends, in effect, the applicant was subjected to trauma during the applicant's deployments that is comparable to any other combat veterans, but due to factors out of the applicant's control, the applicant was predisposed to substance abuse. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based off the applicant's TBI, PTSD outweighed the basis of separation - multiple DUIs, drunk on duty, and making false official statements. The applicant also has in-service mitigating factors (Length, Quality, and Combat service).

(3) The applicant through counsel contends, in effect, on 20 July 2010, the applicant was advised of the right to obtain counsel; however, the applicant was not advised of the applicant's right to obtain copies of documents from the chain of command or the right to submit statements on the applicant's own behalf (see exhibit 9) per AR 635-200, paragraph 2-2. Leading to the applicant not being prepared to present any meaningful defense to the

separation board due to the result of the omissions by the applicant's chain of command. The board determined after a review of the applicant's military records the board found that the company commander notified the applicant on 22 June 2010 and the applicant acknowledged the notification. Also, the Memorandum, Acknowledgement of Administrative Board for (Applicant), 20 July 2010, shows that the applicant understood that the applicant had 7 duty days from the date of receipt to submit any statements in the applicant's own behalf. Nevertheless, the board voted that relief was warranted based on other circumstances as outlined above in paragraph 9a (4) and 9b (1).

(4) The applicant through counsel contends, in effect, the applicant was never advised of the applicant's right against self-incrimination when the applicant was subjected to a BAC test by the chain of command on 12 February 2007 and that this omission directly impacted the applicant's liberty interests. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on other circumstances as outlined above in paragraph 9a (4) and 9b (1).

(5) The applicant through counsel contends, in effect, there is evidence that the applicant could have been rehabilitated if given the appropriate counseling and circumstance. The board considered this contention during proceedings, but ultimately did not address the contention due to an upgrade being granted based on other circumstances as outlined above in paragraph 9a (4) and 9b (1).

c. The Board determined that the applicant's characterization of service was inequitable because the applicant's TBI, PTSD mitigated all the applicant's misconduct - multiple DUIs, drunk on duty, and making false official statements. The applicant also has in-service mitigating factors (Length, Quality, and Combat service).

d. Rationale for Decision:

(1) The Board voted to change the applicant's characterization of service to Honorable because the applicant's TBI and PTSD fully mitigated the applicant's misconduct – multiple DUIs, drunk on duty, and making false official statements. The applicant also has in-service factors (length, quality, combat) and strong letters of support. The board determined the discharge inequitable and the prior characterization is no longer appropriate.

(2) The Board considered the applicant's medical mitigation, quality of service, and strong letters of support and voted to change the reason for discharge to Secretarial Authority under the same pretexts and make the applicant whole, thus the reason for discharge is no longer appropriate. The board determined that the misconduct that occurred was totally due to the applicant's BH conditions of TBI and PTSD. The SPD code associated with the new reason for discharge is JFF.

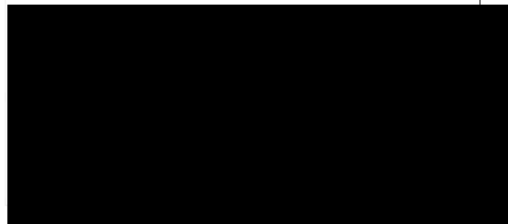
(3) The RE code will not change, as the current code is consistent with the procedural and substantive requirements of the regulation.

10. 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:

2/16/2024



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