

1. Applicant's Name:

- a. **Application Date:** 10 October 2020
- b. **Date Received:** 29 October 2020
- c. **Counsel:** Yes

2. REQUEST, ISSUES, BOARD TYPE, AND DECISION:

a. **Applicant's Requests and Issues:** The current characterization of service for the period under review is under other than honorable conditions. The applicant requests, through counsel, an upgrade to honorable, change RE code 4 to 1, and the characterization of the discharge (narrative reason) to "Secretarial Authority," and removal of derogatory information.

b. The applicant, through counsel, seeks relief contending, in effect, the appeal is based on three errors: (1) the underlying basis of the applicant's separation was procedurally defective at the time of the discharge; (2) the adverse action, to include the administrative discharge, was unfair at the time; and (3) the under other than honorable conditions discharge is inequitable now.

(1) After the applicant's ex-spouse told the applicant that the applicant would never see their children again, the applicant blacked out and when they came to, they were choking their ex-spouse. The applicant should have had a Rule for Courts-Martial 706 board investigation related to their blackout and the possibility that the applicant was experiencing PTSD or other behavioral health related trauma.

(2) The applicant was under investigation for pattern of misconduct, but the command did not wait to find out the results of the investigation. During a command-initiated discharge request, under AR 635-200, Chapter 10, paragraph 10-4b, consideration should be given to the Soldier's potential for rehabilitation, and their entire record should be reviewed before taking action. The commander must provide the member reasonable time to overcome deficiencies. In this case there was a rush to judgment that there was a problem that could not be fixed. The command should have evaluated the applicant as to whether the applicant had a long-term problem or whether there was an immediate fix.

(3) Although the command was authorized to administratively separate the applicant, the fundamental reason for the discharge was substantially deficient. There was no fully determined reason to initiate the discharge. The instruction also allows for the service-member to be able to "fix" the problem. The applicant was not allowed these opportunities. The applicant was never offered or provided with rehabilitation and the results of the investigation were never reviewed prior to the discharge. The command in this case did not have the proper authority to administratively separate the applicant.

(4) The events that took place are no longer relevant to the applicant's life and they have lived since in as responsible a manner as they could. There is no valid equitable purpose in leaving the discharge in place.

c. **Board Type and Decision:** In a telephonic appearance conducted on 1 July 2024, and by a 4-1 vote, the board denied the request upon finding the separation was both proper and equitable.

Please see Section 10 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: In Lieu of Trial by Court-Martial / AR 635-200, Chapter 10 / KFS / RE-4 / Under Other Than Honorable Conditions

b. Date of Discharge: 9 March 2007

c. Separation Facts: The applicant's case separation file is in the AMHRR; however, the applicant provided the file.

(1) Date and Charges Preferred (DD Form 458, Charge Sheet): On 22 February 2007, the applicant was charged with:

(a) Charge I: Violating Article 128, UCMJ, Specification: On 17 February 2007, for unlawfully choking Y. C. with the applicant's hands.

(b) Charge II: Violating Article 90, UCMJ, Specification: On or about 6 February and 19 February 2007, on divers' occasions willfully disobey a lawful command from commissioned officers, to refrain from contacting Y. C. or words to that effect.

(c) Charge III: Violating Article 134, UCMJ: Specification: On or about 1 December 2006 and 19 February 2007, on divers' occasions wrongfully communicate to Y. C. a threat to kill Y. C.

(2) Legal Consultation Date: 22 February 2007

(3) Basis for Separation: Pursuant to the applicant's request for discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial.

(4) Recommended Characterization: Under Other Than Honorable Conditions

(5) Separation Decision Date / Characterization: 27 February 2007 / Under Other Than Honorable Conditions

4. SERVICE DETAILS:

a. Date / Period of Enlistment: 2 June 2005 / 5 years

b. Age at Enlistment / Education / GT Score: 23 / High School Graduate / 104

c. Highest Grade Achieved / MOS / Total Service: E-4 / 63B10, Wheeled Vehicle Mechanic / 3 years, 11 months, and 3 days

d. Prior Service / Characterizations: RA, 7 April 2003 - 1 June 2005 / HD

e. Overseas Service / Combat Service: Alaska, SWA / Iraq (8 February 2004 - 30 September 2004) / The applicant's AMHRR reflects deployment dates, however, the deployment is not reflected on the DD Form 214.

f. Awards and Decorations: NDSM, GWOTEM, GWOTSM, ASR / The applicant's AMHRR reflects award of the ARCOM, AAM, AND AGCM, however, the awards are not reflected on the DD Form 214.

g. Performance Ratings: NA

h. Disciplinary Action(s) / Evidentiary Record:

(1) Charge sheet as described in previous paragraph 3c (1).

(2) The applicant's Enlisted Record Brief, 9 March 2007, reflects the applicant was flagged for Adverse Action (AA), effective 10 January 2007; and Army Physical Fitness Test Failure (JA), effective 12 December 2005; and was ineligible for reenlistment due to Other, prohibitions not otherwise identified (9X). The Assignment Eligibility Availability (AEA) code shows AEA code "C" which is temporarily ineligible for reassignments due to medical, convalescence, confinement due to trial by court martial, enrollment in Track III Army Substance Abuse Program, or local bar to reenlistment. The applicant was reduced from E-4 to E-1 effective 27 February 2007.

i. Lost Time / Mode of Return: None

j. Behavioral Health Condition(s):

(1) **Applicant provided:**

(a) Report of Behavioral Health Evaluation (BHE), 11 January 2007, reflects the applicant was psychiatrically cleared for any administrative actions deemed appropriate by the command. The applicant had the mental capacity to understand and participate in the proceedings; was mentally responsible; and met mental health retention requirements of chapter 3, AR 40-501. The applicant had a psychiatric condition that required treatment and was not motivated to continue in military service. The applicant had 3 reported suicide attempts within 18 months. The applicant was diagnosed with adjustment disorder, depressed mood, alcohol use dependence, and personality disorder not otherwise specified.

(b) Chronological Record of Medical Care, 2 March 2007, reflects the applicant had the following problems: suicidal ideation, alcohol abuse, depression, occupational problem, marital problem, adjustment disorder with depressed mood, other interpersonal problem, and unspecified substance disorders.

(c) Progress Notes reflects the applicant was admitted to the Memphis VA Medical Center for mental health reasons from 3-6 November 2009.

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

The ARBA's medical advisor reviewed DoD and VA medical records and not solely those documents listed in 4j (1).

5. APPLICANT-PROVIDED EVIDENCE: DD Form 293; attorney brief; case separation file; medical records; Appointment of Veterans Service Organization as Claimant's Representative; VA Letter, Request for documents; and Application for Disability Compensation and Related Compensation Benefits.

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

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

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

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

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

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

c. Army Regulation 15-180 (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 (Active Duty Enlisted Administrative Separations) provides the basic authority for the separation of enlisted personnel.

(1) Paragraph 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident.

(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) An under other than honorable conditions discharge is an administrative separation from the Service under conditions other than honorable and it may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court martial based on certain circumstances or patterns of behavior or acts or omissions that constitute a significant departure from the conduct expected of Soldiers in the Army.

(5) Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a discharge for the good of the Service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt.

(6) Paragraph 10-6 stipulates medical and mental examinations are not required but may be requested by the Soldier under AR 40-501, chapter 8.

(7) Paragraph 10-8a stipulates a discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier's overall record during the current enlistment. (See chap 3, sec II.)

(8) Paragraph 10b stipulates Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier's record is otherwise so meritorious that any other characterization clearly would be improper.

(9) 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.

(10) Glossary defines entry-level status for RA Soldiers is the first 180 days of continuous AD or the first 180 days of continuous AD following a break of more than 92 days of active military service.

e. Army Regulation 635-5-1 (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 "KFS" as the appropriate code to assign enlisted Soldiers who are discharged under the provisions of Army Regulation 635-200, Chapter 10, In Lieu of Trial by Court-Martial.

f. Army Regulation 601-210, (Regular Army and Reserve Components Enlistment Program), governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment per DODI 1304.26. It also prescribes the appointment, reassignment, management, and mobilization of Reserve Officers' Training Corps cadets under the Simultaneous Membership Program. Chapter 4 provides the criteria and procedures for waivable and nonwaivable 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 waivable. Eligibility: Ineligible unless a waiver is granted.

(3) RE-4 Applies to: Person separated from last period of service with a nonwaivable 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, change RE code 4 to 1, and the characterization of the discharge (narrative reason) to "Secretarial Authority," and removal of derogatory information. 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 3 years, 11 months, and 3 days during which the applicant served 7 months and 23 days in Iraq (8 February 2004 - 30 September 2004). On 22 February 2007, charges were preferred against the applicant for unlawfully choking their ex-spouse, disobeying a lawful command from commissioned officers on divers' occasions, and for wrongfully communicating to their ex-spouse a threat to kill their ex-spouse on divers' occasions. The evidence in the applicant's AMHRR confirms the applicant was charged with the commission of an offense punishable under the UCMJ with a punitive discharge. The applicant, in consultation with legal counsel, voluntarily requested, in writing, a discharge under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial. In this request, the applicant admitted guilt to the offense, or a lesser included offense, and indicated an understanding an under other than honorable conditions discharge could be received, and

the discharge would have a significant effect on eligibility for veterans' benefits. The under other than honorable conditions discharge received by the applicant was normal and appropriate under the regulatory guidance.

c. The applicant through counsel, requests the narrative reason for the discharge to be changed to "Secretarial Authority." The applicant was separated under the provisions of Chapter 10, AR 635-200, with an under other than honorable conditions discharge. The narrative reason specified by Army Regulations for a discharge under this paragraph is "In Lieu of Trial by Court-Martial," and the separation code is "KFS." 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, requests the RE code to be changed from RE-4 to RE-1. Soldiers processed for separation are assigned reentry codes based on their service records or the reason for discharge. Based on AR 601-210, the applicant was appropriately assigned an RE code of "4." An RE code of "4" cannot be waived, and the applicant is no longer eligible for reenlistment.

e. The applicant through counsel, requests removal of derogatory information from the applicant's AMHRR. The applicant's request does not fall within this board's purview. The applicant may apply to the Army Board for Correction of Military Records (ABCMR), using the enclosed DD Form 149 regarding this matter. A DD Form 149 may also be obtained from a Veterans' Service Organization.

f. The applicant through counsel contends, in effect, after the applicant's ex-spouse told the applicant that the applicant would never see their children again, the applicant blacked out and when they came to, they was choking their ex-spouse. The applicant should have had a Rule for Courts-Martial 706 board investigation related to their blackout and the possibility that the applicant was experiencing PTSD or other behavioral health related trauma. The applicant provided:

(a) Report of Behavioral Health Evaluation, 11 January 2007, reflecting the applicant was diagnosed with adjustment disorder, depressed mood, alcohol use dependence, and personality disorder not otherwise specified.

(b) Chronological Record of Medical Care, 2 March 2007, reflecting the applicant had the following problems: suicidal ideation, alcohol abuse, depression, occupational problem, marital problem, adjustment disorder with depressed mood, other interpersonal problem, and unspecified substance disorders.

g. The applicant through counsel contends, in effect, the applicant was under investigation for pattern of misconduct, but the command did not wait to find out the results of the investigation. The commander must provide the member reasonable time to overcome deficiencies. In this case there was a rush to judgment that there was a problem that could not be fixed. The command should have evaluated the applicant as to whether the applicant had a long-term problem or whether there was an immediate fix.

(1) The applicant provided the separation authority's decision memorandum, Request for Discharge in Lieu of Trial by Court-Martial - (Applicant), 27 February 2017, stating the

discharge was based on the applicant's assault of the applicant's ex-spouse and a threat to kill the ex-spouse on numerous occasions.

(2) The AMHRR does not contain any indication or evidence of arbitrary or capricious actions by the command.

h. The applicant through counsel contends, in effect, although the command was authorized to administratively separate the applicant, the fundamental reason for the discharge was substantially deficient. There was no fully determined reason to initiate the discharge. The command in this case did not have the proper authority to administratively separate the applicant.

(1) The applicant provided the charge sheet, 22 February 2007, that shows the applicant unlawfully choked their ex-spouse, disobeyed a lawful command from commissioned officers on divers' occasions, and wrongfully communicated to their ex-spouse a threat to kill their ex-spouse on divers' occasions.

(2) AR 635-200, paragraph 3-5c, provides the reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident.

i. The applicant through counsel contends, in effect, instruction also allows for the service-member to be able to "fix" the problem. The applicant was not allowed these opportunities. The applicant was never offered or provided with rehabilitation and the results of the investigation were never reviewed prior to the discharge. The applicant provided:

(1) Report of Behavioral Health Evaluation, 11 January 2007, reflecting the clinical psychologist recommended the applicant continue with follow up appointments at Community Mental Health.

(2) Memorandum, Request for Discharge in Lieu of Trial by Court-Martial, 22 February 2017, reflecting the applicant was advised by legal counsel of the basis of their contemplated trial by court-martial and the applicant personally made the choice to request a discharge in lieu of trial by court-martial.

j. 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. 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 by the applicant at the personal appearance hearing.

a. **The applicant submitted the following additional document(s):** N/A

b. **The applicant presented the following additional contention(s):** N/A

c. **Counsel / Witness(es) / Observer(s):** Counsel

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 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: Depression, Adjustment Disorder, and Personality Disorder.

(2) Did the condition exist, or experience occur during military service? **Yes.** Depression, Adjustment Disorder, and Personality Disorder.

(3) Does the condition or experience actually excuse or mitigate the discharge? **No.** The Board's Medical Advisor applied liberal consideration and opined that although the applicant asserts PTSD, there is no diagnosis and documentation does not support an undiagnosed PTSD. The in-service diagnoses are unrelated to violence and subsequent threats and violations of no contact orders. Rather, the misconduct is more likely than not due to the applicant's Personality Disorder. While a characterological condition provides context, it is not mitigating as the individual is not impaired to the extent, they are unaware of right and wrong, their choices, and the related consequences.

(4) Does the condition or experience outweigh the discharge? **No.** Despite the board's application of liberal consideration, the board considered the opinion of the Board's Medical Advisor, a voting member, that the available evidence did not support a conclusion that the applicant's Depression, Adjustment Disorder, and Personality Disorder outweighed the basis for the applicant's separation - request for discharge under the provisions of AR 635-200, Ch. 10, in lieu of trial by court-martial.

b. Response to Contention(s):

(1) The applicant through counsel contends, in effect, after the applicant's ex-spouse told the applicant that the applicant would never see their children again, the applicant blacked out and when they came to, they were choking their ex-spouse. The applicant should have had a Rule for Courts-Martial 706 board investigation related to their black out and the possibility that the applicant was experiencing PTSD or other behavioral health related trauma. The Board considered this contention and found there is no mitigation for the applicant's conduct, the reason for the applicant's separation and the character of service the applicant received upon separation were proper and equitable. The Board also found that the applicant engaged in a series of persistent and disturbing actions against applicant's ex-spouse and based on the severity of the misconduct a discharge upgrade is not warranted at this time.

(2) The applicant through counsel contends, in effect, the applicant was under investigation for a pattern of misconduct, but the command did not wait to find out the results of the investigation. The commander must provide the member reasonable time to overcome deficiencies. In this case there was a rush to judgment that there was a problem that could not be fixed. The command should have evaluated the applicant as to whether the applicant had a long-term problem or whether there was an immediate fix. The Board considered the applicant's contention, however based on the lack of medical mitigation for the misconduct, the Board voted a discharge upgrade is not warranted at this time.

(3) The applicant through counsel contends, in effect, although the command was authorized to administratively separate the applicant, the fundamental reason for the discharge was substantially deficient. There was no fully determined reason to initiate the discharge. The command in this case did not have the proper authority to administratively separate the applicant. The Board considered this contention and determined the applicant's offenses can serve as the basis for separation and characterization in accordance with AR 635-200. Therefore, a discharge upgrade is not warranted at this time.

(4) The applicant through counsel contends, in effect, instruction also allows for the service-member to be able to "fix" the problem. The applicant was not allowed these opportunities. The applicant was never offered or provided with rehabilitation and the results of the investigation were never reviewed prior to the discharge. The Board considered this contention and determined 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.

c. The Board determined that the discharge is, at this time, proper and equitable, considering the current evidence of record. The applicant has exhausted their appeal options available with ADRB. However, the applicant may still apply to the Army Board for Correction of Military Records. 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 Depression, Adjustment Disorder, and Personality Disorder diagnoses did not excuse or mitigate the offenses of unlawfully choking a person, on divers' occasions willfully disobey a lawful command from commissioned officers, to refrain from contacting Y.C., and on divers' occasions wrongfully communicate to Y. C. a threat to kill Y. C. Also, the applicant requested to be separated in lieu of a court martial and the request was granted, therefore no relief is warranted at this time. 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, and 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.

11. BOARD ACTION DIRECTED:

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

Authenticating Official:

7/26/2024

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